

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

In the Matter of:)	
)	
Dos Ventures, LLC)	License Number: 092040
t/a Riverfront at the Ball Park)	Case Number: 13-PRO-00088
)	Order Number: 2013-512
Application for a New)	
Retailer's Class CT License)	
)	
at premises)	
25 Potomac Avenue, S.E.)	
Washington, D.C. 20003)	

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

ALSO PRESENT: Dos Ventures, LLC, t/a Riverfront at the Ball Park, Applicant

Rosemarie Salguero, of the firm Doyle, Barlow, & Mazard, PLLC,
of behalf the Applicant

Ron McBee, Commissioner, Advisory Neighborhood Commission
(ANC) 6D, Protestant

Ed Kaminski, Commissioner for Single Member District ANC
6D02, on behalf of A Group of Five or More Individuals (Kaminski
Group), Protestant

Daniel Hickson, Commander, First District, Metropolitan Police
Department, Protestant

Mary Williams, on behalf of A Group of Five or More Individuals
(Williams Group), Protestant

Martha Jenkins, General Counsel
Alcoholic Beverage Regulation Administration

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

INTRODUCTION

The Alcoholic Beverage Control Board (Board) denies the Application for a New Retailer's Class CT License (Application) filed by Dos Ventures, LLC, t/a Riverfront at the Ball Park, (hereinafter "Applicant" or "Riverfront"). The Board denies the Application, because Riverfront has failed to demonstrate that it can guarantee the safety of patrons and pedestrians seeking admittance to the venue and that it can coexist peacefully with the surrounding neighborhood.

Procedural Background

Riverfront filed an Application for a New Retailer's Class CT License at 25 Potomac Avenue, S.E., Washington, D.C., with the Board. *ABRA Licensing File No. 092040*. Subsequently, the Alcoholic Beverage Regulation Administration (ABRA) posted a Notice of Public Hearing on the Applicant's premises on May 3, 2013. *ABRA Licensing File No. 092040*, Notice of Public Hearing.

During the protest period, a number of parties submitted protests against the Application. First, Commissioner Ed Kaminski, the Commissioner for Single Member District ANC 6D02, filed a protest on behalf of five or more residents and property owners (Kaminski Group). See generally Letter from Ed Kaminski, Commissioner, ANC 6D02, to Sarah Fashbaugh, Community Resource Advisor, Alcoholic Beverage Regulation Administration (ABRA) (undated). Second, ANC 6D filed a protest against the Application. See generally Letter from Andy Litsky, Chairman, ANC 6D to Ruthanne Miller, Chair, Alcoholic Beverage Control (ABC) Board (Jun. 12, 2013). Third, the Washington Nationals Baseball Club filed a protest against the Application. See generally Letter from Gregory McCarthy, Vice President, Government & Municipal Affairs, to Fred Moosally, Director, ABRA (Jun. 14, 2013). Fourth, the Metropolitan Police Department filed a protest against the Application. See generally Letter from Cathy L. Lanier, Chief of Police, Metropolitan Police Department, to Ruthanne Miller, Chair, ABC Board (Jun. 14, 2013). Fifth, a second group of five or more residents or property owners represented by Mary Williams (Williams Group) filed a protest. See generally Letter from Mary Williams, to Fred Moosally, Director, ABRA (Jun. 14, 2013).

The parties came before the Alcoholic Beverage Control Board (Board) for a Roll Call Hearing on July 1, 2013.¹ All of the protestants were granted standing to protest the Application, except for the Washington Nationals Baseball Club, which did not qualify for standing under the Board's standing rules. See D.C. Code § 25-602 (West Supp. 2013); *ABRA Protest File No. 092040*, Roll Call Hearing Results, 2-4 (Jul. 1, 2013). The parties appeared at the Protest Status Hearing on July 24, 2013.

The Protest Hearing occurred on August 14, 2013. At the beginning of the Protest hearing, Riverfront moved to dismiss the Williams Group. Counsel for Riverfront noted that the Williams Group failed to appear at the mandatory mediation session and did not submit the required Protest Information Form (PIF) before the hearing. *Transcript (Tr.)*,

¹ The Board denied a request for a continuance of the Roll Call Hearing filed by ANC 6D in Board Order Number 2013-300. After the Board's Agent recognized that valid protests had been filed, the Board ordered that Riverfront's stipulated license had to be revoked as a matter of law in Board Order Number 2013-327.

Aug. 14, 2013 at 8. The Board granted the motion and dismissed the Williams Group; however, the Board noted that Ms. Williams could still testify as a witness on behalf of any of the parties. Id. at 9. Therefore, as of the date of this Order, the following entities retain standing to protest the Application: ANC 6D, the Kaminski Group, and MPD (collectively the “Protestants”).

The Board further 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 ANC 6D has submitted a recommendation related to the Application under § 25-609. In its letter, ANC 6D expresses concern that the Application will have a negative impact on the neighborhood’s peace, order, and quiet and pedestrian safety. ANC 6D Protest Letter, 1. The Board addresses the issues raised by ANC 6D in its Conclusions of Law.

The Board also notes that it received a letter of support from Advisory Neighborhood Commissioner David Garber who is the Advisory Neighborhood Commissioner for ANC 6D07. Letter from David Garber, ANC Commissioner to Ruthanne Miller (Aug. 13, 2013).

Based on the Protestant’s initial protest letter, the Board may only grant the Application if the Board finds that the request will not have a negative impact on peace, order, and quiet; residential parking and vehicular and pedestrian safety; and real property values 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).

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. Riverfront submitted an Application for a New Retailer’s Class CT License. *ABRA Protest File No.* 13-PRO-00088, Notice of Public Hearing. The establishment would possess six acres of land located directly across the street from Nationals Major League Baseball Stadium. Protest Report, 7.

2. According to the Notice of Public Hearing, the Applicant intends to operate a tavern that operates, sells, serves, and permits the consumption of alcoholic beverages from 8:00 a.m. to 2:00 a.m., Sunday through Thursday, and from 8:00 a.m. to 3:00 a.m. on Friday and Saturday. Id. The establishment also requests hours of live entertainment from 11:00 a.m. to 2:00 a.m., Sunday through Thursday, and 11:00 a.m. to 3:00 a.m. on Friday and Saturday. Id.

3. ABRA Investigator Jason Peru investigated the Application and prepared the Protest Report in this matter. *Tr.*, 8/14/2013 at 13. According to the Protest Report, Riverfront will be located in a commercial zone classified as W-2. Protest Report, 2. Only four licensed establishments are located near Riverfront's proposed address: one off-premise Retailer's Class A License, one off-premise Retailer's Class B License, one Marine Vessel Class C License, and one Retailer's Class C Nightclub License. *Id.* There are no schools, recreation centers, or public libraries located within 400 feet of the establishment. *Id.*

4. Investigator Peru observed that the proposed location is currently undeveloped. *Tr.*, 8/14/2013 at 17, 21. Looking at the proposed location from the nearby stadium, the Anacostia River is located behind the property. *Id.* at 18. Left of the property is a pier that juts out into the water. *Id.* at 18. Finally, to the right of the property is South Capitol Street, S.E. *Id.* at 18. The entrance for the lot faces Potomac Avenue, S.E., and is closer to the corner of First Street, S.E., than South Capitol Street, S.E. *Id.* at 29-30.

5. Parking in the neighborhood changes based on whether events are occurring at the stadium. Protest Report, 6. There is zone permit parking on P Street, S.W., and South Capitol Street, S.E., to the west of Riverfront's proposed location. *Id.* Potomac Avenue, S.E., "is a high volume traffic area" when the Washington Nationals play home games at the stadium. *Id.* Pay-to-Park spaces are available when the stadium is not in operation. *Id.* Finally, there are Pay-to-Park parking lots open in the neighborhood when events occur at the stadium. *Id.*

6. The neighborhood is served by both bus and rail service. *Id.* at 6-7. The following Metro Bus Stops serve the neighborhood: 74, A9, A42, A46, A48, P6, P17, P18, P19, V7, V9, W4, W5, W9, W13, W9, and the D.C. Circulator. *Id.* at 6. In addition, the Navy Yard Metro Station is located at 200 M Street, S.E. *Id.* at 7.

7. Investigator Peru discussed traffic conditions in the neighborhood. *Tr.*, 8/14/2013 at 15. During Nationals games, Potomac Avenue, S.E., is one of the main ways drivers reach the stadium. *Id.* On game days, the traffic on Potomac Avenue, S.E., is congested while on other days Potomac Avenue, S.E., features light traffic. *Id.* at 15, 33. South Capitol Street, S.E., consistently features "a steady amount of traffic," because the road links to two freeways and a bridge that crosses the Anacostia River. *Id.* at 35. Near the proposed establishment, one crosswalk is located at the corner of First Street, S.E., and Potomac Avenue, S.E., while the other crosswalk is located at the corner of South Capitol Street, S.E., and Potomac Avenue, S.E. *Id.* at 23, 29.

8. Investigator Peru observed that residential units are located approximately a block and a half from the proposed location of the establishment. *Id.* at 33. There are also residences located in the Yards Park area, which is several blocks away from the proposed location of the establishment. *Id.* at 36-37.

9. The proposed location does not have any lighting on the property at this time. *Id.* at 39.

II. Metropolitan Police Department

10. MPD Commander Daniel Hickson serves as the commander of the First District, which is the police district where the Applicant intends to locate its proposed establishment. Id. at 45. According to Commander Hickson, the Application envisions a six-acre lot where patrons can roam freely with alcoholic beverages. Id. at 45-46. Based on the size of the lot, Commander Hickson is not confident that Riverfront can prevent underage drinking and other disorder that accompanies businesses that permit the consumption of alcoholic beverages. Id. at 46. In addition, Commander Hickson is also concerned that Riverfront lacks the ability to monitor the potential crowd that could be attracted to the establishment. Id. at 46-47.

11. Commander Hickson further noted that Riverfront's parking plan interferes with the traffic plan developed by the community, the ANC, the Department of Transportation, the Department of Public Works, and the MPD for the area near the stadium. Id. at 47. According to the traffic plan, no traffic may cross the median on Potomac Avenue, S.E. Id. at 57. Riverfront envisions permitting vehicles traveling westbound on Potomac Avenue, S.E., to turn left and park at the proposed location. Id. at 48, 57. Yet, this is not possible based on the direction of the ballards placed on Potomac Avenue, S.E., and the traffic safety plan for Potomac Avenue, S.E. Id. at 48. In addition, Riverfront's plan to permit vehicles exiting the property to turn left to travel westbound on Potomac Avenue, S.E., is also currently prohibited by the traffic safety plan and the ballards currently installed on Potomac Avenue, S.E. Id. at 48, 57. Finally, Potomac Avenue, S.E., intentionally only has two crosswalks at the corners near the stadium, which are assigned police officers during stadium events, in order to ensure pedestrian safety. Id. at 49; see also Applicant's Exhibit No. 10.

12. Commander Hickson further discussed his concerns regarding the safety of pedestrians if the Board allowed the establishment to operate. Id. at 63. Based on Commander Hickson's experience with pedestrians leaving the stadium, he believes the establishment's patrons will likely walk across South Capitol Street, S.E., which is a "hectic intersection." Id. According to Commander Hickson, a car hit an officer directing traffic and wearing a visibility vest last May. Id. at 64. Based on his experience with the area, South Capitol Street, S.E., is a bad intersection for pedestrians to cross, regardless of whether an event occurs at the stadium. Id. at 65, 67.

13. Commander Hickson also expressed concern with Riverfront's application for an entertainment endorsement. Id. at 49. Riverfront intends to have an open stage and host outdoor concerts until 2:00 a.m. and 3:00 a.m. Id. Yet, the establishment is completely outdoors and has no ability to mitigate the noise that would be generated by entertainment at the establishment. Id. at 51. Consequently, nearby residents do not have any protection from the noise generated by Riverfront's entertainment. Id. at 50-51, 61.

14. Commander Hickson also expressed concern that the proposed establishment does not have adequate plumbing and restroom facilities. Id. at 51. Riverfront intends to use "port-a-johns" as restroom facilities. Id. at 52. Commander Hickson noted, based on his experience with nearby events at Yards Park, that when port-a-johns get backed up it generates calls to the MPD to deal with individuals urinating in public. Id.

15. Commander Hickson has further observed that the fencing that separates the back of the lot from the Anacostia River is two layers of “silt fencing,” which is only about “two-and-a-half feet” tall. Id. at 54; see also Applicant’s Exhibit No. 10. The property also slopes from the road towards the river. Id.

16. During Nationals games, the First District has under a dozen officers assigned to the stadium. Id. at 58. Commander Hickson noted that events at the stadium could potentially attract 40,000 people at one time. Id. at 64.

III. Applicant

17. Kijun Sung serves as a managing member of Dos Ventures, LLC. Id. at 99. He also currently serves as a managing member of the following establishments: Capitale, Mason Inn, and George. Id.

18. Mr. Sung discussed his business plan for Riverfront. Id. at 102. According to Mr. Sung, the site will host sports leagues nine months out of the year, and provide a venue for activities like kickball and bocce. Id. He envisions Riverfront opening approximately four nights per week and only staying open until two to three hours before dark. Id. Mr. Sung envisions the site having a maximum occupancy of only 200 to 300 people during sport league events. Id. at 102-03, 144, 174. Mr. Sung also hopes to offer the site as a venue during Nationals games. Id. at 103. According to Mr. Sung, the site will offer parking for thirty vehicles and food and beverages for up to 1,000 people on game days. Id. at 103, 166, 174. Finally, Mr. Sung wants to use Riverfront as an outdoor venue for organizations. Id. at 103.

19. Mr. Sung noted that D.C. Bocce League and WAKA Kickball are eager to host events at the site. Id. at 108. Both leagues have agreed to host a fall season at Riverfront, if Riverfront’s license is approved. Id.

20. Mr. Sung also discussed the alcohol control plan for Riverfront. Id. at 104; Applicant’s Exhibit No. 4. During sporting events, Riverfront will only admit patrons twenty-one years of age or older and check the identification of all patrons entering the venue. Id. Managers, servers, and security will also be trained to recheck patrons that lack a wristband or appear under twenty-one years of age. Id. at 105. Finally, Riverfront will only sell alcoholic beverages in cups, while all other non-alcoholic beverages will be served in their original containers. Id.

21. The establishment also intends to ensure that patrons are safe at Riverfront. Id. at 106. According to Mr. Sung, the establishment will maintain a patron-to-security ratio of 75 to 1. Id. Riverfront will also erect two rows of bike rack barriers to prevent patrons from approaching the river’s edge or the eastern portion of the property. Id. at 106, 129, 171. The bike racks will be between 36 to 42 inches high. Id. at 171. Riverfront will station security near the barrier to prevent patrons from wandering past the silt fence. Id. at 129. Riverfront also plans to put up bike rack barriers to prevent patrons from entering any area not in use by the establishment. Id. at 172. Finally, during game days, patrons will be restricted to the parking lot and the area near the food trucks on the site. Id. at 178-79, 211.

22. Mr. Sung also discussed Riverfront's plans to develop the site. Id. at 118. The site's maximum occupancy is 12,200 people. Id. at 152. The Applicant plans to remove the vegetation on the site and lay RC-6 gravel to reduce bumps on the ground. Id. at 118. On game days at the stadium, the Applicant plans to set up five temporary bar areas. Id. at 127-28. The bars will be stationary. Id. at 129, 211.

23. Riverfront also intends to provide bathroom facilities and trash receptacles for its patrons. Id. at 130. A chart shown by the Applicant indicates that Riverfront intends to provide at least twenty port-a-johns at the site. Id. at 151. In addition, trash pickup will occur daily. Id. at 130.

24. During events for other organizations, Riverfront plans to allow live music until 10:00 p.m. Id. at 145. Nevertheless, Riverfront requests later entertainment hours to allow for music that cannot be heard outside the premises. Id. Mr. Sung believes the establishment can comply with Title 25's noise provisions by pointing Riverfront's speakers away from the stadium and towards the river. Id. at 202.

25. Mr. Sung believes that Riverfront can operate in compliance with the traffic plan for the neighborhood. Id. at 144. Riverfront currently has a deal with U Street Parking to provide up to 600 garage spaces in three separate garages when the establishment hosts large events. Id. at 203.

26. Mr. Sung noted that Riverfront's ability to use the site will expire within the next two to four years. Id. at 133, 137. He also admitted that Riverfront's current agreement must be extended in order for the establishment to operate during the 2014 baseball season. Id. at 159.

27. David Tracz works for Studio 3877 Architecture, which is the firm serving as the architect for Riverfront. Id. at 229. The occupant load for the property used by Riverfront is 12,220 people. Id. at 233, 252. Riverfront's plans include 204 feet of exit space divided between five gates. Id. at 234. Riverfront's plans also include 143 port-a-potties. Id. at 235-36. During game days, the establishment will ensure that the western portion of the site is not accessible to patrons. Id. at 236. Mr. Tracz admitted that his firm was still developing a lighting plan for the site. Id. at 238, 256. Finally, the slope of the site will not impact the sporting events hosted by the establishment. Id. at 247-48.

IV. Additional Protestants

28. Ed Kaminski, Vice-Chair of ANC 6D, presented his concerns regarding the Application. Id. at 262. Commissioner Kaminski is concerned about Riverfront's business model and the large occupancy of the land. Id. at 263.

29. Commissioner Kaminski is further concerned that Riverfront will interfere with the traffic plan for the area. Id. at 264. According to Commissioner Kaminski, the traffic plan never considered Riverfront's operations. Id.

30. Commissioner Kaminski is also concerned about noise coming from Riverfront. Id. at 265. According to Commissioner Kaminski, the Fairgrounds, a nearby establishment, has bothered residents with the establishment's music; as a result,

Riverfront cannot guarantee that it can contain the noise coming from the establishment. Id. at 265-66, 281-82.

31. Commissioner Kaminski is also concerned that Riverfront's plans are ambiguous. Id. at 267. According to Commissioner Kaminski, Riverfront's plans have changed over time. Id.

32. Mary C. Williams is a resident of the neighborhood and lives approximately 200 yards from Riverfront's proposed location. Id. at 287. Ms. Williams described the neighborhood. Id. at 291-93. First, there are row houses and other private residences on the 1400 block of South Capitol Street, S.E. Id. at 291-92. Second, a rental building was built on the 1300 block of South Capitol Street, S.E. Id. at 292. Third, a strip mall and a juvenile probation office are located on the 1200 block of South Capitol Street, S.E. Id. at 293.

33. Ms. Williams lives behind the strip mall located on the 1200 block of South Capitol Street, S.E. Id. According to Ms. Williams, she has heard music from the Fairgrounds, Capitol Skyline pool, and the stadium in her residence. Id. at 293-94. Ms. Williams is afraid that the music produced by Riverfront will reverberate throughout the neighborhood. Id. at 296. Ms. Williams is further concerned that the Applicant cannot prevent underage drinking on the property, because it is an open-air venue. Id. at 298. Finally, Ms. Williams is also concerned that adding over 2,000 people on game day will create additional parking and traffic problems. Id. at 306-07.

34. ANC 6D Commissioner Ronda Hamilton represents single member district ANC 6D06, which is located near the southwest portion of Riverfront's proposed site. Id. at 310. According to Ms. Hamilton, her district deals with contaminants and dust from Buzzard Point. Id. at 312. She is concerned that patrons will be exposed to contaminants located on the site. Id. at 313.

35. Ms. Hamilton is concerned that Riverfront's proposed plan will negatively impact residential parking in the neighborhood. Id. at 316. She has found that parking rule enforcement has been lax in her community, and leads to individuals parking in front of residences in her neighborhood. Id. The neighborhood is also difficult for emergency vehicles to navigate during events. Id. at 317. In addition, as a resident, she has noticed that individuals frequently jaywalk on South Capitol Street, S.E. Id. at 318-19.

36. Ms. Hamilton also noted that she frequently rides Metro. Id. at 318. During festivals, she has observed many intoxicated patrons vomiting on the Metro and acting disorderly when boarding trains. Id.

CONCLUSIONS OF LAW

37. The Board may approve a request for a Retailer's Class CT License if the Applicant demonstrates that the proposed establishment will not have an adverse impact on the area located within 1,200 feet of the establishment. D.C. Code §§ 25-104, 25-313(b) (West Supp. 2013); 23 DCMR §§ 1607.2; 1607.7(b) (West Supp. 2013). Specifically, the issue in this case is whether the Application will have a negative impact on peace, order, and quiet; residential parking needs; pedestrian and vehicular safety; and real property values.

I. Appropriateness

38. The Board agrees with ANC 6D and the other Protestants that the Application will have an adverse impact on peace, order, and quiet and pedestrian safety in the neighborhood.

A. Peace, Order, and Quiet

39. “In determining the appropriateness of an establishment, the Board shall consider all relevant evidence of record, including: . . . [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) (West Supp. 2013).

40. The Board is concerned that Riverfront is not prepared to manage the potentially large crowds that could be attracted to the venue. Mr. Sung indicated that the site’s maximum occupancy is 12,200 people, which would make it one of the largest venues in the city. Supra, at ¶ 22. The Board finds it highly likely that Riverfront has the potential to utilize its entire occupancy during events, because the nearby stadium can draw up to 40,000 people at one time. Supra, at ¶ 16. Nevertheless, none of the plans submitted by the Applicant convinces the Board that it can manage such a large crowd or prevent disturbances caused by large crowds of people traveling towards or away from the venue.² As such, based on the site’s large occupancy, the Board is not convinced that the venue is safe for patrons or the community.

41. The Board is also concerned that the Application will create an unreasonable amount of noise. Under § 25-725, “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). Section 25-313(b)(2) also permits the Board to consider noise that falls outside the bounds of § 25-725. Panutat, LLC, t/a District of Columbia Alcoholic Beverage Control Bd., 2013 WL 5271321, *4 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.”)

42. The Board concludes that Riverfront’s proposed operations raise legitimate and serious concerns regarding noise. Riverfront’s proposed location is approximately only a block and a half from the nearest residents, while Mary Williams reports that she lives approximately 200 yards from the establishment. Supra, at ¶¶ 8, 32. As part of the Application, Riverfront requests permission to host live music until 10:00 p.m., and entertainment hours that last until 2:00 a.m. during the week and 3:00 a.m. during the weekend. Supra, at ¶¶ 2, 24. Riverfront argues it can avoid disturbing residents by facing its speakers towards the river. Supra, at ¶ 24.

² In fact, based on the large crowds that could be attracted to the venue, Riverfront’s proposal would probably require a dedicated police presence to ensure the safety of patrons and the community whenever the establishment would be open.

43. The Board agrees with Commander Hickson that Riverfront’s noise mitigation plan is not capable of preventing noise from bothering nearby residents. Supra, at ¶ 13. As reported by Ms. Williams, noise from the Fairgrounds, Capitol Skyline pool, and the stadium already reverberates in her neighborhood. Supra, at ¶ 33; see also supra at ¶ 30. Similarly, it is highly doubtful that Riverfront will be able to prevent noise from bothering nearby residents; especially, when the property is an undeveloped lot that lacks any noise mitigation or soundproofing features. Supra, at ¶ 13. Consequently, the Board concludes that Riverfront has not demonstrated that it can control the potential noise that will likely be generated by the proposed establishment.

B. Residential Parking Needs and Vehicular and Pedestrian Safety

44. Separate and apart from our determination above, we find that the Application is inappropriate on the grounds that it threatens the safety of pedestrians in the neighborhood.

45. “In determining the appropriateness of an establishment, the Board shall consider all relevant evidence of record, including: . . . [t]he effect of the establishment upon residential parking needs and vehicular and pedestrian safety . . .” D.C. Code § 25-313(b)(3) (West Supp. 2013).

46. In Club Illusions, the Board denied an application for a new license on New York Avenue, N.E., because the Board concluded that the Application would have a negative impact on pedestrian and vehicular safety. In re 2101 Venture, LLC, t/a Club Illusions, Case Number 12-PRO-00054, Board Order No. 2013-004, 8 (D.C.A.B.C.B. Jan. 16, 2013). Specifically, the Board found that encouraging patrons to “cross six lanes of traffic to get to the establishment at one of the most dangerous intersections of the city” endangered pedestrians and vehicles in the neighborhood, even though the applicant in that case agreed to provide crossing guards. Id. at ¶ 28.

47. As in Club Illusions, the Board is deeply concerned that the Applicant’s proposed location, combined with its large occupancy and the potential for large crowds during events at the stadium, endangers pedestrians crossing South Capitol Street, S.E.—a danger that is not within the Applicant’s power to mitigate. Supra, at ¶¶ 16, 22. As noted by Investigator Peru, South Capitol Street, S.E., is a major road that links two freeways and a bridge. Supra, at ¶ 7. We also credit Commander Hickson’s testimony that South Capitol Street, S.E., near the stadium, is a “hectic intersection” that is not appropriate for pedestrians; especially, when, as testified by Ms. Hamilton, pedestrians frequently jaywalk on this road. Supra, at ¶¶ 12, 35. The fact that the city has created a traffic safety plan, and a police officer wearing a visibility vest was hit by vehicle while directing traffic, proves that pedestrians in the area face significant safety issues. Supra, at ¶¶ 11-12. Therefore, similar to our decision in Club Illusions, the Board determines that based on the nature of traffic and roads near the proposed location, encouraging large crowds to cross South Capitol Street, S.E., to enter or exit the establishment puts pedestrians in danger.

48. Based on the Board’s conclusion above, there is no need to address the impact of the proposed establishment on the neighborhood’s real property values at this time.

II. Conditions

49. In deciding this protest, the Board considered the possibility of granting the license with conditions. 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.” D.C. Code § 25-104(e) (West Supp. 2013). In practice, the Board has imposed conditions when it is shown that there are valid concerns regarding appropriateness that may be fixed through the imposition of specific operational limits and requirements on the licensee. See e.g., In re Amduffy, LLC, t/a Duffy’s Irish Restaurant, Case Number 13-PRO-00004, Board Order No. 2013-343, ¶¶ 19-24 (D.C.A.B.C.B. Jul. 10, 2013); In re Ng Shu Kwan t/a Chinatown Market, Case Number 11-PRO-00057, Board Order No. 2012-168, ¶¶ 25-28 (D.C.A.B.C.B. May 23, 2012).

50. Nevertheless, in this case, the Board determines that no adequate conditions exist that can fix Riverfront’s Application. First, the Board is not confident that MPD has sufficient resources to police the establishment and the surrounding streets during events at Riverfront; especially, when Riverfront is requiring some patrons to come to the establishment from off-site parking areas. *Tr.*, 8/14/13 at 86; *supra* at ¶¶ 16, 25. Second, as an undeveloped lot, Riverfront cannot prevent noise generated at the venue from bothering nearby residents. *Supra*, at ¶¶ 4, 13. Third, based on its proximity to South Capitol Street, S.E., the Board lacks confidence that Riverfront can ensure the safety of pedestrians. *Supra*, at ¶¶ 43-47. And fourth, the Board is unconvinced that approximately three foot bicycle racks and silt fences sufficiently block patrons from the river bordering the proposed location. *Supra*, at ¶¶ 4, 15, 21. Based on these issues, the Board lacks confidence that any conditions that the Board could impose would ensure the proposed establishment’s peaceful coexistence with surrounding residents and the safety of patrons and pedestrians.

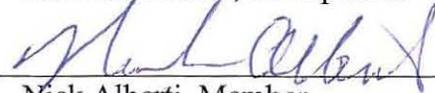
ORDER

Therefore, the Board, on this 13th day of November 2013, hereby **ORDERS** that the Application for a Retailer’s Class CT License filed by Dos Ventures, LLC, t/a Riverfront at the Ball Park is **DENIED**. The ABRA shall distribute copies of this Order to the Applicant and the Protestants.

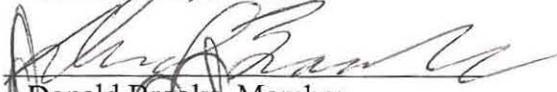
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Alcoholic Beverage Control Board



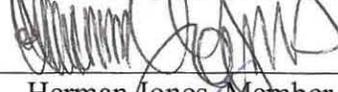
Ruthanne Miller, Chairperson



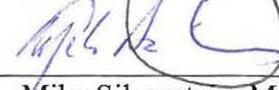
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Herman Jones, Member



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).