

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

---

Amduffy, LLC	)	Case Number:	13-PRO-00004
t/a Duffy's Irish Restaurant	)	License Number:	072539
	)	Order Number:	2013-343
Application for a Substantial Change	)		
to a Retailer's Class CT License	)		
	)		
at premises	)		
2106 Vermont Avenue, N.W.	)		
Washington, D.C. 20001	)		

---

**BEFORE:** Ruthanne Miller, Chairperson  
Nick Alberti, Member  
Herman Jones, Member

**ALSO PRESENT:** Amduffy, LLC, t/a Duffy's Irish Restaurant, Applicant

Andrew Kline, Non-Lawyer Representative, on behalf of the Applicant

Christopher Patterson, Abutting Property Owner, Protestant

Martha Jenkins, General Counsel  
Alcoholic Beverage Regulation Administration

---

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

---

**INTRODUCTION**

We grant the request for a sidewalk café described in the Application for a Substantial Change (Application) filed by Amduffy, LLC, t/a Duffy's Irish Restaurant, (Applicant). Nevertheless, because we agree with the abutting property owner that the sidewalk café will create an unreasonable amount of noise for nearby residences, we approve the Applicant's request subject to the condition that the sidewalk café not operate past 11:00 p.m., Sunday through Thursday, and midnight on Friday and Saturday.

***Procedural Background***

Christopher Patterson (Protestant), an abutting property owner, filed a protest against the Application in accordance with District of Columbia (D.C.) Official Code §§

25-601(1) and 25-602.<sup>1</sup> *ABRA Protest File No. 13-PRO-00004*, Letter from C. Scott Patterson to the Alcoholic Beverage Regulation Administration, 1 (Jan. 22, 2013) [Patterson Letter].

The parties came before the Alcoholic Beverage Control Board (Board) for a Roll Call Hearing on February 4, 2012, and a Protest Status Hearing on April 9, 2012. The Protest Hearing occurred on April 24, 2013.

The Board recognizes that an Advisory Neighborhood Commission's (ANC) properly adopted written recommendations are entitled to great weight from the Board. See *Foggy Bottom Ass'n v. District of Columbia ABC Bd.*, 445 A.2d 643 (D.C. 1982); D.C. Code §§ 1-309.10(d); 25-609 (West Supp. 2012). 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 no Advisory Neighborhood Commission has submitted a recommendation related to the Application under § 25-609. Therefore, the great weight requirement does not apply to this matter.

Based on the Protestant's initial protest letter, we may only grant the Application if we find that the request will not have a negative impact on peace, order, in the area located within 1,200 feet of the establishment. D.C. Code § 25-313(b) (West Supp. 2013); 23 DCMR §§ 1607.2; 1607.7(b) (West Supp. 2013); Patterson Letter, 1.

## 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:

1. The Applicant has submitted an Application for a Substantial Change to its Retailer's Class CT License. *ABRA Protest File No. 13-PRO-00004*, Notice of Public Hearing. According to the Notice of Public Hearing, the Applicant has applied for a sidewalk café with approximately forty seats. *Id.* Furthermore, the Applicant has requested that the sidewalk café operate between the hours of 9:00 a.m. to 2:00 a.m., Sunday through Thursday, and 9:00 a.m. to 3:00 a.m. on Friday and Saturday. *Id.* Finally, the Applicant requests that we permit it to sell, serve, and permit the consumption of alcohol in the sidewalk café between the hours of 10:00 a.m. to 2:00 a.m., Sunday through Thursday, and 10:00 a.m. to 3:00 a.m. on Friday and Saturday. *Id.* During the hearing, the Applicant proffered that it only intends to seek sidewalk café hours that run until midnight. *Transcript (Tr.)*, April 24, 2013 at 150-52.

2. The Applicant's establishment is located in a C-2-B zone and the Uptown Arts-Mixed Use (ARTS) Overlay District. Alcoholic Beverage Regulation Investigator Kofi Apraku, Protest Report of Amduffy, LLC, Trading as Duffy's Irish Restaurant, 2 (April 2013) [Protest Report]. According to § 1900.2, the purpose of the ARTS Overlay District is to (1) "Encourage . . . development [and] a mixture of building uses . . . as generally

---

<sup>1</sup> Lorraine White and Charles White also filed a protest, but we dismissed them based on procedural deficiencies with their protest. See *In re Amduffy, LLC, t/a Duffy's Irish Restaurant*, Case No. 13-PRO-00004, Board Order No. 2013-067 (D.C.A.B.C.B. Mar. 20, 2013).

required by the Comprehensive Plan”; (2) “Require uses that encourage pedestrian activity . . .”; (3) “Provide for an increased presence . . . of the arts and related cultural . . . uses”; (4) “Expand the area’s housing supply . . .”; (5) “Expand . . . and encourage development of residential and commercial buildings”; (6) “Strengthen the design character and identify of the area by means of physical design standards”; (7) Encourage adaptive reuse of older buildings”; and (8) “Foster eighteen (18) hour activity and increased public safety.” 11 DCMR § 1900.2(a)-(h) (West Supp. 2013); *Tr.* 4/24/13 at 64.

3. Thirty-eight establishments holding liquor licenses are located within 1,200 feet of the establishment. *Id.* There are no recreation centers or public libraries located within 400 feet of the establishment; however, the Christian Tabernacle Child Development Center is located approximately 339 feet from the establishment, while the Shaw Middle School is located approximately 266 feet from the establishment. *Id.* at 4.

4. The establishment operates seven days per week. *Id.* at 5. The establishment’s current hours of operation occur between 9:00 a.m. to 2:00 a.m., Sunday through Thursday, and 9:00 a.m. to 3:00 a.m. on Friday and Saturday. *Id.* The establishment’s current hours of alcoholic beverage sales, service, and consumption occur between 10:00 a.m. and 2:00 a.m., Sunday through Thursday, and 10:00 a.m. to 3:00 a.m. on Friday and Saturday. *Id.* Finally, the establishment is permitted to have entertainment until 2:00 a.m., Sunday through Thursday, and until 3:00 a.m. on Friday and Saturday. *Id.*

5. The Applicant employs Good Friends Waste Management to remove its trash. *Id.* The Applicant’s waste removal service operates six days per week. *Id.* Alcoholic Beverage Regulation Administration Investigator Kofi Apraku observed that the establishment’s trash area is clean and free of litter. *Id.*

6. The records of the Metropolitan Police Department indicate that criminal activity is minimal at 2106 Vermont Avenue, N.W. *Id.* at Exhibit 20. According to the Tactical Crime Analysis and Intelligence Branch, there have only been three calls for service at the Applicant’s address between April 10, 2012, and April 9, 2013. *Id.*

7. ABRA Investigators also monitored the establishment on six occasions between April 5, 2013, and April 13, 2013. *Tr.*, 4/24/13 at 16. None of the investigators monitoring the establishment observed criminal activity, littering, loitering or noise in or around the establishment while the establishment was in operation. *Id.*; Protest Report, 5-6.

8. Andrew Duffy has owned and operated the establishment for the past seven years. *Id.* at 125. The establishment operates as a neighborhood Irish bar that serves pub food and beer. *Id.* at 126. The establishment also provides customers with televisions to watch sporting events. *Id.* Finally, the establishment also attracts patrons heading to and coming from shows at the 9:30 Club. *Id.* at 127.

9. Previously, the establishment’s settlement agreement prevented Mr. Duffy from obtaining outdoor seating for his establishment; however, now that the Board has terminated the settlement agreement, he would like to offer outdoor seating near the front entrance to his establishment. *Id.* at 127, 144; Applicant’s Exhibit No. 3-4. He intends to use the patio for “sit-down” eating and drinking. *Tr.*, 4/24/13 at 133, 138; Applicant’s

Exhibit No. 1. He also plans to enclose the sidewalk café with a removable railing. Id. at 167-68. Mr. Duffy does not intend to play amplified music in the outdoor portion of the establishment. Id. at 133, 138-39. Finally, he also plans to have a doorperson monitor the sidewalk café area after 7:00 p.m. Id. at 145.

10. According to Mr. Duffy, at least six establishments in the neighborhood have roof decks. Id. at 129. The Board's records indicate that some of the establishments in the neighborhood operate outdoor seating areas that operate until 1:00 a.m. and 2:00 a.m. See e.g., *ABRA Licensing File No. 084577* (American Ice Company); *ABRA Licensing File No. 087296* (Satellite Room); *Tr.*, 4/24/13 at 129-30.

11. Edward Comstock lives on Florida Avenue, N.W., approximately two blocks from the establishment. *Tr.*, 4/24/13 at 65. Mr. Comstock supports the Application, because he believes the Application will have a positive impact on public safety. Id. As a patron of the Applicant, Mr. Comstock has observed that the Applicant runs a well-managed and orderly business. Id. at 68-69, 89-90.

12. Brooke Fishel lives in the Rhapsody Condominiums on Vermont Avenue, N.W., which is two doors away from the Applicant's establishment. Id. at 102-03. Ms. Fishel is a patron of the establishment and supports the Application. Id. at 104. Ms. Fishel has observed that three other establishments in the neighborhood already have outdoor seating. Id. Of those establishments, both American Ice Company and Satellite Room have sidewalk cafés that are enclosed by concrete walls with partial roofs. Id. at 124. According to Ms. Fishel, the walls and partial roofs helped mitigate the spread of noise from these outdoor seating areas. Id.

13. Ms. Fishel frequently walks her dog around midnight or 1:00 a.m. Id. at 108, 119. During those times, she always observes a small group of people in front of the Applicant's establishment either chatting or smoking. Id. at 108, 120. Ms. Fishel also occasionally hears noise in her residence from people exiting the American Ice Company as they walk through the alley near her condo. Id. at 110. Furthermore, the area around her condo always attracts a large amount of late-night foot traffic. Id. at 121-22.

14. Ms. Fishel also observed that the gas station across the street is always busy and noisy. Id. at 121. She regularly observes teenagers hanging out near the service station. Id. Furthermore, she has observed that vehicles regularly sit in the station's parking lot and play music until 3:00 a.m. Id.

15. Patrick Tangney, an abutting neighbor, lives on Vermont Avenue, N.W. Id. at 174. He does not hear noise from the 9:30 Club, the Satellite Room, the American Ice Company, or the nearby gas station inside his residence. Id. at 176. Instead, he hears the conversations of the Applicant's patrons who loiter outside the establishment smoking. Id. According to Mr. Tangney, smokers at the establishment regularly stand about four to five feet away from a bay window that faces the street. Id. He is also concerned that the Applicant's current proposal for the sidewalk café does not contain sufficient noise mitigation features, such as walls, to mitigate the travel of sound from the sidewalk café. Id. at 184-85. Accordingly, Mr. Tangney requests that the Board restrict the Applicant's sidewalk café hours to 10:30 p.m. during the week and 11:30 p.m. during the weekend. Id. at 198.

16. The Applicant's establishment neighbors 2014 Vermont Avenue, N.W., which is a residence that is currently being offered for sale. Id. at 175; Protest Report, Exhibit No. 7. Mr. Tangney has observed that the Applicant's immediate neighborhood appears more residential than other portions of the U Street Corridor. Id. at 178.

17. Scott Patterson, the Protestant in this case, believes that the establishment's sidewalk café should be limited to 10:00 p.m. during the week and 11:00 p.m. during the weekends based on the noise he hears from smokers near his residence. Id. at 204, 239. Mr. Patterson reasoned that these times are justified because the Applicant's patio lacks soundproofing, and is no farther than seven feet from a residence. Id. at 207-08.

18. During the hearing, the Applicant asked the Board to rely on the transcript from the Petition to Terminate the Applicant's Settlement Agreement (Petition), which we approved with conditions on July 6, 2011. *Tr.*, 4/24/13 at 43-44; In re AMDuffy, LLC, t/a Duffy's Irish Restaurant, Case Number 10-PRO-00185, Board Order No. 2011-301, 8-9 (D.C.A.B.C.B. Jul. 6, 2011).<sup>2</sup> During the Protest Hearing, we permitted the testimony from the prior hearing into the record. Id. at 61. Nevertheless, the Applicant's current plans were not before the Board or discussed by the witnesses cited by the Applicant. See Tr., July 6, 2011 at 12-23, 60-75, 77-97, 100-103 (Case Number 10-PRO-00185). Therefore, while the testimony from the prior hearing is relevant for the purposes of describing the general peace, order, and quiet conditions of the neighborhood, we do not find the testimony from the hearing regarding the Petition useful for addressing the specific issues raised by the Applicant's current request for a sidewalk café.

### CONCLUSIONS OF LAW

19. The Board finds that the Application is appropriate subject to the condition that the sidewalk café close at midnight on Friday and Saturday and 11:00 p.m., Sunday through Thursday.

20. We may approve a request for a substantial change if the Applicant demonstrates that the proposed establishment will not have an adverse impact on area located within 1,200 feet of the establishment. D.C. Code §§ 25-104, 25-313(b) (West Supp. 2012); 23 DCMR §§ 1607.2; 1607.7(b) (West Supp. 2013). Specifically, based on the Protestant's initial protest letter, the issue in this case is whether the Application will have a negative impact on the neighborhood's peace, order, and quiet.

---

<sup>2</sup> The three to one vote in that case approving the Petition was based on two Board Member concurrences expressing reservations about the Petition's significance to future proceedings regarding a sidewalk café. Id. at 8-9. In his concurrence, Board Member Alberti wrote, "the Board's decision in this case is no indication as to what the Board's position would be on an application for a sidewalk café should the Petitioner apply for the use of the outdoor space." Id. at 8 (Alberti, B.M., concurring). Likewise, Board Member Silverstein wrote, "While the Petitioner spoke during the hearing of his hopes for a sidewalk caff[é], such a change would require a separate application. I would employ strict scrutiny of the peace, order, and quiet provisions of Title 25 to any case involving a sidewalk café application featuring a next-door residential neighbor." Id. at 9 (Silverstein, B.M., concurring). As a result, our decision regarding the Applicant's sidewalk café is entirely separate and independent from our decision terminating the Applicant's settlement agreement.

21. The Protestant has provided sufficient evidence that a sidewalk café without restrictions will impact nearby residences' peace, order, and quiet. In considering a substantial change request, the Board must consider all evidence of record, including, but not limited to, "The 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) (West Supp. 2013).

22. Previously, in 3313 11th Hospitality, LLC, we restricted a licensee's rooftop deck to the hours of 11:00 p.m., Sunday through Thursday, and midnight on Friday and Saturday, because "multiple bedroom windows" were only "a few feet" from the establishment's outdoor seating area. In re 3313 11th Hospitality, LLC, t/a To Be Determined, Case Number 10-PRO-00139, Board Order No. 2011-170, 10 (D.C.A.B.C.B. Apr. 20, 2011). In that case, we found that the licensee's proposed outdoor seating did not have sufficient soundproofing to protect nearby residents from noise that could violate the District's disorderly conduct law. Id.; see also D.C. Code §§ 22-1321(d), 25-823(2) (West Supp. 2013).

23. We find 3313 11th Hospitality, LLC highly persuasive to our decision in this matter. Similar to our finding there, it is inevitable that patron noise from the Applicant's sidewalk café will be heard in a residence based on the close proximity of the establishment to residents and Mr. Tangney and Mr. Patterson's experience hearing the conversations of smokers loitering outside the establishment. Supra, at ¶¶ 15, 17. Furthermore, the Applicant's sidewalk café is not comparable to the outdoor seating areas operated by other establishments in the neighborhood, because the Applicant's sidewalk café does not possess any soundproofing whatsoever. Surpa, at ¶¶ 9, 10, 12, 15, 17. Therefore, based on these facts, we find that the Applicant's sidewalk café shall be subject to the same limitations on hours that we set for the rooftop deck in 3313 11th Hospitality, LLC.

24. Finally, we note that 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. 2012). Accordingly, based on our 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 10th day of July 2013, hereby **ORDERS** that the Application for a Substantial Change filed by Amduffy, LLC, t/a Duffy's Irish Restaurant is **GRANTED** subject to the following condition: The Applicant's sidewalk café shall not operate past 11:00 p.m., Sunday through Thursday, and midnight on Friday and Saturday. The ABRA shall distribute copies of this Order to the Applicant and the Protestants.

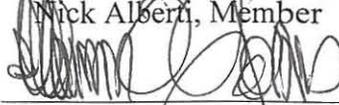
District of Columbia  
Alcoholic Beverage Control Board



Ruthanne Miller, Chairperson



Nick Alberti, Member



Herman Jones, Member

Under 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, Reeves Center, 2000 14th Street, NW, 400S, Washington, D.C. 20009.

Also, under 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 under 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).