

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

301 Romeo, LLC)	Case Number:	13-PRO-00136
t/a Romeo & Juliet)	License Number:	92684
)	Order Number:	2014-045
Application for a New)		
Retailer's Class CR License and)		
Sidewalk Café Endorsement)		
)		
at premises)		
301 Massachusetts Avenue, N.E.)		
Washington, D.C. 20002)		
)		

BEFORE: Ruthanne Miller, Chairperson
Nick Alberti, Member
Donald Brooks, Member
Herman Jones, Member
Mike Silverstein, Member

ALSO PRESENT: 301 Romeo, LLC, t/a Romeo & Juliet, Applicant

Andrew Kline, of The Veritas Law Firm, on behalf of the Applicant

Karen Wirt, Chair, Advisory Neighborhood Commission (ANC) 6C,
Protestant

Martha Jenkins, General Counsel
Alcoholic Beverage Regulation Administration

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

INTRODUCTION

The Alcoholic Beverage Control Board (Board) grants the Application for a New Retailer's Class CR License and Sidewalk Café Endorsement (Application) filed by 301 Romeo, LLC, t/a Romeo & Juliet (hereinafter, the "Applicant" or "Romeo & Juliet"). Nevertheless, based on valid concerns regarding noise from Romeo & Juliet's future sidewalk café, the Board requires that the sidewalk café close at 11:00 p.m., Sunday through Thursday, and 12:00 a.m. on Friday and Saturday.

Procedural Background

The Notice of Public Hearing advertising Romeo and Juliet's Application was posted on September 6, 2013, and informed the public that objections to the Application could be filed on or before October 21, 2013. *ABRA Protest File No. 13-PRO-00136*, Notice of Public Hearing. On or before October 21, 2013, the Alcoholic Beverage Regulation Administration (ABRA) received a protest letter from Advisory Neighborhood Commission (ANC) 6C in accordance with District of Columbia Official Code §§ 25-601 and 25-602. Letter from Karen Wirt, Chair, ANC 6C, to Fred Moosally, Director, ABRA (Oct. 11, 2013) [Protest Letter of ANC 6C].

The parties came before the Board's Agent for a Roll Call Hearing on November 4, 2013, where ANC 6C was granted standing to protest the Application. On November 20, 2013, the parties came before the Board for a Protest Status Hearing. Finally, the Protest Hearing in this matter occurred on December 11, 2013.

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 (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 addresses ANC 6C's concerns regarding peace, order, and quiet in its Conclusions of Law.

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 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. 2014).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:

I. Background

1. Romeo & Juliet has submitted an Application for a New Retailer's Class CR License and Sidewalk Café Endorsement at 301 Massachusetts Avenue, N.E. Notice of Public Hearing.

¹ The protest report indicates that "residential parking" is a concern of the Protestants; however, there is no indication that ANC 6D raised this issue in its initial protest letter. Therefore, the Board considers this issue waived by ANC 6D under D.C. Official Code § 25-602 and finds in favor of Romeo & Juliet on this issue under D.C. Official Code § 25-311(a). See also *Transcript (Tr.)*, December 11, 2013 at 36, 171-72.

II. ABRA Investigator Ileana Corrales

2. ABRA Investigator Ileana Corrales investigated the Application and prepared the Protest Report submitted to the Board. *ABRA Protest File No. 13-PRO-00136*, Protest Report (Dec. 2013) [*Protest Report*].

3. 301 Massachusetts Avenue, N.E., is located in the Capitol Hill neighborhood. *Id.* at 4. The proposed location is three blocks away from Union Station. *Id.* The proposed establishment is located in a commercial C-2-A zone. *Protest Report*, at 2. The proposed building is undergoing construction at this time. *Transcript (Tr.)*, December 11, 2013 at 11. When completed, the establishment will be an “Italian tapas restaurant” located in a “corner lot row-style building.” *Id.* at 11.

4. Thirteen licensed establishments are located within 1,200 feet of the establishment’s proposed location. *Protest Report*, at 3; *Tr.*, 12/11/13 at 34. Ten of the establishments are on-premise retail establishments and three of the establishments are off-premise establishments. *Id.* Four of the establishments have summer gardens or sidewalk cafés. *Protest Report*, at 3. There are no schools, recreation centers, public libraries, or day care centers located within 400 feet of the establishment. *Id.* at 6.

5. The establishment’s proposed hours of operation 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 5. The establishment’s proposed hours of alcoholic beverage sales, service, and consumption are as follows: 8:00 a.m. to 2:00 a.m., Sunday through Thursday, and 8:00 a.m. to 3:00 a.m. on Friday and Saturday. *Id.* Romeo & Juliet’s proposed hours for its outdoor seating 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.* The Board notes that the Applicant has not applied for an entertainment endorsement, which means that the proposed establishment may not charge a cover charge, provide facilities for dancing, or offer live entertainment. *Id.*; D.C. Official Code §§ 25-101(21A); 25-113a(b).²

6. ABRA Investigators monitored the proposed location on five separate occasions between November 25, 2013, and December 4, 2013. *Tr.*, 12/11/13 at 13. The investigators did not observe any peace, order, and quiet issues, and they noted an absence of trash and litter. *Id.* at 14.

III. Michael Rehman

7. Michael Rehman testified on behalf of Romeo & Juliet. *Id.* at 47. Mr. Rehman owns a number of nightclubs in the District of Columbia, but wants to open an Italian restaurant in the neighborhood. *Id.* at 50.-51. The proposed establishment is taking over the space previously occupied by an Indian restaurant called “White Tiger.” *Id.* at 127, 130.

² Under the definition provided by Title 25 of the D.C. Official Code, entertainment is defined as “live music or any other live performance by an actual person, including live bands, karaoke, comedy shows, poetry readings, and disc jockeys. The term ‘entertainment’ shall not include the operation of a jukebox, a television, a radio, or other prerecorded music.” D.C. Official Code § 25-101(21A).

8. The proposed establishment will be three floors, with its main entrance facing 3rd Street, N.E.. *Applicant's Exhibit No. 1; Tr.*, 12/11/13 at 64, 80-81. The first floor will feature a dining area, a bar, and two bathrooms. *Id.* at 57. The second floor will have enough room for six to eight dining tables and a large kitchen. *Id.* at 58. Finally, the third floor will host some dining facilities and the establishment's storage and office areas. *Id.* at 63-64.

9. The proposed establishment will have three outdoor seating areas. *Id.* at 64; *Protest Report*, at Exhibit 9. One enclosed sidewalk café facing 3rd Street, N.E., will have room for eleven seats and three tables, while another separate enclosed sidewalk café facing 3rd Street, N.E., will have room for seventeen seats and six tables. *Protest Report*, at Exhibit 9. The enclosed sidewalk cafés will be enclosed with removable glass windows. *Tr.*, 12/11/13 at 84-85. An unclosed sidewalk café will wrap around the corner of the building facing Massachusetts Avenue, N.E., and 3rd Street, N.E. *Protest Report*, at Exhibit 9. The unenclosed sidewalk café will have enough room to fit 142 seats and thirty-eight tables. *Id.* Mr. Rehman also noted that he is not soundproofing the unenclosed seating area. *Id.* at 113-14. Finally, the establishment also plans to use a portable service bar that will carry glassware and wine in the sidewalk café areas. *Id.* at 122, 136, 140.

10. Mr. Rehman is currently making changes to the building where the establishment will be located. *Id.* Mr. Rehman is adding bathrooms to the first floor and removing a spiral staircase. *Id.* at 54. Mr. Rehman is also updating the building's air conditioning system. *Id.* at 55. He is also renovating and enlarging the establishment's kitchen area. *Id.* at 58, 107.

11. Mr. Rehman hired Frank Ortiz to help the owners develop and operate the establishment as a restaurant. *Id.* at 60. Once finished, Mr. Ortiz will serve as the establishment's general manager. *Id.* at 88. Mr. Ortiz may also be offered an opportunity to become an owner of the establishment at a later date. *Id.* at 118.

IV. Frank Ortiz

12. Frank Ortiz testified on behalf of Romeo & Juliet. *Id.* at 142-43. Mr. Ortiz serves as Romeo & Juliet's Director of Operations. *Id.* Mr. Ortiz has been responsible for the developing Romeo & Juliet as a restaurant. *Id.* at 144. He has twenty-five years of experience in the restaurant industry. *Id.* at 156. He previously worked for the Think Food Group and helped open Jaleo, Café Atlantico, The Austin Grille, and Zaytinya. *Id.* at 157-58. As part of his job, he managed the establishments' daily operations and developed the establishments' business models. *Id.* at 158. Mr. Ortiz left Think Food Group to work for the Intercontinental Hotel Group, where he opened a restaurant called Café du Parc. *Id.* at 159. He then began working independently, and helped revitalize Mio Restaurant by redesigning their operations, menu, and business model. *Id.* at 159. Finally, Mr. Ortiz also developed the restaurant operations at Dirty Martini, and has had no role in the establishment's operations as a nightclub. *Id.* at 155-56.

13. Mr. Ortiz further elaborated on the layout and design of the establishment. *Id.* at 162. According to Mr. Ortiz, there will be a small bar in the first floor and no bar on the second floor. *Id.* at 148-49, 153. The first floor will also have a small kitchen area. *Id.* at 200. One enclosed outdoor seating areas will have thick glass, curtains, and foam that will

mitigate sound from the enclosed sidewalk cafés. Id. at 162-63. The establishment plans to use a canopy to enclose the other sidewalk café. Id. at 164-65. Mr. Ortiz also emphasized that the closest residences are near the enclosed sidewalk cafés, not the unenclosed sidewalk café. Id. at 170. The outdoor seating areas will also be surrounded by trees to help mitigate the impact of sound. Id. at 164.

14. According to Mr. Ortiz, Romeo & Juliet will not have any nightclub activities. Id. at 166. He emphasized that the establishment has not applied for an entertainment endorsement. Id. at 166. The establishment plans to play Italian music from an iPod over the establishment's speaker system on the interior of the establishment. Id. at 204-05. The establishment has no plans to install a speaker system for the exterior portions of the establishment at this time. Id. at 206.

15. Mr. Ortiz discussed the establishment's occupancy. Id. at 196. Romeo & Juliet plans to have forty seats on the first floor and twenty seats on the second floor. Id. The third floor will have a dining table for eight people. Id. The establishment plans to have eleven seats in one of the enclosed sidewalk cafés and sixteen seats in the other. Id. The unenclosed sidewalk café area will have 142 seats. Id. at 198.

16. Mr. Ortiz also discussed Romeo & Juliet's food operations. Id. at 201. The establishment plans to offer "small plates" or "tapas" based on a menu designed by a "chef consultant." Id. at 201. The second floor kitchen will be dedicated to food preparation. Id. at 201. The first floor will operate as a "main station," which will supply the tapas for service to customers. Id. at 202. The establishment's staircase was intentionally built wide to allow for the transfer of food from one kitchen to another. Id. at 202. Mr. Ortiz believes the establishment's kitchens have the capacity to provide food service for up to 300 patrons in a single night. Id. at 203. The establishment plans to offer its full dinner menu until the establishment closes. Id. at 223.

V. Applicant's Ownership History

17. The owners of Romeo & Juliet listed on the Applicant's ABRA Application are as follows: Frederic Gussin, Michael Rehman, and Diego Sequeira. *ABRA Licensing File No. 92684*, ABRA Application, at 1. Diego Sequeira holds an ABRA Manager's License (ABRA License No. 089721), while Frederic Gussin holds no other licenses issued by ABRA. Mr. Rehman owns four establishments holding Retailer's Class C Nightclub Licenses: Midtown (ABRA License No. 072087); Lotus (ABRA License No. 075162); Dirty Martini (also trading under the name "Dirty Bar") (ABRA License No. 083919); and Tattoo (ABRA License No. 075156). *ABRA Licensing File Nos. 072087, 075162, 083919, 075156*.

18. ANC 6C claimed that Mr. Rehman also owned Fur Factory (ABRA License No. 060626); however, ABRA's records show that Fur Factory is solely owned by Lilyan Rehman. *ABRA Licensing File No. 060626*.³

19. ABRA's records show the following regarding the establishments owned by Mr. Rehman: Dirty Martini has no history of violations as of the date of Protest Hearing.

³ ABRA's records show that Fur Factory's license has been cancelled. *ABRA Licensing File No. 060626*.

ABRA Licensing File No. 083919, Investigative History. Tattoo agreed in an offer in compromise to a substantial change violation related to sidewalk café or summer garden on February 20, 2013. *ABRA Licensing File No. 075156*, Investigative History. Lotus was found guilty of failing to follow a Board Order in 2011 and paid a fine of \$750 for a violation occurring in 2007. *ABRA Licensing File No. 075162*, Investigative History. Finally, Midtown agreed in an offer-in-compromise that it committed a sale to minor violation on January 18, 2012; agreed to another offer-in-compromise to pay a \$1,250 fine for a violation on October 6, 2010; agreed that it violated its settlement agreement on April 21, 2010; and admitted it committed a trade name violation on February 13, 2009. *ABRA Licensing File No. 72087*, Investigative History. The Board notes that the Applicant answered “No” to Question 20 in the ABRA Application submitted on July 3, 2013, which reads: “Has there been any administrative action taken against the application or any person listed above regarding ABC violations in the District of Columbia or any state?” *ABRA Licensing File No. 92684*, ABRA Application.

VI. Elizabeth Gardner

20. Elizabeth Gardner testified on behalf of ANC 6C. *Id.* at 246. She lives two houses from the proposed establishment on 3rd Street, N.E., and works as a nurse at the Washington Hospital Center. *Id.* She believes her property line is approximately twelve feet away from the nearest outdoor seating area at the establishment. *Id.* at 266.

21. Ms. Gardner is concerned about noise. *Id.* at 247. She noted that District law generally limits businesses from generating noise that exceeds 60 decibels “at a distance of not less than 1 meter from outside the business establishment.” *Id.* at 248. Furthermore, the District’s disorderly conduct law creates quiet hours from “10:00 p.m. to 7:00 a.m.” *Id.* Ms. Gardner is concerned that noise from the establishment could hurt the ability of nearby residents to sleep, which would have a detrimental impact on the health of residents. *Id.* at 248-49. She noted that she regularly uses a white noise machine when she sleeps. *Id.* at 266.

22. Ms. Gardner noted that she took decibel readings from her property when the prior restaurant was open. *Id.* at 250-251. According to her readings, the establishment created noise in excess of the District’s decibel limits on a regular basis. *Id.* at 251. She is afraid the establishment’s large patio will cause excessive patron noise. *Id.* at 262. Ms. Gardner is aware that there are other establishments in the neighborhood that have patios open until at least 11:00 p.m. during the week and midnight during the weekend. *Id.* at 264, 267.

VII. Kay Elsasser

23. Kay Elsasser testified on behalf of ANC 6C. *Id.* at 281. She lives on C Street, N.E., which is less than a block and a half from the proposed location of the establishment. *Id.* at 281.

24. Ms. Elsasser observed that the “Senate Daycare Center” is less than 100 feet from the establishment. *Id.* at 282. She also observed that the “Senate Page School and Dormitory” is located next to the daycare center.⁴ *Id.* at 283.

⁴ The Board relies on the names of the institutions provided in the record.

VIII. Nancy McCall

25. Nancy McCall testified on behalf of ANC 6C. Id. at 293. She has lived on 3rd Street, N.E., since 1985. Id. at 293-94. Ms. McCall currently lives a block and a half from the establishment's proposed location. Id. Ms. McCall opposes nightclubs in the neighborhood, and notes that Michael Rehman has a reputation as a nightclub owner. Id. at 295.

IX. Richard Fiesta

26. Richard Fiesta testified on behalf of ANC 6C. *Tr.*, 12/11/13 at 43. He has lived on the 200 block of C Street, N.E., since 1984. Id. Mr. Fiesta complains that patrons from 201 Lounge, located at 201 D Street, N.E., are engaging in noisy conversations and arguments at night on weekends. Id. at 44. He also complains that individuals are leaving beer bottles and other waste on his property. Id.

X. Becky Halkias

27. Becky Halkias testified on behalf of ANC 6C. Id. at 329. Ms. Halkias lives on 317 C Street, N.E. Id. at 329-30. Ms. Halkias agreed with the testimony provided by Mr. Fiesta. Id. at 332.

CONCLUSIONS OF LAW

28. The Board may approve a request for a New Retailer's Class CR License when the proposed establishment will not have an adverse impact on area located within 1,200 feet of the establishment. D.C. Official Code §§ 25-104, 25-313(b); 23 DCMR §§ 1607.2; 1607.7(b) (West Supp. 2014). Specifically, the question in this matter is whether the Application will have a negative impact on the peace, order, and quiet of the area located within 1,200 feet of the establishment.

I. THE BOARD FINDS THAT ROMEO & JULIET IS APPROPRIATE.

29. The Board finds that the Application is appropriate subject to the condition that the sidewalk cafés close at 12:00 a.m. on Friday and Saturday, and 11:00 p.m., Sunday through Thursday.

30. By law, 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. 2014).

a. Romeo & Juliet intends to operate as a restaurant.

31. The Board finds that, in general, the issuance of the license will not result in an adverse impact on the neighborhood's peace, order, and quiet when the record shows that Romeo & Juliet intends to operate as a legitimate restaurant.

32. First, the establishment has not applied for an entertainment endorsement. Supra, at ¶¶ 5, 14. This means that the establishment cannot engage in activities often associated with nightclubs, such as offering live entertainment, dancing, and collecting a cover charge. Id. at ¶¶ 5, 5 n. 2. Second, because Romeo & Juliet has applied for a restaurant license, it must satisfy the District's minimum food sales requirements on an annual basis, as well as keep its kitchen open "until at least 2 hours before closing," in accordance with D.C. Official Code § 25-101(43). Third, Romeo & Juliet has demonstrated that it is investing in its capacity to serve food by enlarging the establishment's kitchen area. Supra, at ¶ 10. Fourth, Romeo & Juliet demonstrated its commitment to operating as a restaurant by having the establishment managed by an individual with significant experience opening and operating restaurants. Supra, at ¶ 12. Fifth, the Board finds that Romeo & Juliet has demonstrated the intent to operate as a legitimate restaurant by showing that it has constructed the establishment in a manner conducive to the service of food. Supra, at ¶ 16. For these reasons, the Board finds that ANC 6C's fears that the establishment will morph into a nightclub, or become a source of disorder and antisocial behavior, are not supported by substantial evidence in the record.

b. Romeo & Juliet's operations will not cause an increase in trash or litter.

33. The Board finds that issuing the license will not result in an increase in trash and litter in the neighborhood. Under § 25-726, the licensee must comply with the Litter Control Amendment Act of 1987 and "... take reasonable measures to ensure that the immediate environs of the establishment, including adjacent alleys, sidewalks, or other public property immediately adjacent to the establishment, or other property used by the licensee to conduct its business, are kept free of litter." D.C. Official Code § 25-726. The establishment is not authorized to sell alcohol in closed containers, and it appears that the vast majority of customers will consume their purchases on the premises; therefore, there is little risk that the establishment will cause litter in the neighborhood. D.C. Official Code § 25-113(a)(2)(A). Lastly, the Board finds that behavior associated with 201 Lounge, a separate establishment with no connection to the Applicant, cannot be fairly be imputed to Romeo & Juliet's future operations. Supra, at ¶ 26.

c. The record does not support the contention that Romeo & Juliet's operations will negatively impact children or the facilities that serve them.

34. The Board does not have sufficient evidence in the record to support the contention that Romeo & Juliet's operations will negatively impact the Senate Daycare Center or the Senate Page School and Dormitory.⁵

35. Under § 25-314, the Board must consider the proximity and effect of the establishment on schools and daycare centers, as well as their clientele. D.C. Official Code § 25-314(a)(1)-(3). The Board has also previously held that the mere presence of a

⁵ Even though this issue was not raised by ANC 6C in its protest letter, the Board addresses this issue based on the conflict in testimony regarding the proximity of nearby facilities serving children.

licensed establishment is not sufficient to demonstrate harm to children and the facilities that serve them. In re All Souls, LLC, t/a All Souls, Case Number 11-PRO-00090, Board Order No. 2012-278, ¶¶ 33-37 (D.C.A.B.C.B. Jun. 20, 2012).

36. The record does not explain how the presence of a legitimate restaurant can reasonably interfere with the Senate Daycare Center or the Senate Page School and Dormitory. The Board also notes that Romeo & Juliet's Application has been subject to the public notice requirements of Title 25, yet these institutions have filed no objections. Therefore, the Board concludes there is no persuasive evidence that Romeo & Juliet will negatively affect any children or institutions that serve them.

d. The prior operating history of Romeo & Juliet's ownership does not warrant denial of the Application.

37. We also disagree that Mr. Rehman's record managing and owning other licensed establishments merits the denial of the Application. Supra, at ¶ 24.

38. In Panutat, LLC, the District of Columbia Court of Appeals found that the Board could consider an owner's record operating another establishment to determine whether the owner will responsibly operate another licensed establishment. Panutat, LLC, 75 A.3d at 275.

39. While the Applicant provided an incorrect answer to Question 20 on the ABRA Application, the Board does not deem this error fatal to the Application.⁶ Supra, at ¶ 19. The Board reviewed Mr. Rehman's history as an owner of Dirty Martini, Lotus, Midtown, and Tattoo. Even if all of the violations are attributed to Mr. Rehman, the Board does not find that they are sufficient to merit the denial of a new license. Id. Furthermore, while ABRA has conducted a large number of investigations related to some of these establishments, the Board rejects the use of any incident against a licensee that does not lead to a violation or a formal finding. Therefore, contrary to ANC 6C's position, Mr. Rehman's record does not merit the denial of the Application.

40. The Board also finds that the operations of Dirty Martini, Lotus, Midtown, and Tattoo cannot be reasonably compared to Romeo & Juliet. These nightclubs operate under Retailer's Class C Nightclub Licenses while Romeo & Juliet is applying for a Retailer's Class C Restaurant License. Because Romeo & Juliet has not applied for an entertainment endorsement, its operation is not similar or comparable to the operations of the nightclubs cited by ANC 6C. Supra, at ¶ 5. The Board does not find Mr. Rehman's operating history regarding these nightclubs useful or persuasive in our findings regarding the appropriateness of Romeo & Juliet.

41. Therefore, the Board finds that the establishment is appropriate, and that Romeo & Juliet merits a Retailer's Class CR License based on its showing that it intends to operate as a legitimate restaurant.

⁶ The Board corrects this error in the Order section.

II. A LIMIT ON ROMEO & JULIET'S SIDEWALK CAFÉ HOURS IS WARRANTED BASED ON VALID CONCERNS REGARDING NOISE.

42. Although the Board has decided to issue a license to the Applicant, the Board finds that a limitation on Romeo & Juliet's sidewalk café hours is warranted.

43. Under § 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. The Board, in setting the conditions, shall state, in writing, the rationale for the determination.

D.C. Official Code § 25-104(e).

44. Section 25-725 states, "The licensee under an on-premises retailer's license shall not produce any sound, noise, or music of such intensity that it may be heard in any premises [located in a residential zone] other than the licensed establishment by the use of any: . . . Mechanical device . . ." D.C. Code § 25-725(a), (a)(1), (b), (b)(3) (West Supp. 2013). Further, § 25-313(b)(2) permits the Board to consider noise beyond the scope of § 25-725. Panutat, LLC, t/a District of Columbia Alcoholic Beverage Control Bd., 75 A.3d 269, 267-77 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.")

45. In Duffy's Irish Restaurant, the Board limited the hours of the sidewalk café to 11:00 p.m. during the week and midnight during the weekend based on the presence of residences near the establishment's outdoor seating area. In re Amduffy, LLC t/a Duffy's Irish Restaurant, Case Number 13-PRO-00004, Board Order No. 2013-343, ¶¶ 21-23 (D.C.A.B.C.B. Jul. 10, 2013).

46. The Board notes that Romeo & Juliet is located in a commercial zone and at a location previously occupied by a restaurant, which supports the contention that some late-night commercial activity is appropriate. Supra, at ¶¶ 3, 7. Nevertheless, some limits on the hours of the outdoor seating area are warranted. Romeo & Juliet has proposed to operate an unenclosed patio with the capacity to hold up to 142 patrons. Supra, at ¶ 9. The Board is not convinced that the tree enclosure proposed by Romeo & Juliet will eliminate noise leakage from the unenclosed sidewalk café area. Supra, at ¶13. Further, as testified by Ms. Gardner, noise from the prior restaurant could be heard on her property, which leads the Board to conclude that it is reasonable to conclude that noise from the sidewalk café may disturb nearby residents; especially, given the large size of the unenclosed seating area. Supra, at ¶¶ 21-22. Similar to our conclusion in Duffy's Irish Restaurant, the Board finds that a proper balance between the interests of Romeo & Juliet and the reasonable expectations of its neighbors require the sidewalk café to close at 11:00 p.m. during the week and midnight during the weekend.

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

47. 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


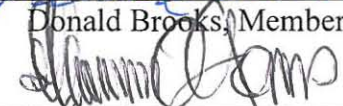
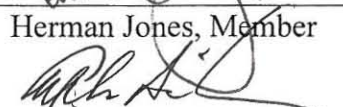
Therefore, the Board, on this 29th day of January 2014, hereby **GRANTS** Application for a New Retailer’s Class CR License and Sidewalk Café Endorsement filed by 301 Romeo, LLC, t/a Romeo & Juliet, subject to the following conditions:

- (1) Romeo & Juliet’s sidewalk cafés shall not operate past 11:00 p.m., Sunday through Thursday, nor operate past 12:00 a.m. (midnight) on Friday and Saturday.

IT IS FURTHER ORDERED that Question 20 in Romeo & Juliet’s ABRA Application, submitted on July 3, 2013, shall be amended to read “Yes.” Kingman Park Civic Ass’n, Et AL., v. District of Columbia Alcoholic Beverage Control Bd., No. 11-AA-831, 7 (D.C. 2012) (permitting amendments to an application when there is no prejudice to the protestants (i.e., when the matter was discussed at the hearing and the applicant was available for cross-examination on the topic)). In future applications, Mr. Rehman should answer “Yes” to Question 20, and provide the Board with a copy of the investigative history for each establishment that he owns.

The ABRA shall distribute copies of this Order to the Applicant and ANC 6C.

District of Columbia
Alcoholic Beverage Control Board


Ruthanne Miller, Chairperson
Nick Alberti, Member
Donald Brooks, Member
Herman Jones, Member
Mike Silverstein, 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).