

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

In the Matter of:

1624 U Street, Inc.
t/a Chi-Cha Lounge

Application for Renewal of a
Retailer's Class CT License

at premises
1624 U Street, N.W.
Washington, D.C. 20009

License No.: ABRA-026519
Case No.: 13-PRO-00132
Order No.: 2014-262

BEFORE: Ruthanne Miller, Chairperson
Donald Brooks, Member
Mike Silverstein, Member
Hector Rodriguez, Member

ALSO PRESENT: 1624 U Street, Inc., t/a Chi-Cha Lounge, Applicant

Emanuel Mpras, Esq., on behalf of the Applicant

Guangsha Wang, Abutting Property Owner, Protestant

Martha Jenkins, General Counsel
Alcoholic Beverage Regulation Administration

Candas C. Taylor, Pro Bono Attorney
Alcoholic Beverage Regulation Administration

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

INTRODUCTION

The Alcoholic Beverage Control Board ("Board") grants the Application to renew a Retailer's Class CT License filed by 1624 U Street, Inc., t/a Chi-Cha Lounge ("hereinafter Chi Cha Lounge" or "Applicant"), located at premises 1624 U Street, N.W., Washington, D.C., 20009.

Procedural Background

The Notice of Public hearing advertising Chi Cha Lounge's Application was posted on October 4, 2013, and informed the public that objections to the Application could be filed on or before November 18, 2013. *ABRA Protest File No. 13-PRO-00132*, Notice of Hearing [*Notice*].

On October 1, 2013, the Alcoholic Beverage Control Administration ("ABRA") received a protest letter from Guangsha Wang, the Abutting Property Owner ("Protestant"), pursuant to D.C. Official Code §25-602(a) (2001). E-mail from Guangsha Wang, to ABRA Adjudication Division (October 1, 2013) [*Protest E-mail of Ms. Wang*].

The parties came before the Board for a Roll Call Hearing on December 2, 2013, where Ms. Wang was granted standing to protest the Application. *ABRA Protest File No. 13-PRO-00132*, Letter from Tesha Anderson to Guangsha Wang (October 4, 2013). The Board held a Status Hearing with the parties on January 29, 2014.

The Protest Hearing occurred on March 28, 2014. At the beginning of the Protest Hearing, the Applicant moved to dismiss the Protest on the basis that: (1) Ms. Wang did not have standing to protest the renewal Application; and (2) the Board was precluded from considering the issue of "adverse effect on the peace, order and quiet" to Protestant's abutting property. The Board denied the motion in a 6-0-0 vote noting that Ms. Wang had standing under § 25-601(1) as an abutting property owner. *Motion to Dismiss Protest for Lack of Standing and Issue Preclusion*, March 25, 2014. The Board also determined that it has "sufficient practical reasons" to review the merits of a Protestant's claim regardless of the Board's prior ruling involving the same parties and similar facts. *Eatonville, Inc., t/a Eatonville*, Board Order 2013-407.

At the conclusion of the Protest Hearing, the Board allowed the record to remain open until April 1, 2014, granting the Protestant additional time to file her Response to the Applicant's Motion to Dismiss. *Transcript (Tr.)*, March 28, 2014 at 296. The Protestant filed a Response to Applicant's Motion to Dismiss asserting that she had standing to protest the Application, as the owner of the abutting property. The Protestant disputes the Applicant's claim that Ms. Wang is a "surreptitious proxy" for a Protestant in a previous Protest Hearing of Applicant's renewal application. *See Response to Applicant's Motion to Dismiss*, April 1, 2014.

The Board received Proposed Findings of Fact and Conclusions of Law from Guangsha Wang on June 17, 2014. The Board also received Proposed Findings of Fact and Conclusions of Law from Chi Cha Lounge on June 18, 2014. The Board considered both in resolving this protest.

I. Issues for the Board's Consideration

The issues in this renewal case are: (1) whether the renewal of the license will adversely impact the peace, order, and quiet of the neighborhood and (2) whether the renewal of the license will adversely impact real property values. D.C. Official Code §§ 25-313, 25-725, and 25-726 and 23 DCMR § 400.1(a) (West Supp. 2014).

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 filed an Application to renew its Retailer's Class CT License. See *ABRA Licensing File No. 026519*, *ABRA Protest File No. 13-PRO-00132*. The Applicant's hours of operations, sales and services are Sunday through Saturday, 11:30 a.m. until 2:00 a.m. *Protest Report* (March 2014) [*Protest Report*]. The hours of operation for the sidewalk café are Sunday through Saturday 11:30 a.m. until 12:00 a.m. *Id.* The Applicant has an entertainment endorsement for the hours of 6:00 p.m. to 2:00 a.m., Sunday through Thursday, and 6:00 p.m. to 3:00 a.m., Friday through Saturday. See *ABRA Licensing File No. 026519*.

II. ABRA Investigator Kofi Apraku

2. Investigator Kofi Apraku investigated the Application and prepared the Protest Report submitted to the Board. *ABRA Protest File No. 13-PRO-00132*, *Protest Report*.

3. The establishment is located at 1624 U Street, N.W. *Protest Report, 1*. It has operated as an ABC licensed establishment for nineteen (19) years. *Transcript (Tr.)*, March 28, 2014 at 114. It is located in a C-2-A zone. *Protest Report, 2*. There are 22 ABC-licensed establishments located within 1200 feet of the establishment. *Id* at 3. There are no schools, recreation centers, public libraries, or day care centers within 400 feet of the Applicant. *Id* at 4.

4. The establishment has a brown and red brick façade and two separate entrances covered by two burgundy awnings. *Protest Report* at 4, *Exhibit 5*. The inside of the establishment is dimly lit and provides multiple seating options for patrons. *Id* at 3. There is a bar located in the middle of the establishment that offers a variety of alcoholic beverages. *Id* at 3. The establishment offers dinner and happy hour menus. *Id* at 3.

5. ABRA investigators monitored the Applicant on thirteen (13) separate occasions between February 11, 2014 and March 9, 2014. *Tr.*, 03/28/14 at 74. ABRA investigators did not observe any loitering, excessive noise, or other ABC violations. *Tr.*, 03/28/14 at 74. Additionally, ABRA Investigators did not observe any excessive noise emanating from the establishment. *Tr.*, 03/28/14 at 74. Protestant did not file a noise complaint with ABRA regarding excessive noise emanating from Applicant's establishment prior to or during the investigatory period of February 11, 2014 through March 9, 2014. *Tr.*, 03/28/14 at 75.

III. Lieutenant Erik Gaull

6. Lieutenant Erick Gaull, of the Metropolitan Police Department (MPD), 3rd District, testified that MPD has received nine (9) calls for service to the Applicant's address between November 1, 2013 and March 28, 2014. *Tr.*, 03/28/14 at 17. There were no

complaints filed that led to further police action regarding excessive noise emanating from Applicant's establishment during that time frame. *Tr.*, 03/28/14 at 18.

7. Lt. Gaull passes by the Applicant's establishment "every time [he] drive[s] to the police station" and has not heard excessive noise emanating from the establishment. *Tr.*, 03/28/14 at 19, 22. He also performs routine business checks at the establishment and does not consider it loud. *Tr.*, 03/28/14 at 18.

8. Lt. Gaull used a reasonable person standard to evaluate the noise level emanating from the establishment. *Tr.*, 03/28/14 at 19, 22. He testified that pursuant to the D.C. Noise Control Act, an establishment is in violation of the Act if "between the hours of 10:00 p.m. and 7:00 a.m., the noise would, to a regular observer, be considered . . . loud enough . . . to disturb a resident." D.C. Code § 22-1321(d) (Supp. 2011). *Tr.*, 03/28/14 at 19.

9. Based on Lt. Gaull's professional and "personal experience. . . and [MPD] dispatches, the complaints [about the Applicant] have not been noise-related." *Tr.*, 03/28/14 at 20, 23.

IV. Farees Salim

10. Farees Salim, the Managing Partner of Chi Cha Lounge, has served as the manager since 2009. *Tr.*, 03/28/14 at 103. Mr. Salim testified that Ms. Wang was aware that the Applicant operated as a lounge beneath Unit 101 when she purchased the Unit in 2010. Mr. Salim testified that Ms. Wang has never contacted him to complain about a noise problem. *Tr.*, 03/28/14 at 104. He became aware of the noise issue after Ms. Wang filed a protest in response to the Applicant's renewal application. *Tr.*, 03/28/14 at 105.

11. The Applicant installed soundproofing materials in its establishment in an effort to decrease the amount of noise emanating from the establishment. *Tr.*, 03/28/14 at 106. The soundproofing was installed in 2010. *Tr.*, 03/28/14 at 149. The main lounge area is soundproofed primarily because the majority of the speakers and the music are in that area. *Tr.*, 03/28/14 at 106.

12. Mr. Salim later offered to share the cost of installing additional soundproofing materials with Ms. Wang but she refused. *Tr.*, 03/28/14 at 105, 113. Ms. Wang alleged that Mr. Salim was not acting in good faith when he made the offer to install additional soundproofing and just wanted her to go away. *Tr.*, 03/28/14 at 226, 227.

V. Michael Reed

13. Michael Reed, an audio engineer, testified on behalf of the Applicant. He was hired by the Applicant in 2010 to install soundproofing materials in the establishment. *Tr.*, 03/28/14 at 154. Mr. Reed has been an audio engineer since 2006. *Tr.*, 03/28/14 at 153.

14. Mr. Reed installed Dynamat (a thick vinyl layer), insulation and caulking in the walls of the rear sections of the establishment. *Tr.*, 03/28/14 at 155, 154. The materials were installed in an effort to stop transmitting sound from the establishment. *Tr.*, 03/28/14 at 155.

15. Mr. Reed also installed surface mounted speakers in the establishment. *Tr.*, 03/28/14 at 155. The speakers were mounted on the walls to reduce sound transmission from the establishment to any other spaces. *Tr.*, 03/28/14 at 155. Surface mounted speakers mitigate sound transmission. Speakers installed inside drywall transmit more sound. *Tr.*, 03/28/14 at 155-158.

16. Mr. Reed also installed a sound limiter that is password protected. *Tr.*, 03/28/14 at 113, 156. A sound meter was used to ensure that the sound limit specified by the establishment could not be increased by anyone other than Mr. Reed or the establishment's management. *Tr.*, 03/28/14 at 113, 156.

17. Mr. Reed inspected the sound equipment ten (10) days prior to the Protest Hearing and determined that the initial settings for the sound limiter had not been changed. *Tr.*, 03/28/14 at 156.

VI. Guangsha Wang

18. Guangsha Wang, abutting property owner, owns Unit 101, a condominium located at 1624 U Street, N.W., that is located directly above the Applicant's establishment. *Tr.*, 03/28/14 at 214.

19. Ms. Wang purchased the unit in 2010 for approximately \$150,000.00. *Tr.*, 03/28/14 at 214, 240. D.C. Tax Records lists Ms. Wang's condominium unit as a residential unit. *Tr.*, 03/28/14 at 229, 282. She has never resided in the unit. *Tr.*, 03/28/14 at 214, 234. Currently, she resides in Chevy Chase, M.D. *Id.*

20. Ms. Wang was informed by her tenant, John Carmel, that there was excessive noise emanating from Chi Cha Lounge into Unit 101. *Tr.*, 03/28/14 at 215.

21. Ms. Wang asserted that she filed noise complaints with ABRA, DCRA and MPD. *Tr.*, 03/28/14 at 215. She is not a qualified acoustical engineer with a certificate of registration issued by the District. 20 DCMR §2700.20. *Tr.*, 03/28/14 at 198.

22. Ms. Wang also asserted that she had to reduce the price of the rent for Unit 101 due to excessive noise emanating from Chi Cha Lounge. *Tr.*, 03/28/14 at 218, 243.

23. Ms. Wang requests that Applicant reduce the noise level to the decibel level allowed under the D.C. Noise Act. *Tr.*, 03/28/14 at 228.

VII. John Carmel

24. John Carmel, a former tenant of Unit 101, testified on behalf of the Protestant. *Tr.*, 03/28/14 at 49. Mr. Carmel informed Ms. Wang that there was excessive noise emanating from the Applicant's establishment. *Tr.*, 03/28/14 at 51, 215.

25. Mr. Carmel resided in Unit 101, for approximately four (4) months beginning in mid-November 2012 through March 2013. *Tr.*, 03/28/14 at 50. Mr. Carmel signed a lease agreement for the term of one (1) year, with the option to extend the lease term. *Tr.*, 03/28/14 at 51. Mr. Carmel paid eighteen hundred (\$1,800.00) for rent per month. *Id.*

26. Mr. Carmel heard excessive noise in his apartment, emanating from the Applicant's establishment every evening from the hours of 5:00 p.m. until 2:00 a.m. *Tr.*, 03/28/14 at 51, 62. On weekends, the noise was heard until 3:00 a.m. *Tr.*, 03/28/14 at 51.
27. The noise emanating from the Applicant's establishment had a detrimental effect on Mr. Carmel's health. *Tr.*, 03/28/14 at 51. It was impossible for him to fall asleep and get the rest he needed. *Tr.*, 03/28/14 at 51.
28. Mr. Carmel spent over five hundred (\$500.00) dollars for thick carpets, a heavy duty fan and earplugs with the intention of making the living situation work. *Tr.*, 03/28/14 at 52. He wanted to honor the lease agreement that he negotiated with Ms. Wang. *Tr.*, 03/28/14 at 51.
29. Mr. Carmel contacted Ms. Wang in March 2013 to terminate the lease because of his health concerns. *Tr.*, 03/28/14 at 52, 65.
30. Mr. Carmel was relatively new to Washington, D.C. when he entered into the lease agreement with Ms. Wang. *Tr.*, 03/28/14 at 60. He believed that Applicant operated as a restaurant and not as a club environment. *Tr.*, 03/28/14 at 60.
31. Mr. Carmel did not complain directly to the Applicant about the excessive noise heard in his unit. *Tr.*, 03/28/14 at 63.

VIII. Jeffrey Weinrich

32. Jeffrey Weinrich, a former tenant of Unit 101, testified on behalf of the Protestant. *Tr.*, 03/28/14 at 173. Mr. Weinrich was informed by Ms. Wang that there was excessive noise emanating from the Applicant's establishment into Unit 101. *Tr.*, 03/28/14 at 175-76, 178. Ms. Wang notified Mr. Weinrich of the noise issue the night before the parties entered into the lease agreement. *Tr.*, 03/28/14 at 175-76, 178.
33. Mr. Weinrich resided at 1624 U Street, N.W., Unit 101 for approximately two (2) months from September 2013 through November 2013. *Tr.*, 03/28/14 at 174-75. Mr. Weinrich signed a lease agreement for the term of one (1) year, for eighteen hundred (\$1,800.00) dollars per month. *Tr.*, 03/28/14 at 175. Ms. Wang reduced the rent to sixteen hundred (\$1,600.00) dollars per month because of the noise emanating from Applicant's establishment. *Tr.*, 03/28/14 at 175-76.
34. Mr. Weinrich did not complain directly to the Applicant about the excessive noise heard in his unit. *Tr.*, 03/28/14 at 180.
35. In November 2013, Mr. Weinrich terminated his lease agreement with Ms. Wang because of the noise. *Tr.*, 03/28/14 at 177.

IX. Andrew Payne

36. Andrew Payne, Ms. Wang's friend and business associate, testified on behalf of the Protestant. *Tr.*, 03/28/14 at 183. Mr. Payne testified that he was aware of the D.C. Noise

Control Act and that a 60 (dB) level or less was required for Ms. Wang's building. *Tr.*, 03/28/14 at 186.

37. On March 1, 2014, at approximately 12:00 a.m., Mr. Young and Ms. Wang stood in front of the glass windows of Chi Cha Lounge with a sound measuring device. *Tr.*, 03/28/14 at 116, 210. The sound level meter reading was 80 (dB). *Tr.*, 03/28/14 at 210.

38. On the same night, Mr. Young took another reading inside District of Columbia Fire Station No. Nine (9) in the corner towards Chi Cha Lounge. *Tr.*, 03/28/14 at 210. The sound meter reading was 87 (dB). *Id.*

X. George Eulo

39. George Eulo, Ms. Wang's business partner, and friend, testified on behalf of the Protestant. *Tr.*, 03/28/14 at 248. Mr. Eulo checked the decibel level of the noise emanating from Applicant's establishment with a sound level meter on September 13, 2013. *Tr.*, 03/28/14 at 251. The test was performed between 9:00 p.m. and 3:00 a.m. inside Unit 101. *Tr.*, 03/28/14 at 252.

40. Mr. Eulo used an iPhone with a free app on it called Decibels to check the noise level in Unit 101. *Tr.*, 03/28/14 at 252. Mr. Eulo laid the iPhone on the floor adjacent to the shared wall. *Tr.*, 03/28/14 at 252. The sound level meter decibel reading was 92 (dB) with a background level of 88 (dB). *Tr.*, 03/28/14 at 252.

41. Mr. Eulo and Ms. Wang contacted the MPD, 3rd District to file a noise complaint on September 13, 2013. *Tr.*, 03/28/14 at 253. Ms. Wang filed her report with an officer and was informed that the Applicant was a bar and that she should expect that it is going to be loud. *Tr.*, 03/28/14 at 253. No further legal action was pursued. *Id.*

CONCLUSIONS OF LAW

42. Pursuant to D.C. Official Code § 25-313(a) (2001) and 23 DCMR § 400.1(a) (2008), an Applicant must demonstrate to the Board's satisfaction that the establishment's Application to renew a Retailer's Class CT License is appropriate for the neighborhood in which it is located. The Protestant challenged the Application on the grounds that it would adversely impact peace, order, and quiet of the neighborhood and adversely impact real property values. The Board finds that the Application is appropriate.

43. The Board finds that renewing the Application will not adversely impact the peace, order, and quiet of the neighborhood. The noise experienced by Ms. Wang is not prohibited by law and the Applicant is compliant with D.C. Code § 25-725.

44. The ABC laws of the District of Columbia state that "The licensee under an on-premises retailer's license shall not produce any sound, noise, or music of such intensity that it may be heard in any premises other than the licensed establishment" except if the premises are located "within a C-1, C-2, C-3, C-4, C-M, or M zone, as defined in the zoning regulations for the District." D.C. Code § 25-725(a), (b)(3) (2001). In addition, "licensees . . . shall comply with the noise level requirements set forth in Chapter 27 of

Title 20 of the District of Columbia Municipal Regulations.” § 25-725(c). In commercial zones, the maximum noise level that may be caused by a licensee is 60 dB(A) at night. 20 DCMR § 2701.1 (Supp. 2011).

45. Here, the facts show that Ms. Wang and the Applicant are located in a C-2-A zone. *Supra*, at para. 2. Based on this fact, the noise heard by Ms. Wang in her condominium unit falls under the exception to the noise prohibition found in § 25-725(b)(3), which carves out properties located in commercial zones from the prohibition. § 25-725(a), (b)(3).

46. The Board was presented with sound level meter readings as evidence that the noise heard in Ms. Wang’s unit exceeds the 60 dB(A) limit set by § 2701.1.

47. The Applicant made a Motion to Exclude the sound level meter readings as evidence. *Tr.*, 03/28/14 at 206. The Board denied the Motion with a 3-1-0 vote. *Tr.*, 03/28/14 at 207.

48. The D.C. Noise Control Act (“Act”) requires noise levels be measured by any official designated by the Mayor or by any person who is a qualified acoustical engineer who holds a certificate of registration as a professional engineer issued by the District. The measurements shall be admissible as evidence in any civil, criminal, or administrative proceeding relating to the enforcement of any provision of the Act. 20 DCMR § 2700.20. *Tr.*, 03/28/14 at 198. The sound level meter and microphones “shall meet Type II specifications. [and] be qualified annually.” 20 DCMR §2901. *Tr.*, 03/28/14 at 200.

49. The facts indicate that the sound level meter readings that Ms. Wang presented are insufficient evidence of Applicant’s violation of the D.C. Noise Act. T The sound level meters and measurements failed to meet the statutory requirements. *Tr.*, 03/28/14 at 201, 203, 206, 209. Ms. Wang is not a “qualified acoustical engineer with a certificate of registration” issued by the District. 20 DCMR §2700.20. *Tr.*, 03/28/14 at 198. Ms. Wang did not present evidence that the devices used to measure the sound level met the specifications required by 20 DCMR § 2901. *Tr.*, 03/28/14 at 200. Accordingly, the Board does not consider the meter readings as accurate measurements of the sound level emanating from Chi Cha Lounge. Therefore, the Board does not find that the noise heard by the Protestant violates § 25-725.

50. The Board also notes that the Applicant is not at risk of violating the District of Columbia’s disorderly conduct law, which is an ABC violation under D.C. Code § 25-823(2) (Supp. 2011).

51. The law states: “It is unlawful for a person to make an unreasonably loud noise between 10:00 p.m. and 7:00 a.m. that is likely to annoy or disturb one or more other persons in their residences.” D.C. Code § 22-1321(d) (Supp. 2011). In the Board’s view, noise generated by an establishment cannot be “unreasonable” if a licensee has taken commercially reasonable steps to soundproof its establishment and is not otherwise in violation of the District of Columbia’s noise laws.

52. There is no evidence that the noise created by the Applicant has an adverse impact on Ms. Wang’s real property value. The real property is located in a C-2-A zone. *Supra* at para. 2. The noise heard by Ms. Wang in her condominium unit falls under the exception to

the noise prohibition found in § 25-725(b)(3), which carves out properties located in commercial zones from the prohibition. § 25-725(a), (b)(3). Further, Ms. Wang's property may also be used for a commercial purpose. As such, the Board cannot conclude that the establishment is having a negative impact on property value and does not violate § 25-725.

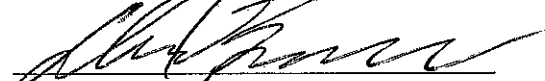
53. Consequently, the Board finds that renewing the Applicant's Retailer's Class CT License will not adversely impact the peace, order, and quiet of the neighborhood or adversely impact real property values.


ORDER

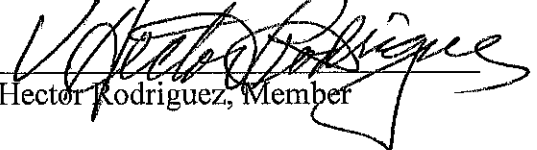
Therefore, this 6th day of August 2014, it is hereby **ORDERED** that the Renewal Application of the Retailer's Class CT License filed by 1624 U Street, Inc., t/a Chi-Cha Lounge, at premises 1624 U Street, N.W., Washington, D.C., is hereby **GRANTED**. Copies of this Order shall be sent to the Applicant and the Protestant.

District of Columbia
Alcoholic Beverage Control Board


Ruthanne Miller, Chairperson


Donald Brooks, Member


Mike Silverstein, Member


Hector Rodriguez, 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, N.W., Suite 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, 500 Indiana Avenue, N.W., Washington, D.C. 20001. 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) (2004).