

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

In the Matter of:)		
)	Case No.:	15-PRO-00016
T&L Investment Group)	License No:	ABRA-086961
t/a Panda Gourmet)	Order No:	2015-397
)		
Application for a Substantial Change to)		
Retailer's Class CR License)		
)		
at premises)		
2700 New York Avenue, NE)		
Washington, D.C. 20002)		

BEFORE: Ruthanne Miller, Chairperson
Nick Alberti, Member
Donald Brooks, Member
Herman Jones, Member
Mike Silverstein, Member
Hector Rodriguez, Member
James Short, Member

ALSO PRESENT: Mark Jones, on behalf of T&L Investment Group t/a Panda Gourmet,
Applicant

Jacqueline Manning, Chairperson, Advisory Neighborhood Commission
(ANC) 5C, Protestant

Martha Jenkins, General Counsel
Alcoholic Beverage Regulation Administration

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

INTRODUCTION

The Alcoholic Beverage Control Board (Board) finds that the Application for a Substantial Change to a Retailer's Class CR License filed by T&L Investment Group, LLC t/a Panda Gourmet, (hereinafter "Applicant" or "Panda Gourmet") is appropriate for the neighborhood, on the condition that the Applicant reserves the main parking lot whenever entertainment is provided.

Procedural Background

The Notice of Public Hearing advertising Panda Gourmet's Application was posted on February 6, 2015, and informed the public that objections to the Application could be filed on or before March 23, 2015. *ABRA Protest File No. 15-PRO-00016*, Notice of Public Hearing [*Notice of Public Hearing*]. The Alcoholic Beverage Regulation Administration (ABRA) received a timely filed protest letter from the Advisory Neighborhood Commission (ANC) 5C. *ABRA Protest File No. 15-PRO-00016*, Roll Call Hearing Results.

The parties came before the Board's Agent for a Roll Call Hearing on April 6, 2015, where the above-mentioned objector was granted standing to protest the Application. On May 13, 2015, the parties came before the Board for a Protest Status Hearing. Finally, the Protest Hearing in this matter occurred on June 24, 2015.

The Board recognizes that an ANC's properly adopted written recommendations are entitled to great weight from the Board. *See Foggy Bottom Ass'n v. District of Columbia Alcoholic Beverage Control Bd.*, 445 A.2d 643, 646 (D.C. 1982); D.C. Code §§ 1-309.10(d); 25-609 (West Supp. 2015). The ANC provided the Board with its recommendation in its protest letter. In its letter, the ANC contends that bringing an entertainment endorsement to the establishment will adversely affect residential and commercial parking. Letter from Jacqueline Manning, Chairperson for ANC 5C to Ruthanne Miller, Chairperson, Alcoholic Beverage Control (ABC) Board (March 4, 2014) [ANC 5C Protest Letter].

The ANC further argues that this particular neighborhood is already home to four other licensed nightclubs that create parking challenges for the community. *Id.* The ANC also proffers that if Panda Gourmet were to operate late into the night with an entertainment endorsement, it would attract large crowds who would generate a disturbance. *Id.* Therefore, the ANC reasons, the entertainment endorsement would adversely affect the peace, order, and quiet in the surrounding neighborhood. *Id.* The Board will discuss the ANC's concerns in the Conclusions of Law below.

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; and residential parking 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) (West Supp. 2015).

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 has applied for an entertainment endorsement which will allow the Applicant to provide disc jockey (DJ) entertainment, dancing, and live bands. *Protest Report*, at 1; *see also Notice of Public Hearing*. The Applicant's proposed hours of live entertainment beginning after 6:00 p.m. are as follows: 6:30 p.m. to 1:00 a.m., Sunday through Saturday. *Notice of Public Hearing*.

II. Testimony of ABRA Investigator Abiye Ghenene

2. ABRA Investigator Abiye Ghenene investigated the Application and prepared the Protest Report submitted to the Board. *Transcript [Tr.]*, 6/24/15 at 14; *ABRA Protest File No. 15-PRO-00016, Protest Report [Protest Report]*. The protest was filed on the basis of peace, order and quiet and residential parking. *Tr.*, at 15-16.

3. Panda Gourmet is a one-story restaurant with a large kitchen, main dining room, and bar area. *Tr.*, at 18. A private room is located in the rear of the establishment. *Id.*

4. According to the Geographic Information System of the area, there are nine (9) liquor licenses within 1,200 feet, including three (3) active Class CN (nightclub) licenses and one (1) active Class CT (tavern) license. *Tr.*, at 16. The establishment is bounded by Bladensburg Road, N.E. to the east and New York Avenue, N.E. to the south. *Tr.*, at 17. The surrounding area has very high pedestrian and vehicular traffic throughout the day and evening hours. *Id.*

5. Investigator Ghenene monitored the establishment on seven different occasions between June 3, 2015 and June 17, 2015. *Tr.*, at 17-18; *Protest Report*, 4-5. The establishment and immediate surrounding area were monitored during operational hours and nonoperational hours. *Protest Report*, 5.

6. Investigator Ghenene observed that Panda Gourmet has a dedicated parking lot that is shared with a Days Inn Hotel, a Dunkin' Donuts and a restaurant, Hogs on the Hill. *Id.* Further, Investigator Ghenene observed heavy pedestrian and vehicular traffic when nearby ABC licensed establishments are open for business; however, Panda Gourmet provides a parking lot attendant and there was always parking available in the shared lot. *Id.* Panda Gourmet has approximately 300 dedicated parking spaces available to its customers. *Id.* at 22.

7. During the monitoring period, Investigator Ghenene reviewed the records from the noise task force from May 21, 2014 to May 21, 2015. *Id.* There were no noise complaints filed. *Id.* The establishment's Investigative History reflects six (6) violations between May 1, 2012 and August 20, 2014. *Protest Report*, 5-6. These violations included two (2) quarterly statement violations and one (1) books and records violation. *Id.*

III. Testimony of Mark Jones

8. Mark Jones is the Business Manager of Panda Gourmet and testified on behalf of T&L Investment Group. *Tr.*, 6/24/15 at 3. As Business Manager, his responsibilities are to promote

and assist in compliance with ABRA, the Department of Consumer & Regulatory Affairs (DCRA) and other government entities that impact the company. *Id.* at 85.

9. T&L Investment Group owns and manages the adjoining Days Inn Gateway and Panda Gourmet. *Id.* at 84. The parking lot is sectioned in two parts, one that is bounded by cones for the use by temporary residents of the Days Inn Hotel and the other which is open to patrons of the establishment. *Id.* at 109. The two parking areas are identified as the “main” and “overflow” parking lots. *Id.* at 61; 85-86. The “main” parking lot is bounded to the west, north and south by the property line of Lot 8. *Id.* at 103-10; *See also Protest Report* Exhibit 4-5. This lot is bounded to the east by the establishment. *Id.* at 103-10; *See also Protest Report* Exhibit 4-5. Mr. Jones contends that parking is not an issue due to the fact that there are nearly 300 parking spaces which Panda Gourmet uses for its customers. *Id.* at 7-8.

10. The establishment’s ‘main’ parking lot is in part leased to Tag-B. *Id.* at 58-59. Tag-B provides short-term parking to its customers. *Id.* at 51, 58-59; 103-110.

11. The D.C. Department of Human Services (DHS) leases all of the Days Inn guest rooms and the ballroom to house families who are in need of shelter. *Id.* at 80, 142. The DHS imposes a 9:00 p.m. curfew on the residents on weekdays and 11 p.m. on weekends. *Id.* at 57. The DHS also controls parking on the “overflow” parking lot and it prohibits parking by the general public in the evening. *Id.* at 144-48.

12. Because Panda Gourmet is a small family operation that caters to a customer that averages over the age of 59 years, it is unlikely to draw a large, disruptive crowd. *Id.* Further, the nearest home in the nearby area is in the Arboretum, located 0.4 miles, or approximately 2,000 feet, away. *Id.* at 7. Thus, Mr. Jones argued, it would be difficult to hear any noise emanating specifically from the Applicant’s establishment while it is operating. *Id.*

13. Mr. Jones testified that the Applicant seeks to have live karaoke, and occasionally it will host a DJ for special events if it is granted the entertainment endorsement. *Id.* at 8, 78. The Applicant marked all of the types of available entertainment when it applied for the substantial change in operations. *Id.* at 8; 78-79. However, the Applicant does not intend to offer all of the types of entertainment listed on the Application or the Notice of Public Hearing. *Id.* at 8; 78-79.

IV. Testimony of ANC 5C Commissioner Jacqueline Manning

14. Commissioner Manning is the Chairperson of ANC 5C and Single Member District 5C-04 representative. *Tr.*, 6/24/15 at 4. The ANC is concerned about the availability of parking spaces because the Days Inn is located near the Department of Human Services and the Virginia Williams Family Resource Center. *Id.* at 179. As a result, there are a lot of temporary residents at this hotel which affects the availability of parking spaces in the lot shared by Panda Gourmet, Dunkin’ Donuts and Hogs on the Hill. *Id.* Further, Commissioner Manning is concerned that an entertainment endorsement will lead to increased demand for parking which will have a negative effect on the surrounding communities. *Id.* at 246-49.

15. Commissioner Manning tried to gain access to this parking lot by approaching the entrance checkpoint of the “overflow” parking at approximately 11:00 p.m. one evening and she was denied entry by a security guard. *Id.* at 240-46.

16. Commissioner Manning also notes that this establishment is located in an area that has always had issues with drug paraphernalia. *Id.* at 199. There is already an abundance of establishments with entertainment endorsements in the neighborhood and Commissioner Manning believes that adding even more entertainment will make conditions worse. *Id.*

17. The ANC also raises a concern that the application of the entertainment endorsement is for the entire licensed establishment, not just the bar area where the occupancy is limited to twenty (20) patrons. *Id.* at 201. Commissioner Manning believes that if live entertainment such as a DJ or karaoke is offered, it will attract more patrons and create more noise problems. *Id.* at 201-02.

18. The ANC recommends that if an entertainment endorsement is granted to the Applicant, the Board should limit the offering of live music to no later than 11:00 p.m. *Id.* at 234-35. The ANC further advises that the parking should be dedicated to the Applicant’s patrons only. *Id.* at 235. Finally, the establishment should have Metropolitan Police Department Reimbursable Detail every night that it operates, regardless of whether an entertainment endorsement is granted. *Id.*

V. Testimony of LaShawn McDuffy

19. LaShawn McDuffy is a District resident and patronizes Panda Gourmet five to six times per week. *Tr.*, 6/24/15 at 260-61. On a typical weekday, there are usually about five people in the bar area. *Id.* at 261. On a typical weekend, there are about eight people. *Id.* Rarely is there twenty people at any one time. *Id.* Ms. McDuffy testified that she has never been denied parking when visiting the restaurant. *Id.* at 261-62.

20. Ms. McDuffy attests that the establishment is primarily seeking an entertainment endorsement because the patrons want it. *Id.* at 267. She personally believes it will be nice to listen to entertainment while she is at the bar. *Id.* at 268.

CONCLUSIONS OF LAW

21. The Board may approve an Application for an entertainment endorsement when the proposed endorsement will not have an adverse impact on the neighborhood. D.C. Official Code §§ 25-104, 25-313(b); 23 DCMR §§ 1607.2; 1607.7(b) (West Supp. 2015). Specifically, the question in this matter is whether the Application will have a negative impact on the peace, order, and quiet; and residential parking 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) (West Supp. 2015).

22. Under D.C. Official Code §§ 1-309.10(d) and 25-609, an ANC’s properly adopted written recommendations are entitled to great weight from the Board. D.C. Official Code §§ 1-

309.10(d) and 25-609; *See also Foggy Bottom Ass'n v. District of Columbia Alcohol Beverage Control Bd.*, 445 A.2d 643 (D.C. 1982). Accordingly, the Board “must elaborate, with precision, its response to the ANC issues and concerns.” *Id.* at 646. Here, ANC 5C opposes the Application and articulates its concerns by the testimony of Comm. Manning. *Supra*, at ¶ 11-14. The Board will address ANC 5C’s concerns below.

I. THE ESTABLISHMENT’S APPLICATION FOR AN ENTERTAINMENT ENDORSEMENT IS DEEMED APPROPRIATE SUBJECT TO CONDITIONS

23. The Board finds that the Application is appropriate for the neighborhood, on the condition that the establishment makes a minimum of sixty (60) spots available exclusively to Panda Gourmet patrons in the shared parking lot whenever entertainment is provided.

24. 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. Official 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. 2015).

25. The appropriateness test has never been limited to mere compliance with the law. *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.”). It has been said, that each location where an establishment is located is “unique,” which requires the Board to evaluate each establishment “. . . according to the particular circumstances involved.” *Le Jimmy, Inc. v. D.C. Alcoholic Beverage Control Bd.*, 433 A.2d 1090, 1093 (D.C. 1981). Under this test, the Board must consider the “prospective” effect of the establishment on the neighborhood.” *Id.* Among other considerations, this may include the Applicant’s efforts to mitigate or alleviate operational concerns,¹ the “character of the neighborhood,”² the character of the establishment,³ and the license holder’s future plans.⁴ Thus, the appropriateness test seeks to determine whether the applicant’s future operations will satisfy the reasonable expectations of residents to be free from disturbances and other nuisances. 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).

¹ *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).

² *Citizens Ass'n of Georgetown, Inc. v. D.C. Alcoholic Beverage Control Bd.*, 410 A.2d 197, 200 (D.C. 1979).

³ *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, 801 (D.C. 1970).

⁴ *Sophia's Inc.*, 268 A.2d at 800.

A. Granting an entertainment endorsement will not adversely affect the peace, order and quiet of the surrounding neighborhood.

26. The Board finds that granting the Application for an entertainment endorsement will not adversely impact the peace, order, and quiet of the neighborhood. The law emphasizes that the Board should focus on “[t]he effect of the establishment on peace, order, and quiet. . .” D.C. Official Code § 25-313(b)(2). Among other considerations, the Board is instructed to consider “...noise, rowdiness, loitering, litter, and criminal activity.” 23 DCMR § 400.1(a) (West Supp. 2015).

27. The Board credits Investigator Ghenene’s testimony that the noise task records from May 21, 2014 to May 21, 2015 revealed that there were no complaints of noise against this establishment. *Supra*, at ¶ 3. Additionally, the Board looks to the Applicant’s Investigative History provided in Investigator Ghenene’s Protest Report. *Supra*, at ¶ 6. While there are several violations on the Applicant’s record, the Board does not find these to be of a violent or disruptive nature. Further, the Board relies upon the testimony of Mark Jones, who indicated that the nearest home is approximately 2,000 feet away. *Supra*, at ¶ 9. The Board also agrees with Mr. Jones that at this distance, it would be difficult to isolate any noise emanating from the establishment, if heard at all inside the resident’s homes. *Id.*

28. With regards to rowdiness within the establishment, the Board credits Mr. Jones’s testimony that it is a fairly small operation that caters to patrons who are close to 60 years in age. *Supra*, at ¶ 9. The Board finds that the addition of karaoke and the occasional DJ to an establishment that has a total capacity of 99 persons must be distinguished from the larger crowds often associated with licensed nightclubs with larger capacities offering live performances.

29. The Board does not find any persuasive evidence on the record pertaining to excessive loitering, litter, or criminal activity within or surrounding the establishment. *Supra*, at ¶ 1-16. The Board acknowledges Commissioner Manning’s testimony that the neighborhood has had issues with drugs in the past and an abundance of temporary residents at the Days Inn Hotel. *Supra*, at ¶ 11-12. However, the ANC failed to adequately demonstrate how the establishment operating with an entertainment endorsement would further contribute to these issues. The Board finds that the entertainment sought by the establishment would not rise to the level of negatively impacting the peace, order, and quiet of the neighborhood.

30. Based upon these facts, the Board has no reason to conclude that granting an entertainment endorsement would adversely affect the peace, order, and quiet of the surrounding neighborhood.

B. The Applicant will have a negative impact on parking without conditions.

31. In determining the appropriateness of an establishment, the Board shall consider all relevant evidence of the record, including “[t]he effect of the establishment upon residential parking needs...” D.C. Official Code § 25-313(b)(3). The Board finds a negative impact on

residential parking without conditions. In this case, the addition of an entertainment endorsement will change the nature of operations and attract more patrons to the establishment. There is ample evidence on the record to suggest that there is a high demand for the parking spaces in the lot near Panda Gourmet. *Supra*, at ¶¶ 5, 8. Panda Gourmet is located in close proximity to nine ABC-licensed establishments within 1,200 feet, several of which lease space within the parking lot used by this establishment. *Supra*, at ¶ 1. The Board does find credible Mr. Jones testimony that at least some of the 300 spaces within the shared parking lot would be available for the exclusive use of its customers. *Supra*, at ¶¶ 5, 8. The Board heard testimony that DHS controls parking on the ‘overflow’ lot and prohibits parking by the general public in the evening. This testimony indicates that the ‘overflow’ lot comprises approximately 240 of the total 300 parking spaces on the Day’s Inn property. Therefore, based on the high demand for parking in the neighborhood, the Board conditions its approval of the substantial change on the requirement that the Applicant providing parking for its customers.

C. The Board finds it necessary to impose a minimum parking requirement on the establishment.

32. The Board finds that it must impose a parking requirement condition so that the Applicant will not negatively affect the residential parking of the neighborhood. Under D.C. Code § 25-104(e), the Board, in issuing licenses, “may require that certain conditions be met if it determines that the inclusion of the conditions will be in the best interest of the locality, section, or portion of the District where the licensed establishment is to be located.” D.C. Official Code § 25-104(e).

33. The Board finds that granting an entertainment endorsement to include DJ entertainment, dancing, and live bands will not adversely affect the residential parking of the immediate area provided that the establishment avails the parking spaces in the entire ‘main’ parking lot for its patrons whenever entertainment is offered. More specifically, these reserved parking spaces are to remain under the Applicant’s exclusive control. That is, these spaces are not to be leased to a third party.

34. In the instant case, the lack of available parking for the Applicant’s patrons whenever entertainment is offered would cause an immediate hardship on the neighborhood and burden residential parking needs. Further, it would undermine the Board’s basis for approving the substantial change, which is based on the Applicant’s representation that parking will be available. *Supra*, at ¶¶ 8, 27. Consequently, the Board finds it necessary to impose the condition that the establishment must reserve the entire ‘main’ parking lot exclusively for Panda Gourmet patrons when live entertainment is offered at the establishment.

II. THE BOARD HAS SATISFIED THE GREAT WEIGHT REQUIREMENT BY ADDRESSING ANC 5C’S ISSUES AND CONCERNS.

35. ANC 5C’s recommendation submitted in accordance with D.C. Official Code § 25-609(a) indicated that its protest was based on concerns regarding Good Hope Deli Market’s impact on peace, order, and quiet; and residential parking. *ANC Protest Letter*. More specifically, in its letter and testimony, the ANC submitted its concerns regarding the

Application. *Supra*, at ¶¶ 11-14. The Board notes that it specifically addressed these concerns in Paragraphs 17 through 30 of this Order.

III. THE APPLICATION SATISFIES ALL REMAINING REQUIREMENTS IMPOSED BY TITLE 25.

36. 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. 2014). 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

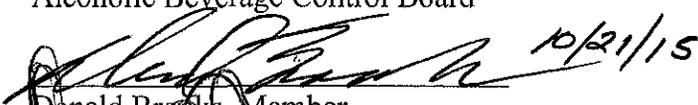
Therefore, the Board, on this 28th day of October 2015, hereby **APPROVES** the Application for a Substantial Change to a Retailer’s Class CR at 2700 New York Avenue, N.E. filed by T&L Investment Group, LLC t/a Panda Gourmet and imposes the following condition:

(1) Whenever entertainment is provide, the license holder shall reserve the entire ‘main’ parking area for the exclusive use of its patrons and maintain exclusive control of the ‘main’ parking lot. The ‘main’ parking lot is defined as the parking area to the west of the establishment entrance. The establishment is located on DC Zoning Parcel 164 Lot 8. The ‘main’ parking lot is bounded by the establishment to the east, by the property line of Parcel 164 Lot 8 along Bladensburg Rd to the west, and by the north and south property boundaries of Parcel 164 Lot 8.

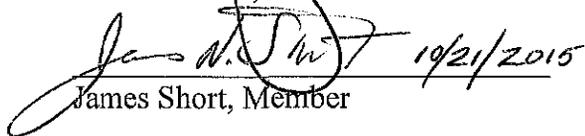
IT IS FURTHER ORDERED that the Board’s findings of fact and conclusions of law contained in this Order shall be deemed severable. If any part of this determination is deemed invalid, the Board intends that its ruling remain in effect so long as sufficient facts and authority support the decision.

The ABRA shall deliver a copy of this order to the Applicant and the ANC.

District of Columbia
Alcoholic Beverage Control Board

 10/21/15
Donald Brooks, Member

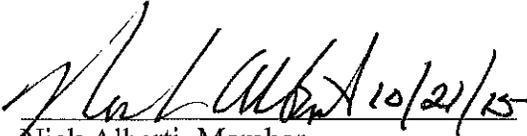

Herman Jones, Member

 10/21/2015
James Short, Member

There is often a large demand for parking in the neighborhoods adjacent to the licensee due to presence of several large neighboring entertainment venues. *Supra*, at ¶¶ 4, 11-12. That demand for parking has had a negative effect on the availability of parking for nearby residents, and the large numbers of persons who park on the residential streets and return to their vehicles in the early morning hours has a negative effect on the peace, order and quiet of the residential community. *Supra*, at ¶¶ 4-5. I conclude that the issuance of an entertainment endorsement to the Panda Gourmet will further add to the demand for parking and the negative effects that result from that demand. Therefore, I conclude it is necessary to require the Applicant to ensure that there is ample parking for its patrons when entertainment is offered.

The evidence shows that T&L Hospitality LLC has contracted with the DHS to house DHS clients at the Days Inn. *Supra*, at ¶ 9. DHS's contract with T&L Hospitality LLC gives DHS authority to control the use of the "overflow" parking area. *Supra*, at ¶ 9. The DHS has the authority to restrict parking on the overflow lot in the evenings. *Supra*, at ¶ 9. As long as DHS continues its contract with T&L Hospitality LLC to house clients, a contract that includes the use of the "overflow" parking lot, the Applicant cannot guarantee parking for its clients in the "overflow" parking lot. On evenings when T&L Hospitality LLC leases the "main" parking lot to Tag-B or any other entity, the Applicant cannot ensure its customers parking either in the "main" or "overflow" parking lots.

I agree with the decision of the majority of the Board to impose a requirement that the Applicant reserve the use of the entire "main" parking for its customers whenever entertainment is offered.

 10/21/15
Nick Alberti, Member

We concur with the decision to grant the entertainment endorsement, but dissent to the condition imposed by the majority.

The Board may impose conditions upon a license in connection with a protest hearing upon a finding that such conditions are necessary to preserve the peace, order and quiet of the surrounding neighborhood or to protect residential parking. D.C. Official Code § 25-313 (b). In addition, the imposition of such conditions is subject to the Administrative Procedures Act's requirement that the need for the conditions be supported by substantial evidence in the record. D.C. Official Code § 2-509(e). In our view, the record lacks substantial evidence supporting the following condition imposed by the majority: whenever the Applicant provides entertainment, all 60 spaces comprising the main parking lot must be reserved for the exclusive use of Panda Gourmet's patrons.

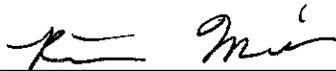
The record shows that the Applicant has an abundance of parking. *Supra*, at ¶ 8. It owns the parking lot that has 300 spaces, divided into two areas. *Supra*, at ¶ 8. One area, referred to by the Board as the "main" parking lot, has an abundance of spaces. *Supra*, at ¶ 8. Mr. Jones testified that this lot is leased to Tag B which charges patrons to park there. *Supra*, at ¶ 8. However, patrons and employees of Panda Gourmet are also allowed to park there for free and are given priority. *Supra*, at ¶ 8. Mr. Jones also testified that parking is available for Panda Gourmet patrons and employees on the side of the lot that is shared with the Days Inn hotel. *Supra*, at ¶ 8. According to ABRA's Investigator Ghenene, who monitored the establishment on seven different occasions, there is always parking available in the shared lot when the main lot is used by surrounding ABC establishments. *Supra*, at ¶ 5. Further, on those occasions, Panda Gourmet customers and employees are given priority in the main lot and not charged the fee that is charged for patrons of the other establishments. *Supra*, at ¶ 5.

In regards to the shared parking lot, Mr. Jones testified that he observes the lot every day and that there are about 164 families living there now and fewer than 12 families have cars. *Tr.* at 80, 142. In addition, DHS staff uses 2 or 3 spaces in front of the hotel. *Id.* There is a guard in a booth who monitors the lot. *Supra*, at ¶ 9. Prior to May of this year, the ballroom attached to the Days Inn was rented out for parties on the weekends. Since T & L Investment entered the lease with DHS, that use is no longer allowed, decreasing the parking demand on the shared parking lot.

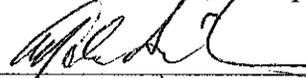
The majority's condition requiring that all 60 spaces in the main lot be exclusively dedicated to Panda Gourmet on nights when it offers entertainment appears to be based on ANC Commissioner Manning's testimony that on one visit to the parking lot at 11 pm she was turned away by the guard and on speculation that the Guard would not let Panda Gourmet employees or patrons park there at any time, despite Mr. Jones' testimony to the contrary. *Supra*, at ¶ 11. In addition, the majority speculates that even though Panda Gourmet does not have a parking problem now, it will when it offers entertainment. *Supra*, at ¶¶ 29-30. In our view, the evidence does not support that conclusion. Panda Gourmet is a small Chinese Restaurant. *Supra*, at ¶ 9. Its occupancy is limited to 99. The bar area has only 20 seats. On the establishment's busiest nights, everyone leaves around midnight. *Protest Report*, 5. LaShawn McDuffy, a frequent patron of the restaurant's bar testified that the patrons are able to park in the shared parking lot. *Supra*, at ¶ 15. The record also shows that the average age of the patrons is 59.8. *Supra*, at ¶ 9. Panda Gourmet seeks an entertainment endorsement to occasionally have a dj or jazz ensemble on special occasions to meet the interests of its current clientele. *Supra*, at ¶¶ 10, 16. In light of the limitation on occupancy of the licensed establishment, the number of seats in the

bar, the nature of the clientele, and the patrons' access to parking, the evidence does not support a conclusion that there will be a major increase in parking that the current parking conditions cannot accommodate.

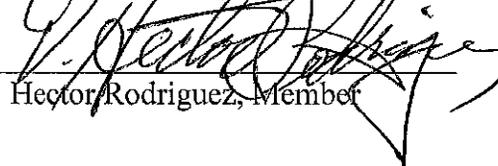
Finally, what the majority gives with one hand, it takes away with the other. The Board's condition interferes with a contractual agreement that the Applicant has with Tag-B. It is unknown what the consequences of this condition will be on that agreement. However, it is likely that any possible profit that Panda Gourmet may make as a result of the addition of entertainment on a particular night will be offset by the loss of revenue from the lease of the lot to Tag B. Further, on nights the lot will be reserved for Panda Gourmet patrons and employees exclusively, it will no longer be available for overflow parking from other establishments in the area. There is no evidence in the record of any other commercial parking area that would accommodate this need. Accordingly, the "overflow" parking is likely to spread to the surrounding residential neighborhood as a result, having the opposite impact intended by the Board implicating a disturbance of the peace, order and quiet of such areas, and making residential parking even more difficult.



Ruthanne Miller, Chairperson



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, 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 (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).