

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

In the Matter of:)

DGB2, LLC)
t/a Dacha Beer Garden)

Application to Renew a)
Retailer's Class CT License)

at premises)
1740 14th Street, N.W.)
Washington, D.C. 20009)

Case No.: 17-PRO-00035
License No: 105719
Order No: 2017-582

BEFORE: Donovan Anderson, Chairperson
Mike Silverstein, Member
James Short, Member
Donald Isaac, Sr., Member

ALSO PRESENT: DGB2, LLC, t/a Dacha Beer Garden, Applicant

Andrew Kline, Counsel, on behalf of the Applicant

Lyle Blanchard, Counsel, on behalf of a Group of Five or More Residents
or Property Owners, Protestants

• Jason Forman, Chairperson, Advisory Neighborhood Commission (ANC)
2F, on behalf of ANC 2F and ANC 1B, Protestants

Elwyn Ferris, President, Shaw Dupont Citizens Alliance, Inc. (SDCA)

Charles Ellis, Vice-President, Dupont Circle Citizens Association (DCCA)

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 for a New Retailer's Class CT License filed by DGB2, LLC, t/a Dacha Beer Garden, (hereinafter "Applicant" or "Dacha") subject to the condition that the total occupancy of the entire premises be limited to 200 people, including the occupancy of any unenclosed outdoor seating areas, which is limited to 150 people. Furthermore, Dacha's requested hours of operation shall be limited to 1:30 a.m. during the week and 2:30 a.m. on Friday and Saturday, while the hours of operation for any unenclosed outdoor seating area shall extend no later than 11:00 p.m. during the week and midnight on Friday and Saturday.

The Board finds the Application generally appropriate because (1) Dacha's proposed address is located in an ARTS-3 zone, which focuses on creating 18 hours of activity per day, encouraging retail and entertainment businesses, and generating employment; (2) Dacha has not applied for an entertainment endorsement and noise issues caused by amplified music can be addressed by the enforcement of D.C. Code § 25-725; (3) Dacha's main entrance and exit will face 14th Street, N.W., not the abutting street leading into a residential area; (4) Dacha's neighborhood has adequate access to public transportation to prevent an adverse impact on neighborhood parking; and (5) there is no convincing or compelling argument that Dacha will cause a decline in property values.

In approving the Application, the Board considered the ownership's past history of violations at a separate establishment. While Dacha was issued significant fines and suspensions, the offenses did not lead to the revocation of the license, did not relate to underage drinking, violence, or other criminal conduct, and Dacha complied with the settlement resolving the violations.

The Board found sufficient cause to limit the occupancy and hours authorized by the license. First, because the Applicant in this case has a history of numerous occupancy violations at another establishment, the Board is not satisfied that the Applicant can manage crowds of up to 600 people without a detrimental impact on the neighborhood. Second, the Board is concerned that granting Dacha's full occupancy request could lead to overcrowded sidewalks and interfere with traffic in an area that experiences many accidents. Finally, the Board was persuaded by testimony of late night disturbances to conclude that Dacha's hours should be reduced in order to discourage activity on S Street, N.W., very late into the night. Consequently, the Board conditions licensure on the Applicant abiding by a lower occupancy and fewer hours than initially requested.

Procedural Background

The Notice of Public Hearing advertising Dacha's Application was posted on May 5, 2017, and informed the public that objections to the Application could be filed on or before June 19, 2017. *ABRA Protest File No. 17-PRO-00035*, [Notice of Public Hearing]. The records of the Alcoholic Beverage Regulation Administration (ABRA) indicate that Advisory Neighborhood Commission (ANC) 2F, ANC 1B, a Group of Five or More Residents and Property Owners, the Shaw Dupont Citizens Alliance (SDCA), and the Dupont Circle Citizens

Association (DCCA) (hereinafter collectively the “Protestants”) have filed a protest against the Application. *ABRA Protest File No. 17-PRO-00035*, Roll Call Hearing Results.

The parties came before the Board’s Agent for a Roll Call Hearing on July 10, 2017, where all of the above-mentioned objectors were granted standing to protest the Application. On July 19, 2017, the parties came before the Board for a Protest Status Hearing. Finally, the Protest Hearing in this matter occurred on October 4, 2017. After the hearing, the Board received Proposed Findings of Fact and Conclusions of Law submitted by the Protestants, which the Board has considered in issuing this Order.

The Board further 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 properly adopted written recommendations from ANC 2F and ANC 1B. The ANCs’ 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 Board finds that the request will not have an adverse impact on the peace, order, and quiet; residential parking and vehicular and pedestrian safety; the overconcentration of licensed establishments; 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. 2017).

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. Dacha has submitted an Application for a New Retailer’s Class CT License at 1740 14th Street, N.W., Washington, D.C. *Notice of Public Hearing*. A drawing of the proposed establishment shows that Dacha will construct a building at the back of the property. *ABRA Protest File No. 17-PRO-00035, Protest Report*, at Exhibit 6 (Sept. 2017) [*Protest Report*]. Next to the building is an enclosed sidewalk café that runs along S Street, N.W. *Id.* In combination with the building, the two structures make an “L” shape that borders an outdoor summer garden that faces 14th Street, N.W. *Id.*

2. During the hearing, the Applicant stipulated to a different occupancy for the premises than initially requested in its Application. *Transcript (Tr.)*, October 4, 2017 at 24. Dacha stipulated to a maximum occupancy of 200 persons in the building; a maximum of 250 people in the summer garden; and a maximum of 150 people in the sidewalk café. *Id.*

3. The proposed establishment is located in an ARTS-3 zone. *Protest Report*, at 6. According to § 800.1 of Title 11-K of the D.C. Municipal Regulations, “The purposes of the Mixed-Use-Uptown Arts (ARTS) zones (ARTS-1 through ARTS-4) are to:

- (a) Promote the creation of arts, arts-related, and art-supporting uses;
- (b) Encourage a pedestrian scale of development, a mixture of building uses, adaptive reuse of older buildings, strengthened design character, public safety, and eighteen (18) hour activity;
- (c) Require uses that encourage pedestrian activity, especially retail, entertainment, and residential uses; . . .
- (f) Expand business and job opportunities, and encourage development of residential and commercial buildings; . . . [and]
- (i) Foster eighteen (18) hour activity and increased public safety.

11-K DCMR § 800.1(a)-(c), (f), (i) (West Supp. 2017). Furthermore, “The ARTS-3 zone is intended to permit medium-density, mixed-use development, with a focus on employment.” 11-K DCMR § 800.4 (West Supp. 2017).

4. The rear of the establishment borders an alley and is located next to a residential RF-2 zone. *Protest Report*, at 7. Forty licensed establishments are located within 1,200 feet of the proposed location. *Id.* There are no schools, recreation centers, public libraries, or day care centers located within 400 feet of the establishment. *Id.* at 9.

5. According to the public notice, Dacha Beer Garden’s proposed hours of operation and hours of sale service and consumption of alcoholic beverages are as follows: 7:00 a.m. to 2:00 a.m., Sunday through Thursday, and 7:00 a.m. to 3:00 a.m. on Friday and Saturday. *Id.* at 10. The establishment’s proposed summer garden and sidewalk café operating hours are as follows: 7:00 a.m. to 11:00 p.m., Sunday through Tuesday; 7:00 a.m. to 12:00 a.m. on Wednesday and Thursday; and 7:00 a.m. to 2:00 a.m. on Friday and Saturday. *Id.* at 11. The proposed sale, service, and consumption of alcohol hours start at 8:00 a.m. on all days but are otherwise the same as the outdoor operating hours.

6. At this time, the proposed establishment does not operate at the current address. *Id.* at 11. Nevertheless, across from Dacha’s proposed location, “Garden District, a beer garden located at 1801 14th Street[,] N.W., . . . has not received any noise complaints within the time period of September 2016 to September 2017. *Id.* Moreover, the Applicant intends to have trash pickup every day except Sunday. *Tr.*, 10/4/17 at 47.

II. Illya Alter

7. Illya Alter owns Dacha with Dmitri Chekaldin. *Id.* at 90. He also owns another beer garden called Dacha Beer Garden in the Shaw neighborhood, which has been in operation since 2013. *Id.*

8. When the Shaw beer garden first opened, it received a license that permitted a maximum of 126 people in a space that fit 400 people. *Id.* at 96. Nevertheless, when demand exceeded the owners' expectations they began letting in more people than their license allowed. *Id.* Mr. Alter admits that this was wrong because they "almost lost" their business and that "there is no upside to being a bad neighbor." *Id.* at 98; *see also id.* at 139.

9. In Board Order No. 2015-511, Dacha's current owners agreed to a settlement whereby the owners received \$42,500 fines and received forty suspension days. *In re Daci Enterprises, LLC, t/a Dacha Beer Garden*, ABRA License No. 2015-511, Board Order No. 2015-511, 1-2 (D.C.A.B.C.B. Nov. 4, 2015). The violations related to violations of the substantial change law and various settlement agreement violations. *Id.* at 1-5; D.C. Code § 25-762. In total, the owners admitted to three primary tier offenses and nine secondary tier offenses. *In re Dacha Beer Garden*, Board Order No. 2015-511 at 5.

10. The proposed business at 1740 14th Street, N.W., will operate as a full-service restaurant. *Id.* at 101-02. Servers will take orders and employees will bring food and drinks to people at tables. *Id.* at 102. Dacha will serve breakfast, brunch, and lunch. *Id.* at 102-03. The establishment will also have a large enclosed sidewalk café. *Id.*

11. Dacha has taken steps to curb noise issues. *Id.* at 109. First, Dacha will construct a building in the rear of the property to block noise. *Id.* Second, the summer garden will face 14th Street, N.W., and the sidewalk café will use sound mitigating material. *Id.* at 109, 118. Third, Dacha has hired a sound engineer to ensure that the construction of the building incorporates noise mitigation. *Id.* at 110. Fourth, the entrance and exit to the establishment will be built on 14th Street, N.W., while the exits on S Street, N.W., will only be used as emergency exits to encourage patrons to stay off S Street, N.W. *Id.*

12. The property that will host Dacha is about 130 feet long from 14th Street, N.W., to the alley. *Id.* at 113. The building will cover sixty percent of the property and will be approximately 20 feet high. *Id.* at 113, 121. The outdoor seating area will be limited to 250 seats. *Id.* at 115. There is no standing area in the outdoor seating area. *Id.* The enclosed sidewalk café will also only have a seating area and a children's playground will be located in the rear of the structure. *Id.* at 116.

13. If Dacha's plans for the proposed sidewalk café are not approved by the appropriate authorities, Mr. Alter indicated that Dacha will build a wall to provide noise mitigation on the property line facing S Street, N.W. *Id.* at 119.

14. Mr. Alter indicated that the establishment wants to operate at least until midnight during the week and 1:00 a.m. during the weekend. *Id.* at 123-24.

III. Commissioner Alex Padro

15. Alex Padro serves as the Chair of ANC 6E, which is located in the Shaw neighborhood. *Tr.*, 10/4/17 at 71. He has observed that the current owners of Dacha run a popular beer garden in his neighborhood. *Id.* at 73. In 2013, the beer garden in Shaw previously created a large amount of noise that bothered nearby residents and attracted crowds as large as 600 people. *Id.* at 74-75, 86. He also is aware that during this time the owners had to pay a large fine to ABRA. *Id.* at 83. After this occurred, the owners agreed in a settlement agreement to limit the outdoor beer garden in Shaw to 250 people, limit the interior to 250 people, and implement a number of soundproofing measures recommended by a sound engineer. *Id.* at 75, 83. After the agreement, the noise complaints ceased. *Id.* at 76-77. Consequently, Mr. Padro believes that the owners have become more considerate since the incidents in 2013 and are ready to follow the conditions of their license and the law if granted another license. *Id.* at 82, 86.

IV. Josh Curley

16. Josh Curley works for Phoenix Noise & Vibration (Phoenix). *Id.* at 141. Phoenix is an acoustical consultant company that focuses on addressing noise and vibration problems. *Id.* at 142. Mr. Curley has a degree in mechanical engineering and has worked for Phoenix for over 10 years. *Id.* at 141-42.

17. Phoenix performed a noise analysis for Dacha at the proposed location. *Id.* at 144. The analysis considered the occupancy and site plan to determine the noise impact on S Street, N.W. *Id.* at 145. Based on this information, Phoenix created a simulation of noise sources to mimic the noise impact of people and amplified music for the purpose of calculating the noise impacts on S Street, N.W. *Id.* at 145-48. The test presumed that there would be a maximum occupancy of 150 people in the enclosed sidewalk café, 200 people in the interior of the building, and 250 people in the summer garden. *Id.* at 146. The test also presumed that Dacha would use “absorptive materials,” that speaking volume would be 67 decibels, and that half the people would be talking at any one time. *Id.* at 149-50.

18. The simulation determined that Dacha’s maximum noise impact—with full capacity, amplified music, and open doors and windows—would be similar to “existing noise sources.” *Id.* at 146, 148-49. Mr. Curley indicated that this would be equivalent to existing traffic and the outdoor seating areas of other establishments located in the neighborhood. *Id.* at 147.

19. As part of the noise analysis, Phoenix produced a report for Dacha titled “Dacha Beer Garden – 1740 14th Street NW Preliminary Noise Analysis.” *Applicant’s Exhibit 2*. According to the report, under the “‘worse case’ scenario,” with Dacha at full capacity and the sidewalk café windows open, the noise level at the nearest residence will likely be 53 dBA, which is lower than the legal decibel limit for commercial zones. *Id.* at 2, 6. The report further notes that “placing the only true outdoor area as far from the residences as possible within the boundary” reduces the noise impact of the establishment. *Id.* at 9.

V. Fernando Garcia

20. Fernando Garcia sells residential real estate in the District of Columbia. *Tr.*, 10/4/17 at 168. He has participated in a number of real estate transactions in the area surrounding Dacha's proposed location. *Id.* at 169, 179. As part of his job, he regularly conducts comparative market analyses by comparing the value of property sold in the community in order to determine the value of the property being sold. *Id.* at 175-76. Based on transactions he has worked on, he has seen a number of properties sell for more than the initial asking price. *Id.* at 180. Mr. Garcia also noted that a metro station is located a block and half away from the proposed location. *Id.* at 183.

VI. Commissioner Jason Forman

21. Commissioner Jason Forman lives in and represents ANC 2F01. *Id.* at 192. He objects to the Application based on concerns regarding the occupancy of the premises, the overconcentration of licensed establishments in the neighborhood, and Dacha's use of public space. *Id.* at 192.

22. Mr. Forman opposes the initial Application's request for a maximum of occupancy of 400 in the outdoor seating areas. *Id.* In comparison, the beer garden across the street from Dacha's proposed location, Garden District, has a maximum capacity of 156. *Id.* Moreover, Doi Moi, which is located nearby, has a sidewalk café with a maximum capacity of 50 people. *Id.* at 193.

VII. Charles Ellis

23. Charles Ellis serves as the Vice President of the Dupont Circle Citizens Association. *Id.* at 226. Mr. Ellis is concerned that the proximity of residents and future construction at the proposed location will reduce the property value of nearby residences. *Id.* at 227. He is also concerned that people patronizing the establishment and talking will create noise and overcrowd nearby sidewalks. *Id.* at 228, 232.

VIII. Norissa Giangola

24. Norissa Giangola has lived on S Street, N.W., for over seventeen years. *Id.* at 241. She believes that Dacha's plans do not address noise control, trash, or peace, order, and quiet. *Id.* at 242. She noted that the residential block near the establishment is designated historic and residences cannot have soundproof windows. *Id.* at 245.

IX. Vanessa Bertelli

25. Vanessa Bertelli lives about a block and a half away from Dacha's proposed location with her family. *Id.* at 250. She noted that her children have had their sleep disturbed by shouting outside her home. *Id.* at 251-52.

X. Khalid Pitts

26. Khalid Pitts owns Cork Market on 14th Street, N.W., an establishment that holds a liquor license. *Id.* at 254. He noted that finding parking in the neighborhood is very difficult and many patrons find parking near residences. *Id.* at 255-56.

XI. Clayton Wilkerson

27. Clayton Wilkerson lives on Swann Street, N.W. *Id.* at 258. Mr. Wilkerson has a residential parking permit and owns a vehicle. *Id.* at 258-59. He indicated that it often takes him between thirty and forty five minutes to find a parking spot during the week. *Id.* at 259. He also indicated that taxis and ride share services often block nearby alleys while picking up or dropping off people. *Id.* at 260. He generally does not use his car on Friday and Saturday nights due to traffic and the difficulty of finding parking. *Id.* at 265. He noted that there is often a police presence at the corner of Swann Street, N.W., and 14th Street, N.W., due to the absence of lights and the size of crowds. *Id.* at 266

XII. Whitney Fisler

28. Whitney Fisler lives on Swann Street, N.W. *Id.* at 269. He lives approximately 200 feet from the proposed location. *Id.* at 272. Mr. Fisler hears noise from the outdoor seating at Masa 14, which is located in the neighborhood, although he did not indicate the type of noise that he has heard. *Id.* at 272. He has also observed people engage in public urination near Ted's Bulletin, an establishment located in the neighborhood, although this problem has decreased since the business installed security cameras. *Id.* at 273. He also noted that outside his home he sees people engage in verbal and physical fights every weekend. *Id.*

XIII. Caroline Mousset

29. Caroline Mousset lives in the neighborhood. *Id.* at 279. She has observed that people visiting the neighborhood at night engage in disturbing behavior, such as singing and fighting. *Id.* She also noted that there is a lot of litter and rats in the neighborhood. *Id.* at 280.

XIV. Soochon Radee

30. Soochon Radee lives on S Street, N.W., approximately three houses away from the proposed location. *Id.* at 283. Mr. Radee videotaped the Applicant's other establishment in Shaw. *Id.* Outside the Shaw location, people were lined up outside on the sidewalk and were talking and laughing. *Id.* at 287.

XV. Tom Coumaris

31. Tom Coumaris previously served as an ANC Commissioner for Dacha's proposed location. *Id.* at 307. He is concerned that Dacha is mostly located on S Street, N.W.. *Id.* at 308-09. S Street, N.W., is filled with single-family homes. *Id.* at 309.

32. Mr. Coumaris indicated that on one occasion he saw someone killed as a result of a traffic accident at the alley near his home. *Id.* at 310. He also has observed a lot of accidents at that specific location. *Id.* at 311. He also has observed that the Metropolitan Police Department (MPD) regularly stations officers near that location to control traffic. *Id.*

XVI. David Conklin

33. David Conklin's home is located directly behind Dacha and separated by an alley. *Id.* at 315. He regularly works from home in the evenings. *Id.* Currently, noise created by drunk patrons disturbs him in his home late at night. *Id.* In response, he has moved his bedroom to the back of his house. *Id.*

XVII. Jeff Faux

34. Jeff Faux lives in the neighborhood. *Id.* at 318. He has observed that he regularly finds litter in the neighborhood. *Id.* at 319. Furthermore, he is regularly disturbed by people making noise and has observed that people often urinate in the alleys near his home. *Id.*

XVIII. Marge Allen

35. Marge Allen lives in the neighborhood. *Id.* at 324. She indicated that she has almost been hit by vehicles several times. *Id.*

XIX. Russel Page

36. Russel Page lives on S Street, N.W. *Id.* at 328. He is regularly awakened by noise from drunk people screaming and slamming car doors. *Id.* He regularly observes litter in the neighborhood, including alcohol containers and packaging. *Id.*

XX. Ed Downs

37. Ed Downs lives in the neighborhood. *Id.* at 331. He is concerned that the crowds that the business will attract will make navigating the sidewalks difficult. *Id.* at 332.

XXI. Keith Johnson

38. Keith Johnson lives on S Street, N.W. *Id.* at 335. He has observed at least five vehicles "turn against the light leaving legal traffic out in the middle of 14th Street trying to crossover." *Id.* at 336. He further noted that delivery trucks tend to double park on Thursdays. *Id.*

XXII. Lori Feith

39. Lori Feith lives on S Street, N.W. *Id.* at 338. She believes that sidewalks in the area have become more congested as businesses install sidewalk cafes. *Id.* She further believes that the nearby intersection is hazardous to drivers and pedestrians. *Id.* at 339.

XXIII. George Schubert

40. George Schubert lives on S Street, N.W., two houses away from Dacha's proposed location. *Id.* at 341. Mr. Schubert is concerned that Dacha will be too noisy. *Id.* at 341-42.

XXIV. Eric Muhl

41. Eric Muhl lives on Swann Street, N.W. *Id.* at 343. He indicated that people engage in disturbing behavior on Swann Street, N.W., near his home. *Id.* at 343-45. In particular, he hears fights, screaming, and the honking of vehicle horns. *Id.* at 344.

CONCLUSIONS OF LAW

42. The Board may approve an Application for a New 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); 25-314; 23 DCMR §§ 1607.2; 1607.7(b) (West Supp. 2017). 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; the overconcentration of licensed establishments; and real property values of the area located within 1,200 feet of the establishment. D.C. Code §§ 25-313(b), 25-314; 23 DCMR §§ 1607.2; 1607.7(b) (West Supp. 2017).

43. Furthermore, in the case of a new application for licensure or transfer to a new location, "the Board shall consider whether the proximity of [a tavern or nightclub] establishment to a residence district, as identified in the zoning regulations of the District and shown in the official atlases of the Zoning Commission for the District, would generate a substantial adverse impact on the residents of the District." D.C. Code § 25-314(c).

I. The Establishment is Appropriate for the Neighborhood Subject to Conditions.

44. 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. 2017). 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).

45. 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. Based on the Board’s approval with conditions, Dacha will not have a negative impact on peace, order, and quiet.

46. The Board finds that Dacha sufficiently satisfies the peace, order, and quiet standard under the appropriateness test to merit the issuance of the license with conditions. “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. 2017).

47. In *Saloon 45*, the Board denied an application for a tavern license based on the potential negative impact on residents on Swann Street, N.W., in the Dupont Circle neighborhood. *In re Stephens, David J.W., t/a Saloon 45*, Case No. 14-PRO-00040, Board Order No. 2014-334, ¶¶ 5, 47 (D.C.A.B.C.B. Sept. 23, 2014). In that case, the applicant intended to locate in a C-2-A commercial zone. *Id.* at ¶ 3. In denying the application, the Board found that the applicant’s plan to have its main entrance face Swann Street, N.W., a highly residential street, rather than 18th Street, N.W., the commercial corridor, would negatively impact residents by encouraging loitering and patron noise outside residences. *Id.* at ¶ 48. The Board also denied the application because the tavern applicant sought to place a sidewalk café near residents without any discernible soundproofing, and the Board found that mere fencing was not preventing existing patron noise from bothering nearby residents. *Supra*, at ¶¶ 29, 49.51.

48. In general, the character of the neighborhood in this case strongly supports the placement of a tavern at Dacha’s proposed location. The location is designated an ARTS-3 zone. *Supra*, at ¶ 3. This means that the neighborhood is meant to “encourage pedestrian activity” and “retail entertainment, and residential uses” and “[f]oster eighteen . . . hour activity.” *Id.* Moreover, the zoning regulations explicitly indicate that this type of zone should have a “focus on employment.” *Id.*

49. The Board is further satisfied that amplified music played at Dacha will not impact nearby residents. First, Dacha has not applied for an entertainment endorsement, which means that Dacha will not provide live entertainment, such as bands and disc jockeys. Second, while Dacha can play recorded background music as a matter of right, nearby residents located in the neighboring residential zone can seek relief from ABRA under § 25-725, which prohibits licensed establishments from generating amplified music and other sounds that can be heard in a premise located in a residential zone. D.C. Code §§ 25-101(21A), 25-113a(b)(1); 25-725(a), (b)(3).

50. The Board is also satisfied that Dacha has adequately addressed the impact of patron voices and other noises that may be generated on its premise. First, unlike the applicant in *Saloon 45* who provided no soundproofing in its proposal, Dacha has consulted with a noise expert and intends to follow their recommendations by proposing to build a building and enclosed sidewalk café using sound absorbing materials, and placing the proposed structures in a manner that mitigates noise. *Supra*, at ¶¶ 1, 10-11. Moreover, Dacha has presented a credible sound analysis that indicates that these measures will likely be effective at curbing Dacha's noise impact. *Supra*, at ¶¶ 17-19. Second, unlike the applicant in *Saloon 45*, by having its main entrance and exit face 14th Street, N.W., Dacha has taken adequate steps to discourage loitering on S Street, N.W. *Supra*, at ¶ 11. Finally, the Applicant's plan to have trash pickup every day except Sunday, and the fact that Dacha is prohibited from selling closed containers for off-premise consumption are adequate to address concerns that Dacha will exacerbate existing trash and litter problems in the neighborhood. *Supra*, at ¶ 6; D.C. Code 25-113(a)(3).

51. Nevertheless, the Board credits evidence that people are engaging in loud and disturbing behavior near their homes, that the sidewalks near the proposed location are becoming overcrowded with patrons, that the proposed location's zoning designation does not promote 24 hours of activity per day, and that the proposed location borders a residential zone. *Supra*, at ¶¶ 25, 27, 28-29, 33-34, 39, 41. Based on these facts, the Board finds it appropriate to curb Dacha's occupancy and hours in order to prevent the overcrowding of nearby sidewalks and discourage patrons from walking on S Street, N.W., very late into the night. The Board notes that it does not find these facts sufficient to merit the denial of the Application because of Dacha's location in an ARTS-3 zone, which establishes a reasonable expectation of a high amount of pedestrian activity in the neighborhood throughout most of the day.

b. Based on the Board's approval with conditions, Dacha will not have a negative impact on residential parking needs and vehicular and pedestrian safety.

52. The Board is satisfied that Dacha will not have an adverse impact on residential parking needs and vehicular and pedestrian safety. "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. 2016).

53. In *Club Illusions*, the Board denied an application for a nightclub license based on the “negative impact on pedestrian and vehicular safety that [was] not adequately addressed by the Applicant’s parking and traffic plan.” *Id.* at 2. In *re 2101 Venture, LLC, t/a Club Illusions*, Case No. 12-PRO-00054, Board Order No. 2013-004 (D.C.A.B.C.B. Jan. 16, 2012). The decision was based on the testimony of a “professional traffic engineer” that the proposal in that case would force pedestrians to cross “one of the most dangerous intersections in the city,” which “had the highest frequency of crashes in 2005.” *Id.* at ¶¶ 18, 28. Furthermore, the proposal in that case would have resulted in patrons having to cross a six lane highway and frequent shuttle buses operated by the licensee interfering with traffic. *Id.*

54. In this case, Dacha’s proposed location is close to a metro station. *Supra*, at ¶ 20. The availability of public transportation permits the Board to find that adding new establishments to the neighborhood will have a minimal impact on the community’s parking needs.

55. The Board credits the extensive eye witness testimony regarding accidents in the neighborhood provided by the Protestants. *Supra*, at ¶¶ 32, 35, 38. Yet, there is no compelling or convincing evidence that any part of Dacha’s proposal will in and of itself create danger to pedestrians or vehicles. As a result, the Board is not convinced that the Board’s decision in *Club Illusions* applies to this case or that the Application merits denial on the ground of vehicular and pedestrian safety.

56. Nevertheless, the Board credits testimony that overcrowding of the nearby sidewalks may pose a danger to vehicles and pedestrians. Many witnesses in this case report observing accidents involving vehicles and pedestrians in the immediate vicinity of Dacha’s proposed location and that the sidewalks are overcrowded and hard to navigate when licensed establishments are in operation. *Supra*, at ¶¶ 32, 35, 37, 39. Moreover, the situation requires MPD to regularly assign officers to engage in traffic control operations in the area. *Supra*, at ¶ 32. As a result, the Board is persuaded that granting Dacha a huge occupancy of 600 people would likely exacerbate this situation.

c. Dacha will not have a negative impact on real property values.

57. The Board is persuaded that Dacha’s proposal will not have a negative impact on real property values. 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, Dacha intends to build a new building as part of its proposal; therefore, there are no concerns about blight. *Supra*, at ¶ 1. In turn, the Protestants have not provided compelling or convincing evidence that mere proximity to licensed establishments have a negative impact on

property values or that nightlife in the neighborhood is having a negative impact on property values. As a result, the Board finds that Dacha satisfies this portion of the appropriateness test.

II. The Approval of the Application Will Not Cause Overconcentration.

58. The Board rejects the Protestants' argument that approving Dacha's application will lead to the overconcentration of licensed establishments. Under § 25-314(a)(4), in considering a new license application the Board must consider "Whether issuance of the license would create or contribute to an overconcentration of licensed establishments which is likely to affect adversely the locality, section, or portion in which the establishment is located." D.C. Code § 25-314(a)(4). D.C. Official Code § 25-101(35)(a) defines overconcentration as "the existence of several licensed establishments that adversely affect a specific locality, section, or portion of the District of Columbia, including consideration of the appropriateness standards under § 25-313(b)." D.C. Code § 25-101(35A).

59. Under §§ 25-314(a)(4) and 25-101(35A), the mere fact that an area has a large number of licensees is not sufficient in and of itself to make a finding of overconcentration. Instead, there has to be a showing that multiple licensed establishments are having a severe negative impact on the neighborhood under the appropriateness test. In this case, Dacha is located in an ARTS-3 zone, which encourages retail and entertainment uses, pedestrian activity, and eighteen hours activity with a focus on employment, which renders Dacha's application eminently reasonable and appropriate given the zoning designation. *Supra*, at ¶ 3. Furthermore, the Board has not been presented with statistics showing that the level of crime, alcohol violations, and other anti-social behavior is unusually high for this type of neighborhood, that the establishments in the neighborhood are having a detrimental impact on parking and vehicular and pedestrian safety, or that the presence of a large number of establishments is depressing property values. Consequently, the Board is satisfied that the neighborhood will not become overconcentrated by approving Dacha's Application.

III. The Board Has Satisfied the Great Weight Requirement by Addressing the ANC 2F's and ANC 1B's Issues and Concerns.

60. ANC 2F's and ANC 1B's written recommendations submitted in accordance with D.C. Code § 25-609(a) indicated that their protests were based on concerns regarding Dacha's impact on peace, order, and quiet; the overconcentration of licensed establishments; residential parking and safety; and real property values. The Board notes that it specifically addressed these concerns in its Conclusions of Law.

IV. Dacha's Ownership Satisfies the Character and Fitness Requirement of D.C. Code § 25-301(a)(1) But The Ownership's Prior Occupancy-Related Violations Merit Limiting the Occupancy of the Premises.

61. The Board finds that Dacha's ownership satisfies the character and fitness criteria of D.C. Code § 25-301(a)(1). Under that statute, "Before issuing . . . a license, the Board shall determine that the . . . applicant is of good character and generally fit for the responsibilities of licensure." The Board notes that in accepting one of the largest fines and suspensions ever issued by this body—rather than revoking its license—Dacha was given one last chance to show it deserved the privilege

of holding liquor licenses in the District of Columbia. To date, the ownership has not engaged in any behavior that would lead the Board to regret its previous decision. Furthermore, the Board is satisfied by the testimony of the owner and Mr. Padro that Dacha's ownership has turned over a new leaf and sufficiently committed to complying with the law. *Supra*, at ¶¶ 8-9, 15. The Board also notes that the owners in this case do not have a history of operating establishments with extensive violations related to underage drinking, violence, or other criminal conduct. Therefore, while Dacha's record is not perfect, Dacha's owners can still satisfy § 25-301(a)(1).

63. Separately, the Board notes that it may consider an owner's management of a separate licensee in order to determine whether the proposed establishment will have an adverse impact on the neighborhood. *Panutat, LLC v. D.C. Alcoholic Beverage Control Bd.*, 75 A.3d 269, 275 (D.C. 2013). In this case, the Applicant has a history of numerous occupancy violations at other establishments. Based on this record, the Board is not satisfied that the Applicant can manage large crowds of up to 600 people at this time. Consequently, the Board finds that this history further justifies limiting the occupancy of the premises.

V. The Board Conditions Licensure on Reducing Dacha's Occupancy and Hours of Operation.

64. In light of the Board's findings regarding appropriateness, the Board finds it necessary to impose conditions on the Applicant's license in order to justify the renewal of the 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). For the reasons, stated above, the Board limits Dacha's operating hours to 1:30 a.m. during the week and 2:30 a.m. on Friday and Saturday. Similarly, the operating hours of the unenclosed outdoor seating areas shall be limited to 11:00 p.m. during the week and 12:00 a.m. on Friday and Saturday. Moreover, in order to prevent the overcrowding of nearby sidewalks and exacerbating existing issues on S Street, N.W, the Board limits the occupancy of the premises to 200 persons and limits the occupancy of the sidewalk café to 150 people. This avoids the creation of an overly large establishment next to a residential street and overcrowded sidewalks and keeps the occupancy at a level that the Board is confident the ownership can manage. Moreover, based on the operation of Garden District across the street, a similar type of establishment, the Board is persuaded that the neighborhood will not be overtaxed by a similarly sized Dacha. *Supra*, at ¶¶ 6, 22.

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

65. 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. 2017). 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 29th day of November 2017, hereby **APPROVES** the Application for a New Retailer's Class CT License at premises 1740 14th Street, N.W. filed by DGB2, LLC, t/a Dacha Beer Garden, subject to the following **CONDITIONS**:

1. The maximum occupancy of the entire premises shall be limited to 200 persons;
2. The maximum occupancy of any unenclosed outdoor seating area shall be limited to 150 persons (and shall count towards the cap of 200 people);
3. The license holder's hours of operation shall extend no later than 1:30 a.m., Sunday through Thursday, and 2:30 a.m. on Friday and Saturday; and
4. The license holder's hours of operation for any unenclosed outdoor seating area shall extend no later than 11:00 p.m., Sunday through Thursday, and 12:00 a.m., on Friday and Saturday.

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

The ABRA shall deliver a copy of this order to the Parties.

District of Columbia
Alcoholic Beverage Control Board



Donovan Anderson, Chairperson



Mike Silverstein, Member

James Short, Member



Donald Isaac, Sr., 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).