

Letter in Opposition: BZA No. 12799A - 6201 3rd Street, N.W. – Request for a Modification

November 23, 2018

Dear DC Board of Zoning:

I am writing concerning 12799A “Request for Modification” by the VIP Room at 6201 3rd Street, NW.

I have owned and lived in a house in close proximity to the VIP room since summer 2010, and since its reopening in 2014 have been affected by the noise and other disruptions associated with its operation. I am writing to express my objection to this Request.

Case Manager Stephen Mordfin’s memorandum states that BZA has received no notice from the surrounding neighbors, but those of us within the impact zone were never notified by BZA; we only received an e-mail from our ANC single member 4B06 that the request was made. A phone call to BZA assured us that owners of properties within the impact zone would receive notification at the proper time. This never happened. Upon inquiry this week—having found the notice of the 28 November hearing on the BZA website—Mr. Mordfin explained to my direct neighbor that notification is not required in the case of “minor modifications”. In our opinion, this is not a “minor modification” as it voids the 1979 agreement (found at end of this letter) with the neighborhood and does an end run around ABRA’s latest ruling on the case (found after 1979 agreement at end of this letter).

In its order granting a Tavern license to VIP in 2017, ABRA recognized the logic of the restrictions in 12799 and placed conditions on the license that were consistent with the “no sale of alcohol” restriction. The introduction states that one of the primary reasons for granting the license was that “the BZA has already set strict limits on the use of the property and bars the property owner from allowing the premises to be used as a stereotypical bar or tavern”. In the “Findings of Fact” #34 “it is in the best interest of the neighborhood that the Applicant ensures that the use of the property does not exceed the grant of authority provided by the BZA, which would have a detrimental impact on the quality of the life of VIP’s neighbors”. Now VIP is asking to remove the restriction on alcohol sales so that they can benefit from the license. However, ***the license was granted with the understanding that the surrounding properties would be protected from adverse impact addressed in 12799.*** With the “no sale of alcohol” condition removed, another ABRA condition would disappear *i.e.* “the license holder shall not allow or permit the collection of a cover charge”. The VIP would then no longer be limited to its current business model. It could behave like a tavern with ticketed, cover-charged, and more frequent entertainment. The surrounding properties would no longer be protected from increase vehicular traffic, parking problems, noise, and litter —the very protection that the order’s conditions were trying to ensure.

Regarding the VIP supplied “Reasons for Modification”:

- #1 says VIP owners “have been paying for a temporary license since 2000, which allows them to have a cash bar, take money at the door”. ***If they actually did those things, it means that they have been in violation of 12799 for 18 years,*** which they were operating under: “There shall be no alcoholic beverages sold on the premises”. Furthermore, they were not in operation from the early 2000s to 2014.
- #2 VIP ***compares itself to others in the same zone, but they are in a quiet 1-block business zone surrounded by family homes, schools, and daycare centers;*** they are not near any other

business zones, nor are they situated in proximity to Georgia Avenue where that kind of Tavern is common.

- #4 VIP **complains that it must follow different rules** than others with the same license, **but VIP requested and was granted their ABRA license on the basis that they did not want to operate like other Taverns.**
- #5 VIP claims that it has been on 3rd St. since 1963, but it wasn't operating as a party room between 1963 and 1979. They **claim that it has had no problems in the neighborhood since 1979, but they were closed from the early 2000s until 2014 and it is not true that they have had no problems** in the neighborhood. At the ABRA hearing several neighbors testified to negative impacts on the neighborhood and many noise complaints have been lodged.
- #7 ANC **claims to have the support of ANC4B. However,** although the VIP Room had the support of the ANC to obtain the liquor license **ANC4B did not weigh in on this request for modification.**
- #8 VIP claims that it can't serve alcohol at "wedding receptions, birthday parties, anniversary parties, repasts and other special events", however this is untrue **VIP is already able to serve alcohol at these events**, just not as a bar where people pay for individual drinks. The restrictions on individual sales were made to limit them to the kinds of activities they say that they want to have. They claim to desire a business model different than the other business they compare themselves too. Their restricted license reflects this desire.

In Mr. Mordfin memorandum, he recommends that the board approve the modification to remove the condition that "There shall be no alcoholic beverages sold on the premises" further saying "Neither the official file nor the order for BZA 12799 indicate the reason for not permitting alcoholic beverage sales. The official file contains no entries from the community, either in support or opposition." This analysis seems flawed; a close reading of the order shows that the "no sales" restriction is necessary to meet the concerns of the neighborhood:

- "Findings of Fact" # 11 says "There were many letters of opposition received into the record. The basis of the opposition was the increased vehicular traffic and the parking problems that were generated from the proposed use."
- "Findings of Fact" #12 says "Many property owners within 200 feet of the subject site and throughout the neighborhood testified in opposition to the application on the grounds that (1) There would be an increase in the flow of traffic (2) Parking problems for the residents would result and (3) an increase in the noise, trash and litter in the neighborhood."

Like many, I want the ANC 4B03 and 4B06 areas to thrive, but I also relish the family-oriented, quiet nature of the neighborhood and the quality of life it affords. I love seeing people of all ages walk down 3rd Street NW every day to the metro, ball fields, schools, and shops. I welcome small businesses that support our community and fit within the spirit of the neighborhood, and **I have no problem with the VIP Room remaining as it is**, a venue that hosts family celebrations, church events, repasts, business meetings, and other private parties/events. I am not trying to undermine their business or its existence.

The condition of "no alcoholic beverage sales" is essential to keeping the neighborhood as a positive place to raise a family.

I hope you will seriously consider the negative impact on the neighborhood that approval of this modification will have and take note of the problems in their enumerated "reasons for modification". I fear that this modification will allow VIP to function as a tavern and nightclub, which is counter to the spirit of the 1979 order to address neighborhood concerns and the 2017 ABRA license to conform to that order.

Respectfully submitted,

A handwritten signature in black ink that reads "Suzanne Grinnan". The signature is written in a cursive style with a long horizontal flourish extending to the right.

Suzanne Grinnan
6112 3rd St NW
Washington, DC 20011

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 12799, of Earline Sampson, pursuant to Paragraph 8207.11 of the Zoning Regulations, for a variance from the use provisions (Section 5101) to use part of the first floor of the subject property premises as a public hall, seating 150 persons in a C-1 District at the premises 6201 3rd Street, N.W., (Square 3342, Lots 805, 809, and 812).

HEARING DATE: November 15, 1978
DECISION DATE: December 6, 1978

FINDINGS OF FACT:

1. The subject property is located at the northwest corner of the intersection of 3rd and Rittenhouse Streets in the C-1 District and is known as 6201 - 3rd Street, N.W.
2. The C-1 District at this location consists of a one block strip surrounded on the north, east, south and west by R-1-B Districts.
3. The applicant proposes to establish a public hall, for the use of kiddie parties, wedding receptions and other such activities. A public hall is a use first permitted as a matter-of-right in a C-2 District.
4. The hall has a seating capacity of 150 persons.
5. The applicant owns the entire building. On the adjoining side of the building, the applicant has a drapery cleaning, carpet sales, and vacuum cleaner repair and sales business.
6. The applicant has been operating the hall for over a year. The certificate of occupancy he received from the Zoning Administrator No. B102513, dated December 22, 1977 only governed the vacuum cleaner and carpet business. However, the application for the certificate of occupancy, dated May 31, 1977, clearly states the applicant's intention to have "40 X 40 room for rent (weddings, kiddie parties, private affairs)."

7. The applicant has nineteen parking spaces to the rear of his building. By law he is only required to provide fifteen.

8. There are no set hours of operation, however, the majority of the activities will be held on the weekend.

9. The applicant does not intend to seek a license to sell alcoholic beverages. Any such beverages served on the premises would be supplied only by the person renting the premises at that time.

10. As a matter of right in a C-1 District, the applicant could operate a bar or cocktail lounge on this site with the approval of the Alcoholic Beverages Control Board, or a restaurant which would represent a more intensive use of the premises.

11. There were many letters of opposition received into the record. The basis of the opposition was the increased vehicular traffic and the parking problems that were generated from the proposed use.

12. Many property owners within 200 feet of the subject site and throughout the neighborhood testified in opposition to the application on the grounds that (1) There would be an increase in the flow of traffic (2) Parking problems for the residents would result and (3) an increase in the noise, trash and litter in the neighborhood.

13. The South Manor Neighborhood Association was in opposition to the application because of increased noise and traffic.

14. Advisory Commission 4B was notified as to the application, but no recommendation was received.

15. As to the concerns of the persons in opposition, the Board finds that the proposed use represents a less intense use than that of a restaurant, bar or a cocktail lounge which the applicant could operate as a matter of right. In addition, the nineteen parking spaces which are provided by the applicant exceed the number required by law. The Board further finds that the proposed use, by operation of conditions which the Board can and will impose on the granting of the application, will generate minimal noise and will not adversely impact upon surrounding properties.

16. The applicant testified at the hearing and submitted a statement for the record thereafter as to the manner in which the business is run. The Board finds that the applicant has made and will continue to make a diligent effort to minimize all adverse effects which reasonably might occur from his operation of the premises, and that the applicant will operate the premises in a manner as to eliminate any negative impacts on nearby properties

CONCLUSIONS OF THE LAW:

The requested variance is a use variance, the granting of which normally requires the showing of an undue hardship related to the property. The Board is of the opinion that the use of the property as proposed basically constitutes a neighborhood oriented establishment which has had and will have a minimal impact on the area. The Board notes that the applicant could operate a restaurant, bar or cocktail lounge as a matter-of-right, all of which could create great adverse impacts upon the community and represent a more intense use of the property than the proposed use. The Board concludes that the low level of use of the premises combined with the nineteen parking spaces provided by the applicant will reduce the impact upon residential parking and vehicular traffic. The Board further concludes that the application can be granted without adverse impact upon the neighboring properties and the surrounding community.

Accordingly, it is ORDERED that the application is GRANTED subject to the following CONDITIONS:

1. There shall be no alcoholic beverages sold on the premises.
2. There shall be no operation of the premises after 2:00 A.M.
3. The GRANT is LIMITED to this particular applicant and operator and is NOT TRANSFERRABLE.
4. The applicant and operator shall be responsible for seeing that noise emanating from the establishment does not interfere with reasonable use of surrounding properties.

VOTE: 5-0 (Walter B. Lewis, Chloethiel Woodard Smith,
Charles R. Norris, William F. McIntosh and
Leonard L. McCants to GRANT).

BY ORDER OF THE D. C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY:



STEVEN E. SHER
Executive Director

FINAL DATE OF ORDER: 29 JAN 1979

THAT THE ORDER OF THE BOARD IS VALID FOR A PERIOD OF SIX MONTHS
ONLY UNLESS APPLICATION FOR A BUILDING AND/OR OCCUPANCY PERMIT
IS FILED WITH THE DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
WITHIN A PERIOD OF SIX MONTHS AFTER THE EFFECTIVE DATE OF THIS
ORDER.

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

In the Matter of:)		
)		
The V.I.P. Room, LLC)	Case No.:	17-PRO-00042
t/a The V.I.P. Room)	License No:	105823
)	Order No:	2017-544
Application for a New)		
Retailer's Class CT License)		
)		
at premises)		
6201 3rd Street, N.W.)		
Washington, D.C. 20011)		

BEFORE: Donovan Anderson, Chairperson
Nick Alberti, Member
Mike Silverstein, Member
James Short, Member
Donald Isaac, Sr., Member

ALSO PRESENT: The V.I.P. Room, LLC, t/a The V.I.P. Room, Applicant

Craig Butler and Michelle Bell, Counsels, on behalf of the Applicant

Ian Oliver, Designated Representative, on behalf of the Group of 29
Residents and Property Owners, Protestants

Martha Jenkins, General Counsel
Alcoholic Beverage Regulation Administration

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

INTRODUCTION

The Alcoholic Beverage Control Board (Board) approves the Application for a New Retailer's Class CT License filed by The V.I.P. Room, LLC, t/a The V.I.P. Room, (hereinafter "Applicant" or "VIP") with conditions enforcing the limits on the use of the property previously set by the Board of Zoning Adjustment. The Board grants the license for three primary reasons. First, VIP, through the use of temporary licenses, has long history of operation without any evidence of significant incidents. Second, there is scant evidence that VIP's prior operations and

business model have had a negative impact on the quality of life in the community. And third, the Board of Zoning Adjustment (BZA) has already set strict limits on the use of the property and bars the property owner from allowing the premises to be used as a stereotypical bar or tavern. Consequently, in light of the limited nature of VIP's request, the Board finds the application appropriate.

Procedural Background

The Notice of Public Hearing advertising The V.I.P. Room's Application was posted on June 9, 2017, and informed the public that objections to the Application could be filed on or before July 24, 2017. *ABRA Protest File No. 17-PRO-00042*, Notice of Public Hearing [*Notice of Public Hearing*]. The records of the Alcoholic Beverage Regulation Administration (ABRA) indicate that multiple parties filed protests against the Application. *ABRA Protest File No. 17-PRO-00042*, Roll Call Hearing Results.

The parties came before the Board's Agent for a Roll Call Hearing on August 7, 2017, and upon reviewing the filings granted one party, a Group of 29 residents and property owners (hereinafter collectively "Protestants"), standing to protest the Application. On September 13, 2017, the parties came before the Board for a Protest Status Hearing. Finally, the Protest Hearing in this matter occurred on October 4, 2017.

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. Official Code §§ 1-309.10(d); 25-609. 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 4B in support of the Application. *Letter from Advisory Neighborhood Commission 4B to Chairperson Donovan Anderson*, 1-2 (May 23, 2017). The ANC's issues and concerns shall be addressed by the Board in its Conclusions of Law, below.

The Board further notes that VIP withdrew its request for a summer garden during the hearing.

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. D.C. Official Code § 25-313(b); 23 DCMR §§ 1607.2; 1607.7(b) (West Supp. 2017).

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. VIP has submitted an Application for a New Retailer's Class CT License at 6201 3rd Street, N.W., Washington, D.C. *Notice of Public Hearing*.
2. ABRA Investigator Mark Brashears investigated the Application and prepared the Protest Report submitted to the Board. *ABRA Protest File No. 17-PRO-00042, Protest Report* (Sept. 2017) [*Protest Report*].
3. The proposed establishment is located in a MU-3 zone. *Protest Report*, at 3. Two licensed establishments are located within 1,200 feet of the proposed location. *Id.* at 3-4. There are two day care centers located within 400 feet of the establishment. *Id.* at 4.
4. VIP proposes to operate and provide entertainment between the hours of 8:00 a.m. and 2:00 a.m. *Id.* at 5.
5. The Olivet School of Media and Communication is located on the intersection of Rittenhouse Street, N.W., and North Dakota Avenue, N.W. *Id.* Investigator Brashears visited the school and, based on his conversation with staff, learned that the school is not currently in operation or licensed. *Transcript (Tr.)*, October 4, 2017 at 46, 48.
6. ABRA investigators monitored the establishment on seven occasions between September 16, 2017, and September 23, 2017. *Id.* During this period, they did not observe criminal activity, noise, or ABRA violations at or in the vicinity of the proposed establishment. *Id.* The D.C. Noise Task Force reports that six noise complaints were filed against VIP between January 1, 2017 and September 26, 2017. *Id.* at 47. ABRA investigators that responded to these noise complaints did not find any violations during their visits. *Id.*

II. BZA Order

7. On December 6, 1978, the Board of Zoning Adjustment (BZA) issued an order granting the property owner's request for a variance with conditions at 6201 3rd Street, N.W. *In re Application No. 12799*, Board of Zoning Adjustment, 1 (Dec. 6, 1978). As part of the order, the BZA indicated that "The applicant does not intend to seek a license to sell alcoholic beverages. Any such beverages served on the premises would be supplied only by the person renting the premises at that time." *Id.* at ¶ 9. The BZA further indicated that the operation of a "bar or cocktail lounge on this site with the approval of the Alcoholic Beverage Control Board, or a restaurant . . . would represent a more intensive use of the premises." *Id.* at ¶ 10. The BZA also indicated that the property owner could operate a "restaurant, bar, or cocktail lounge as a matter of right." *Id.* at 3.
8. Nevertheless, the property owner only proposed to operate a public hall for private events. *Id.* at ¶ 3. Based on this self-imposed limitation on the business, the BZA believed that the "proposed use represent[ed] a less intense use" and would not negatively impact the

community so long as the property owner followed the conditions imposed by the BZA. *Id.* at ¶ 15. The conditions, relevant to this matter, are as follows:

1. There shall be no alcoholic beverages sold on the premises.
2. There shall be no operation of the premises after 2:00 a.m. . . . [and]¹
4. The . . . operator shall be responsible for seeing that noise emanating from the establishment does not interfere with reasonable use of surrounding properties.

Id.

III. Abner M. Sampson

9. Abner M. Sampson works at VIP, which is owned by Earline Sampson and the Sampson family. *Id.* at 81. The Sampson family has owned VIP since 1979. *Id.* at 82. VIP's business focuses on renting to private parties, like weddings, anniversaries, and other events. *Id.* at 83, 102. VIP may also host its own events for the community. *Id.* at 131. Mr. Sampson wants a license because obtaining multiple temporary licenses is cost prohibitive and burdensome. *Id.* at 90-91, 123-24.

10. Mr. Sampson indicated that the establishment takes several steps to avoid having a negative impact on the neighborhood. *Id.* at 91. For example, VIP cleans the premises regularly, monitors for noise, and advises patrons to use private taxi services. *Id.* at 92-94. Furthermore, the establishment also offers a valet parking area with thirteen parking spaces. *Id.* at 99. He has also not observed any issues regarding vehicular or pedestrian safety. *Id.* at 100.

11. Mr. Sampson has not observed any issues related to criminal activity, parking, noise, or rowdiness. *Id.* at 97-98.

12. VIP requires people that rent the establishment to provide their own alcohol. *Id.* at 104-05. VIP does not sell alcohol; however, VIP's bartenders pour and serve alcohol. *Id.* at 105, 131-32.

13. VIP does not have any concrete plans regarding the summer garden at this time. *Id.* at 141. The Applicant indicated that he would not oppose removing the request for a summer garden from his application. *Id.* at 154.

IV. Adria Goosvy-Gresholm

14. Adria Goosvy-Gresholm lives on Rittenhouse Street, N.W. and lives approximately two houses away from VIP's premises. *Id.* at 65-66. She has lived in the neighborhood since 1976. *Id.* at 65. She indicated that her property values have gone up over the last couple of years. *Id.* at 70.

¹ The third condition in the BZA's order is excluded because it is not relevant to this proceeding.

15. Ms. Goosvy-Gresholm also previously worked for VIP. *Id.* at 65. She noted that VIP regularly hosts birthday parties, holiday parties, and other types of events. *Id.* at 66. She has never observed noise, trash or antisocial behavior related to the operations of VIP. *Id.* at 67-68.

V. Nancy Ricks

16. Nancy Ricks is a licensed realtor. *Id.* at 157. She is aware that home values in the neighborhood around VIP have risen. *Id.* She further indicated that homes in the area around the establishment generally only remain on the market between five and 15 days before being sold. *Id.* She has observed no evidence that homes located near licensed establishments in the District of Columbia suffer from a decline in property values. *Id.* at 161-62.

VI. Raynette C. Sanders

17. Raynette Sanders owns a woman's clothing store located two doors away from VIP. *Id.* at 176-77. She also patronized events at VIP in the past. *Id.* at 177. During her visits to the establishment, she never observed crime, litter, loitering, noise problems, or rowdiness. *Id.* at 178. She also has observed that there is high demand for parking in the neighborhood on Saturday mornings due to a nearby dance studio. *Id.* at 179.

VII. Clyde Cavanaugh

18. Clyde Cavanaugh lives directly across the street from VIP and has lived there for over 24 years. *Id.* at 183. He has not experienced any issues regarding crime, litter, noise, parking, or rowdiness related to VIP's operation. *Id.* at 184-85. He also indicated that the value of his home has increased recently. *Id.* at 186.

VIII. Pamela Ellison

19. Pamela Ellison lives in the neighborhood. *Id.* at 196, 199. She has patronized events at VIP in the past. *Id.* She has not experienced any issues regarding crime, litter, noise, parking, or rowdiness related to VIP's operation. *Id.* at 197. She also indicated that the value of her home has increased recently. *Id.* at 198.

IX. Chris DeLousie

20. Chris DeLousie lives across the street from VIP and has lived in the neighborhood since May 2017. *Id.* at 211. On one occasion he observed a few patrons leaving VIP and fighting as they walked through the neighborhood. *Id.* at 212-13. He has not experienced noise issues in the 90 days before the protest hearing. *Id.* at 216. He also has not observed heavy traffic in the neighborhood. *Id.* at 217.

X. David Snider

21. David Snider works as a real estate agent. *Id.* at 230. As part of his job, he attempted to sell the home next to VIP. *Id.* at 238-39. In the process of selling the home, only one offer was

submitted and Mr. Snider believed it was low. *Id.* at 239-40, 242-43. Nevertheless, the property was sold within 15 days of going on the market. *Id.* at 248.

XI. Jay Ferrari

22. Jay Ferrari lives approximately 350 feet from VIP. *Id.* at 264. He noticed that VIP room is occasionally causing noise disturbances. *Id.* at 266. According to Mr. Ferrari, he has made noise complaints to the police on several occasions. *Id.* at 267. For example, on one occasion people were yelling outside his home. *Id.* at 268. He also has observed two patrons of VIP leave the premises carrying open containers of beer in public, and observed other individuals engage in public urination and litter. *Id.* at 267, 270-71.

XII. David Owens

23. David Owens lives less than 100 feet away from VIP. *Id.* at 280. He objects to granting the establishment a tavern license, operating until 2:00 a.m., having outdoor live entertainment, and allowing them to collect a cover charge. *Id.* at 280, 283, 286.

XIII. Michael Cotton

24. Michael Cotton lives in the neighborhood. *Id.* at 299. Mr. Cotton believes the license is inappropriate based on the character of the neighborhood. *Id.* at 311.

XIV. Jim Stehle

25. Mr. Stehle lives approximately 50 feet from VIP. *Id.* at 316. On several evenings, when VIP has hosted events, he has heard bass sounds in his home. *Id.* at 317-18.

CONCLUSIONS OF LAW

26. The Board may approve an Application for a New Retailer's Class CT License when the proposed establishment 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. 2017). 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. D.C. Official Code § 25-313(b); 23 DCMR §§ 1607.2; 1607.7(b) (West Supp. 2017). Furthermore, in the case of a new application for licensure or transfer to a new location, "the Board shall consider whether the proximity of [a tavern or nightclub] establishment to a residence district, as identified in the zoning regulations of the District and shown in the official atlases of the Zoning Commission for the District, would generate a substantial adverse impact on the residents of the District." D.C. Official Code § 25-314(c).

I. The Establishment is Appropriate For The Neighborhood.

27. 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. 2017). 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).

28. 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. VIP’s long history of operation indicates that it will not have a negative impact on peace, order, and quiet.

29. “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. Official Code § 25-313(b)(2); see also D.C. Official 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. 2017).

30. In this case, VIP has a long history of operation and providing facilities for private parties in the neighborhood. *Supra*, at ¶¶ 7-8. Despite this history, there is no evidence of serious incidents or a pattern of anti-social behavior related to its operations. *Supra*, at ¶ 6. Furthermore, if this were the case, nearby residents would have reported this in their testimony instead of describing a few incidents that appear isolated in light of the establishment's long history. *Supra*, at ¶¶ 22, 25. Therefore, the Board is persuaded that VIP will not have a negative impact on peace, order, and quiet.

b. VIP's long history of operation indicates that it will not have a negative impact on residential parking needs or vehicular and pedestrian safety.

31. "In determining the appropriateness of an establishment, the Board shall consider . . . [t]he effect of the establishment upon residential parking needs and vehicular and pedestrian safety . . ." D.C. Official Code § 25-313(b)(3); *see also* D.C. Official Code §§ 25-101(35A), 25-314(a)(4). Among other considerations, the Board is instructed to consider the availability of both private and public parking, any parking arrangements made by the establishment, whether "[t]he flow of traffic . . . will be of such pattern and volume as to . . . increase the [reasonable] likelihood of vehicular [or pedestrian] accidents . . ." 23 DCMR § 400.1(b), (c) (West Supp. 2016). In this case, VIP makes valet parking available to its customers and there is no evidence in the record that residents have issues finding parking when the establishment is in operation. Therefore, the Board is persuaded that VIP will not have a negative impact on residential parking and vehicular and pedestrian safety.

c. VIP's long operating history indicates that it will not have a negative impact on property values.

32. 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. Official 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, there is no evidence that VIP's property is blighted and property values in the neighborhood have generally increased while VIP has been present in the neighborhood. *Supra*, at ¶¶ 14, 16, 18. In contrast, the Protestants' evidence is speculative and not sufficiently supported to overcome VIP's evidence.

33. Therefore, for these reasons, the Board deems the Application appropriate.

II. The Board Imposes Conditions on the License to Enforce the BZA Order.

34. Under § 25-104(e), the Board is granted the authority to impose conditions on a license when ". . . the inclusion of conditions will be in the best interest of the [neighborhood] . . ." D.C. Official Code § 25-104(e). Under Title 25 of the D.C. Official Code, licensees are obligated to comply with District law. D.C. Code § 25-823(a)(1)-(2). In this case, it is in the

best interest of the neighborhood that the Applicant ensures that the use of the property does not exceed the grant of authority provided by the BZA, which would have a detrimental impact on the quality of the life of VIP's neighbors.

35. In that vein, the Board prohibits the direct sale of alcohol on the property or operations beyond 2:00 a.m. The Board also prohibits the collection of a cover charge, defined as "a fee required by an establishment to be paid by patrons for admission," as this type of fee also constitutes an indirect sale of alcohol. The Board further prohibits VIP from storing alcohol for more than 24 hours on the property, because the BZA order indicates that it would only operate as a BYOB ("Bring Your Own Beverage") establishment. *Supra*, at ¶ 7. The Board also prohibits the licensee from allowing amplified music and other amplified sounds to be heard in any nearby residence or dwelling because this type of noise interferes with the use of nearby properties.

III. The Board Has Satisfied the Great Weight Requirement by Addressing ANC 4B's Issues and Concerns.

36. ANC 4B's written recommendation submitted in accordance with D.C. Official Code § 25-609(a) indicated that it supported the Application. The Board notes that it agreed with the ANC's advice to grant the application, and that the Board has explained its reasoning for imposing conditions in the Board's Conclusions of Law.

IV. The Application Satisfies All Remaining Requirements Imposed by Title 25.

37. 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. 2017). 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 1st day of November 2017, hereby **APPROVES** the Application for a New Retailer's Class CT License at premises 6201 3rd Street, N.W. filed by The V.I.P. Room, LLC, t/a The V.I.P. Room, with the following **CONDITIONS**:

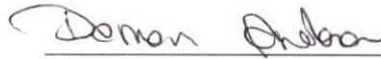
1. The license holder shall not sell alcohol on the premises or allow a third party to sell alcohol on the premises;
2. The license holder shall not allow or permit the collection of a cover charge;
3. The license holder shall not operate after 2:00 a.m.; and
4. The license holder shall not permit amplified music or other amplified sounds to be heard in any residence or dwelling with its windows and doors closed.

IT IS FURTHER ORDERED that the request for a summer garden is **WITHDRAWN**.

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



Nick Alberti, Member

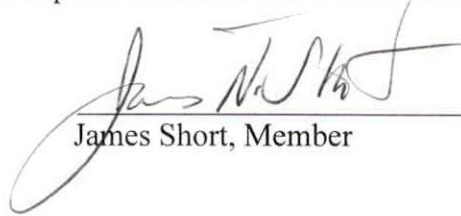


Mike Silverstein, Member



Donald Isaac, Sr., Member

I concur with the Board's decision to approve the Application, but dissent as to the Board's decision to grant the establishment's hours request. I believe VIP's hours should be limited to 1:00 a.m.



James Short, 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. 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. 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).