

In the Matter of:	)	
	)	
Pax Liquor, Inc.	)	Case No.: 18-PRO-00071
t/a Pax Spirits	)	License No: ABRA-110690
	)	Order No: 2019-127
Application to Renew a	)	
Retailer's Class A License	)	
	)	
at premises	)	
4944 South Dakota, N.E.	)	
Washington, D.C. 20017	)	
	)	

**ALSO PRESENT:** Pax Liquor, Inc., t/a Pax Spirits, Applicant

Ronnie Edwards, Chairperson, and Gordon-Andrew Fletcher, Vice-Chair,  
Advisory Neighborhood Commission 5A, Protestants

Martha Jenkins, General Counsel  
Alcoholic Beverage Regulation Administration

## INTRODUCTION

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### ***Procedural Background***

The Notice of Public Hearing advertising Pax Spirits' Application was posted on August 8, 2018, and informed the public that objections to the Application could be filed on or before September 17, 2018. *ABRA Protest File No. 18-PRO-00071*, Notice of Public Hearing [*Notice of Public Hearing*]. The records of the Alcoholic Beverage Regulation Administration (ABRA) indicate that Advisory Neighborhood Commission (ANC) 5A has filed a protest against the Application. *ABRA Protest File No. 18-PRO-00071*, Roll Call Hearing Results.

The parties came before the Board's Agent for a Roll Call Hearing on October 1, 2018, where the above-mentioned objector was granted standing to protest the Application. On October 31, 2018, the parties came before the Board for a Protest Status Hearing. Finally, the Protest Hearing in this matter occurred on January 16, 2019.

The Board 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 a properly adopted written recommendation from ANC 5A. The ANC's 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; and real property values of the area located within 1,200 feet of the establishment, as well as other relevant issues raised by the Protestant. D.C. Code § 25-313(b); 23 DCMR §§ 1607.2; 1607.7(b) (West Supp. 2019).

### **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. Pax Spirits has submitted an Application for a New Retailer's Class A License at 4944 South Dakota, N.E., Washington, D.C. *Notice of Public Hearing*.
2. ABRA Investigator Countee Gilliam investigated the Application and prepared the Protest Report submitted to the Board. *ABRA Protest File No. 18-PRO-00071*, *Protest Report* (Nov. 2018) [*Protest Report*]. The proposed establishment is located in a MU-3A zone. *Protest Report*, at 3. No 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.* According to the public notice, Pax Spirits' proposed hours of operation are from 8 a.m. to midnight. *Id.* at 4.

3. During his conversation with Pax Spirits' representative, the Applicant indicated to the investigator that the Respondent had no objection to installing security cameras. *Transcript (Tr.)*, January 16, 2019 at 32. ABRA investigators monitoring the site did not observe any issues at the premises. *Id.* at 35, 40, 58.

4. MPD records show only three calls for service related to the Pax Spirits address between November 2017 and November 2018. *Protest Report*, at 5. During the period of review, there were two calls related to breaking and entering and one medical call. *Tr.*, 1/16/19 at 36.

5. "The proposed establishment is located in a small shopping center [with] a parking lot." *Protest Report*, at 4. Currently, the shopping mall contains a Chinese restaurant and a dry cleaner. *Tr.*, 1/16/19 at 41. The parking lot has eleven parking spaces. *Id.* at 39. A residential area is located behind the shopping center. *Id.* at 44.

## **II. Change Choi**

6. Change Choi serves as the President of Pax Spirits. *Id.* at 81. He has worked in the liquor store business for over 11 years and attended trainings provided by ABRA. *Id.* at 89, 100. The business will be operated by his family and some employees. *Id.* at 82. There is no evidence in the record that Mr. Choi obtained any violations or was involved in any prior violations of any alcohol laws during his prior employments.

7. Mr. Choi indicated that he would take a number of steps to avoid negatively impacting the community. *Id.* at 85. He indicated that he generally plans to operate the store between 10 a.m. and 10 p.m. *Id.* at 83. He further anticipates that he will only receive deliveries up to two times per week. *Id.* at 91. He also indicated that he would post signs prohibiting loitering, panhandling, and trespassing; post signs notifying the public that parking is only for customers; and refrain from selling single containers of beer or dividing manufacturer's packages. *Id.* He also indicated that he would regularly clean the property, bar unaccompanied minors from entering the premises, and install security cameras and lighting. *Id.* at 90.

## **III. Simon Chan**

8. Simon Chan represents the landlord leasing the property to the Pax Spirits. *Id.* at 126. According to Mr. Chan, the landlord supports the Application and is aware that Pax Spirits will be a liquor store. *Id.* at 127-28. Under the lease, the tenant will be responsible for maintaining the property. *Id.* at 128.

## **IV. Bill Smith**

9. Bill Smith currently lives approximately a block and a half away from the establishment's proposed location. *Id.* at 149. As a resident, he believes the neighborhood is home to many families and mostly residential. *Id.* at 151-52; *see also* 188. He does not believe that a liquor store is appropriate for the neighborhood. *Id.* at 153. As a longtime resident, he has observed loitering when previously existing establishments have sold alcohol in the

neighborhood. *Id.* at 155, 164. He further observed that the community has a number of facilities that serve children, including a library and a school. *Id.* at 178-79.

#### **V. Robert Oliver**

10. Robert Oliver is a longtime resident of North Michigan Park and serves as the President of the Lamont-Riggs Library Friends. *Id.* at 185-86. He expressed concern that traffic on South Dakota Avenue, N.E., is dangerous because many people speed and the road is not illuminated at night. *Id.* at 186. He also does not believe there is sufficient parking in the parking lot to accommodate the business. *Id.* at 187.

#### **VI. Petros Kiflu**

11. Petros Kiflu owns the Four Seasons Convenience Store, which is located in North Michigan Park. *Id.* at 199-200. His store operates across the street from the proposed location. *Id.* at 201. He previously applied for a liquor license in the neighborhood, but withdrew his application before it was approved. *Id.* at 206. He indicated that he currently does not have a problem with littering, loitering, or panhandling on his property. *Id.* at 204.

#### **VII. Silas Grant**

12. Silas Grant works for Councilmember Kenyan R. McDuffie. *Id.* at 208. He previously grew up in the neighborhood where the establishment will be located. *Id.* As a teenager, he witnessed frequent panhandling at the Fish Market when it was in business. *Id.* at 209. Based on his experience as a resident, he believes liquor stores in Ward 5 attract crime. *Id.* at 5.

#### **VIII. Nandini Singh**

13. Nandini Singh lives in the community with her family. *Id.* at 219. Her current home is approximately a two minute walk away from the establishment's proposed location. *Id.* at 220. She is concerned about living near a liquor store. *Id.* at 222.

#### **IX. Grace Lewis**

14. Grace Lewis serves as the Advisory Neighborhood Commissioner for Advisory Neighborhood Commission (ANC) ANC5A-02. *Id.* at 227. She currently opposes the Application. *Id.* at 228.

#### **X. Peter Bishop**

15. Peter Bishop serves as the treasurer of the Emerson Park Homeowners Association. *Id.* at 236. Emerson Park is located a few blocks away from the establishment's proposed location. *Id.* He has lived in the community since 2009. *Id.* at 240. Mr. Bishop indicated that the community is highly residential with many private homes. *Id.* at 242, 246. He further indicated that the neighborhood is located next to two commercial areas. *Id.* at 244. He also has observed that South Dakota Avenue, N.E., is a major fast moving road. *Id.* at 244-45, 255. He is concerned

that delivery trucks will block traffic in the neighborhood. *Id.* at 245. He is also concerned that the commercial property where Pax Spirits seeks to be located is not well maintained. *Id.* at 247, 253.

#### **XI. Hazel Franklin**

16. Hazel Franklin is a resident of the neighborhood. *Id.* at 259. He is concerned that the presence of a liquor store will encourage loitering, littering, and public urination. *Id.* at 260. He indicated that there were at least four liquor stores within a fifteen minute drive from his home. *Id.* at 261. He indicated that one of the stores in the area attracts loiterers. *Id.* Based on studies he has read, he is also concerned that the addition of more liquor stores will encourage crime, reduce investment in the neighborhood, reduce property values, and increase insurance premiums. *Id.* at 262, 265.

#### **XII. Carmen Williams**

17. Carmen Williams serves as the President of the North Michigan Park Civic Association and resides in the community. *Id.* at 274-75. She noted that the property owners of the strip mall where the establishment will be located have failed to fix lights and do not remove graffiti in a timely fashion. *Id.* at 275-76. She further noted that the parking lot needs to be fixed and has no handicap parking. *Id.* at 276, 281; *Protestant's Exhibit No. 12*. She further observed that the strip mall's curb requires fixing and the roof of the mall appears rusted and in bad shape. *Tr.*, 1/16/19 at 276. Moreover, in her experience, the property owners are not responsive to community complaints regarding the state of the property. *Id.* She further noted that the parking lot has been full at certain times, even though the proposed establishment is not currently operating but pictures submitted by the Protestant show many spaces available. *Id.* at 283; *Protestant's Exhibit No. 12*. Exhibit 12 shows that immediately behind the premises, the alley is overgrown with grass and next to an unfenced forest. *Protestant's Exhibit No. 12*.

18. Based on her observations, Ms. Williams has observed that liquor stores near the neighborhood tend to attract loiterers. *Tr.*, 1/16/19 at 280. She is further concerned that the nearby McDonald's will attract loiterers to the shopping plaza. *Id.* at 293; *Protestant's Exhibit No. 12*.

#### **XIII. Angel Austin**

19. Angel Austin lives in the single member district where the establishment will be located. *Tr.*, 1/16/19 at 305. He noted that in the past when the Fish Market was open and closed containers of alcohol were sold, loitering and littering would occur in the neighborhood. *Id.* at 305-06. He opposes the Application because he is concerned that a liquor store will encourage loitering and crime. *Id.* at 309.

#### **XIV. Studies**

20. A report discussing a study conducted by Johns Hopkins looking at exposure to violent crimes in Baltimore between 2012 and 2016 indicate that "every 10 percent increase in alcohol

outlet access is associated with a 4.2 percent increase in violent crime in the surrounding area.” *Protestant’s Exhibit No. 17*, 1-2. A report published in the *Western Journal of Emergency Medicine* indicates that “[i]n Washington, D.C., alcohol outlet density is significantly associated with . . . violent crime.” *Id.* at *Western Journal of Emergency Medicine*, 283.

## CONCLUSIONS OF LAW

21. The Board may approve an Application for a New Retailer’s Class A License when the proposed establishment will not have an adverse impact on the neighborhood. D.C. Code §§ 25-104, 25-313(b); 23 DCMR §§ 1607.2; 1607.7(b) (West Supp. 2019). 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; and real property values of the area located within 1,200 feet of the establishment, as well as other relevant issues raised by the Protestant. D.C. Code § 25-313(b); 23 DCMR §§ 1607.2; 1607.7(b) (West Supp. 2019).

### I. The Establishment is Inappropriate for the Neighborhood.

22. 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. 2019). 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).

23. 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. The record shows that the Application will encourage loitering to the detriment of peace, order, and quiet.**

24. In this case, approval of the Application is inappropriate because it is likely that the presence of a liquor store will encourage loitering and other antisocial behavior. “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. 2019).

25. In finding the Application inappropriate, the Board is concerned that loiterers may engage in a number of behaviors that will have a negative impact on the community, including disorderly conduct, drug dealing, fighting, littering, public drinking, and public urination. The Protestants’ presentation demonstrates that this concern is not mere speculation. *Supra*, at ¶¶ 2, 20. Specifically, loitering is a likely outcome when loitering is habitual at other liquor stores in the area and the Ward. *Supra*, at ¶¶ 9, 16, 18-19. Moreover, the nearby McDonald’s restaurant will likely make the area an attractive place to loiter and encourage litter. *Supra*, at ¶ 18. Finally, the Board is concerned that the overgrown alley and forest behind the premise provides an area hidden from public view that will attract mischief and lead to more than people just hanging around. *Supra*, at ¶ 17. As a result, the Board finds that the Application is inappropriate under § 25-313(b)(2).

**b. Pax Spirits will likely have a detrimental impact on real property values.**

26. The Board is also persuaded that approval of the Application will 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, testimony and photos show that the parking lot and building facilities that will be used by the Applicant are not in good condition and have not been well maintained by the property owner. *Supra*, at ¶ 17. The Board is also concerned that the overgrown alley and forest demonstrate a significant deterioration of the property that make the presence of a liquor store inappropriate. *Id.* Moreover, the Board is not persuaded that this situation will change by approving the Application in light of testimony that the property owners have a history of not being diligent in addressing issues such as removing graffiti. *Id.* Therefore, the Board finds the establishment inappropriate under § 25-313(b)(1).

## **II. The Board Has Satisfied the Great Weight Requirement.**

27. The Board considered ANC 5A's written recommendations and has addressed these concerns in the paragraphs above.

### **ORDER**

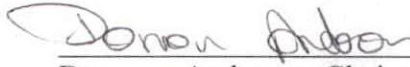
Therefore, the Board, on this 20th day of March 2019, hereby **DENIES** the Application for a New Retailer's Class A License at premises 4944 South Dakota, N.E. filed by Pax Liquor, Inc., t/a Pax Spirits.

**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.



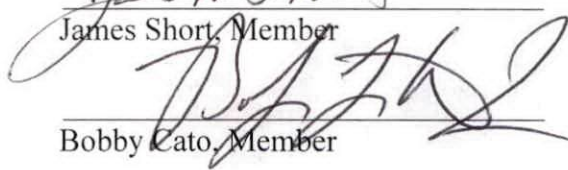
District of Columbia  
Alcoholic Beverage Control Board



Donovan Anderson, Chairperson



James Short, Member



Bobby Cato, Member

I dissent from the position taken by the majority of the Board. I am persuaded that approval of the Application would satisfy the appropriateness standards and not have a detrimental impact on public safety or other negative impacts so long as the Board imposed strict conditions. Such conditions could include the mandated use of security cameras, the limiting of the establishment's hours, mandatory exterior lighting, the reservation of parking spots for the establishment, and other requirements. Therefore, I would vote to approve the application subject to conditions.



Mike Silverstein, Member

I abstain.



Rema Wahabzadah, 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).