

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

Historic Restaurants, Inc.)	Case Number:	13-PRO-00131
t/a Washington Firehouse Restaurant,)	License Number:	092685
Washington Smokehouse)	Order Number:	2014-107
)		
Application for a New)		
Retailer's Class CT License,)		
)		
at premises)		
1626 North Capitol Street, N.W.)		
Washington, D.C. 20002)		

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

ALSO PRESENT: Historic Restaurants, Inc., t/a Washington Firehouse Restaurant,
Washington Smokehouse, Applicant

Makan Shirafkan, Attorney, on behalf of the Applicant

Teri Jenin Quinn, Vice-Chair, Advisory Neighborhood Commission
(ANC) 5E, Protestants

Jane Young, on behalf of the Group of Eleven, Protestant

Karla Lewis, on behalf of the Group of Forty Three, Protestant

Sylvia M. Pinkney, on behalf of the Group of Five, 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 CT License, Sidewalk and Summer Garden Endorsement, and Entertainment Endorsement (Application) filed by Historic Restaurants, Inc., t/a Washington Firehouse Restaurant, Washington Smokehouse (hereinafter, the "Applicant" or "Firehouse"). Nevertheless, based on the stipulations provided by the parties and reasonable and valid concerns regarding noise and parking, the Board finds that some limitations on the license are warranted, which the Board describes in detail below.

Procedural Background

The Notice of Public Hearing advertising Firehouse's Application was posted on August 16, 2013, and informed the public that objections to the Application could be filed on or before September 30, 2013. *ABRA Protest File No. 13-PRO-00131*, Notice of Public Hearing [*Notice of Public Hearing*]. On or before September 30, 2013, the Alcoholic Beverage Regulation Administration (ABRA) received protest letters from Advisory Neighborhood Commission (ANC) 5E; the Bloomingdale Civic Association; a Group of Eleven Residents or Property Owners (Young Group); a Group of Five Residents and Property Owners (Pinkney Group); and a Group of Forty Three Residents and Property Owners (Lewis Group) (hereinafter collectively, the "Protestants"). *ABRA Protest File No. 13-PRO-00131*, Roll Call Hearing Results.

The parties came before the Board's Agent for a Roll Call Hearing on October 15, 2013, where all of the above-mentioned parties were 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 January 29, 2014 after the parties agreed to continue the Protest Hearing scheduled on December 4, 2014.

The Board notes that Attorney Makan Shirafkan appeared on behalf of the Applicant. *Transcript (Tr.)*, January 29, 2014 at 19. Vice-Chair Teri Quinn appeared at the Protest Hearing on behalf of ANC 5E and the Bloomingdale Civic Association. *Id.* at 2-3. The Young Group was represented by Jane Young; the Pinkney Group was represented by Sylvia M. Pinkney; and the Lewis Group was represented at the hearing by Karla Lewis. *Id.* at 3-4.

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 notes that it received a written recommendation from ANC 5E. ANC 5E's issues and concerns shall be addressed by the Board in its Conclusions of Law, below.

Based on the issues raised by the Protestants, the Board may only grant the Application if the Board finds that the request will not have an adverse impact on the peace, order, and quiet; residential parking and vehicular and pedestrian safety; and real

property values of the area located within 1,200 feet of the establishment. D.C. Official Code § 25-313(b); 23 DCMR §§ 1607.2; 1607.7(b) (West Supp. 2014).

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. Firehouse has submitted an Application for a New Retailer's Class CT License, Sidewalk and Summer Garden Endorsement, and Entertainment Endorsement at 1626 North Capitol Street, N.W., Washington, D.C. *Notice of Public Hearing*.
2. ABRA Investigator Derek Brooks investigated the Application and prepared the Protest Report submitted to the Board. *ABRA Protest File No. 13-PRO-00131*, Protest Report (Nov. 2013) [*Protest Report*].
3. Firehouse will be located in the Bloomingdale neighborhood. *Tr.*, 1/29/14 at 268, 379. The proposed establishment is located in a commercial C-2-A zone. *Protest Report*, at 5. Four licensed establishments are located within 1,200 feet of the proposed location. *Id.* at 6. One of the nearby establishments holds a Retailer's Class CR license, while the remaining establishments are off-premise retailers. *Id.* There are no schools, recreation centers, public libraries, or day care centers located within 400 feet of the establishment. *Id.* at 7.
4. The three level building housing the establishment is made of "concrete, steel, and glass," and formerly served as a firehouse. *Id.* at 7; *Applicant's Exhibit No. 11*. The entrance is located on North Capitol Street, N.W. *Protest Report*, at 7; *Applicant's Exhibit No. 11C*. The summer garden will be located on Quincy Place, N.W. *Protest Report*, at 7; *see also Applicant's Exhibit No. 11B*. The interior of the establishment will have a seating capacity of 347 seats and an occupant load of 398. *ABRA Protest File No. 13-PRO-00131*, Notice of Public Hearing (Correction). The summer garden will have a seating capacity of 85 patrons. *Id.*
5. According to the public notice, Firehouse's proposed hours of operation 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. *Notice of Public Hearing*. The establishment has proposed hours of alcoholic beverage sales, service, and consumption, as well as entertainment, which are as follows: 8:00 a.m. to 1:30 a.m., Sunday through Thursday, and 8:00 a.m. to 2:30 a.m. on Friday and Saturday. *Id.* Firehouse's proposed summer garden hours are 8:00 a.m. to midnight, seven days per week. *Id.* Finally, the proposed hours of entertainment in the summer garden are 8:00 a.m. to 11:30 p.m., seven days per week. *Id.*
6. Firehouse subsequently volunteered to reduce their hours as a concession to the Protestants. *Id.* at 58. Accordingly, the Applicant agreed to have their operations and entertainment cease at 1:30 a.m., Sunday through Thursday, and 2:30 a.m. on Friday and

Saturday. Id. at 58. Furthermore, the Applicant agreed to cease their summer garden operations at 11:30 p.m. Id.

7. ABRA Investigators monitored the proposed location on five separate occasions between November 21, 2013, and November 26, 2013. *Protest Report*, at 9. On November 21, 2013, around 2:00 p.m., an investigator noted that no parking was available near the proposed location and observed some individuals loitering in the area. Id. On November 22, 2013, around midday, an investigator did not observe any available parking in the surrounding street and observed individuals loitering in the area. Id. On November 22, 2013, around 10:45 p.m., an investigator found that parking was available in the neighborhood. Id. Finally, on November 26, 2013, around 11:00 p.m., an investigator found that parking was readily available in the neighborhood. Id.

8. ABRA Investigator Derek Brooks personally monitored the proposed location during his investigation. *Tr.*, 1/29/14 at 56. He observed that individuals loiter on the other side of North Capitol Street, N.W., across from the proposed location near some of the nearby off-premise establishments. Id. at 56-57, 59; *Applicant's Exhibit No. 13*. He noted that he observed some of the loiterers drinking alcohol outside. Id. at 59-60.

9. The Protest Report also describes the parking resources available to the neighborhood. *Protest Report*, at 6. The 1600 block of North Capitol Street, N.W., limits standing and parking between 7:00 a.m. and 9:30 p.m. and 4:00 p.m. and 6:00 p.m., Monday through Friday at various points on the block. Id. R Street, N.W., features a two-hour parking limit from 7:00 a.m. to midnight, Monday through Sunday, and also offers parking for Zone 5 resident permit holders from 7:00 a.m. to midnight at various points on the block. Id. Quincy Place, N.W., offers two hour parking from 7:00 a.m. to 8:30 p.m., Monday through Friday. Id. Finally, the 1600 block of Lincoln Road, N.E., has no standing or parking from 7:00 a.m. to 9:30 a.m. and between 4:00 p.m. and 6:30 p.m., as well as having specific portions of the block designated no parking or standing zones. Id. Investigator Brooks further added that a local nearby church also holds a farmers market every Sunday that attracts additional vehicles to the neighborhood. Id. at 57.

10. The Protest Report also describes the public transportation resources available to the neighborhood. *Protest Report*, at 8. The Noma-Galludet Metro Station on the Red Line is located at 200 Florida Avenue, N.E.¹ Id. Investigator Brooks estimated that the Metro Station is approximately a quarter of a mile from the establishment. *Tr.*, 1/29/14 at 71, 115-16. Furthermore, Metro Bus routes 80 and P6 go through North Capitol Street, N.W., and Florida Avenue, N.W. *Protest Report*, at 8.

11. Investigator Brooks observed that row houses abut both sides of the establishment. Id. at 61. Row houses are also located across the street from the establishment on Quincy Street, N.W. Id. at 66; *Applicant's Exhibit No. 13*.

12. Investigator Brooks identified pictures of various portions of the area surrounding the establishment. *Tr.*, 1/29/14 at 86, 91-92. A picture of the rear alley behind Firehouse shows a dirt patch, broken concrete on the ground, and a brick wall, door, and window tagged with graffiti. *Applicant's Exhibit No. 13B*. Across the street from the

¹ The Board takes administrative notice of the name of the Metro Station.

establishment, on North Capitol Street, N.W., are two boarded up buildings with decaying signs. *Applicant Exhibit No. 13C*. Another photograph shows the area just up the street and across from Firehouse, which shows a liquor store that has graffiti and a boarded up window on the second floor. *Applicant Exhibit No. 13D*.

II. Cory Lee

13. Cory Lee serves as a Project Manager with the Office of Deputy Mayor for Planning and Economic Development. *Tr.*, 1/2914 at 130. His office focuses on real estate projects involving partnerships between private entities and the public on District-owned land. *Id.* at 131. The current Application is part of a project managed by his office that he is currently working on. *Id.* at 132, 143.

14. Mr. Lee believed that Firehouse would have a beneficial impact on real property values, because it would be utilizing an abandoned building and offer the neighborhood an additional amenity. *Id.* at 131-32, 138. He also anticipates that the project would cause property values to rise, because it will cause people to become more familiar with the neighborhood. *Id.* at 141.

15. The building is currently owned by NC Firehouse, LLC, which is owned, in part, by Abbas Fathi. *Id.* at 136.²

III. Vincent Baylor

17. Vincent Baylor will serve as Firehouse's general manager. *Id.* at 165. Currently, Mr. Baylor works as the assistant general manager at Shaw's Tavern. *Id.* at 165-66. Mr. Baylor has eight years of experience in the hospitality industry and previously worked at Café Leopold's in Georgetown. *Id.* at 167. The Board takes administrative notice that Shaw's Tavern has no recorded violations of Title 25 of the D.C. Official Code. *ABRA Licensing File No. 088569*, Investigative History (last updated Aug. 7, 2013).

18. According to Mr. Baylor, Firehouse will operate primarily as a restaurant. *Id.* at 166. The establishment will also offer entertainment on the second floor where the establishment hopes to host events. *Id.* The establishment plans to employ between 100 and 115 employees. *Id.* at 171.

19. Firehouse has considered noise mitigation in its construction plans. *Id.* at 168. The roof of the building will have four inches of insulation. *Id.* The windows of the establishment will be double-pane soundproof windows. *Id.* Firehouse also plans to double-pane the two garage doors located in the front of the establishment. *Id.*

² The Protestants have raised concerns about Abbas Fathi serving as the landlord of the premises. *Tr.*, 1/29/14 at 136, 304-05. Mr. Fathi was previously deemed unfit for licensure in a prior Board Order. *In re Shaw's Tavern, LLC t/a Shaw's Tavern*, Case No. 11-CMP-00314, Board Order No. 2011-458, 9 (D.C.A.B.C.B. Nov. 2, 2011). The Board sees no evidence that Mr. Fathi will manage, own, or participate in the operations of Firehouse; therefore, the Board has no basis to find that the Applicant is unfit for licensure or that the Applicant does not intend to act as the true and actual owner of the business. D.C. Official Code § 25-301(a)(1), (5). Consequently, the mere fact that Mr. Fathi will act as the landlord of Firehouse is not a sufficient basis to deny the license.

20. The establishment will not be constructing a disc jockey booth inside the establishment. Id. at 168. The establishment will play recorded music for ambience. Id. at 168-69. In addition, Mr. Baylor stated that the establishment intends to offer live jazz music on the second floor. Id. at 170, 198. The band area will be located on the portion of the floor closest to North Capitol Street, N.W. Id. at 211. Firehouse plans to offer recorded music in its summer garden, but will not have the music being played on the second floor blasted outside. Id. at 191.

21. Firehouse does not intend to use its full occupancy on a regular basis. Id. at 204. According to Mr. Baylor, the second floor will be reserved for private events and overflow from the establishment's weekend brunch. Id.

22. The closest resident to the establishment is located approximately fifteen feet from Firehouse's patio. Id. at 205. She is separated from the patio by an alley. Id. The sidewalk café will have plants to help mitigate noise. Id. at 221.

23. Firehouse wants a cover charge to cover the cost of the entertainment being provided by the establishment. Id. at 231.

IV. Abdol Ostadhosseini

24. Abdol Ostadhosseini testified on behalf of the Applicant, and is one of the Applicant's owners. Id. at 259, 296-97. The Applicant has entered into a valet parking agreement with U Street Parking. Id. at 262-63; *Applicant's Exhibit No. 2*, 1-5. The valet will park vehicles in two lots. *Tr.*, 1/29/2014 at 332.

25. The Applicant has entered into a waste removal contract with Tenleytown Trash. *Applicant's Exhibit No. 3*. The agreement shows that the company will empty two 3-yard dumpsters seven days per week. Id.

26. Firehouse has also entered into a Pest Elimination Agreement with QESPRO. *Applicant's Exhibit No. 12*. The focus of the contract is preventing and eliminating infestations related to rats, mice, and cockroaches. Id.

27. Mr. Ostadhosseini described the occupancy of the premises. Id. at 295. The first floor will have an approximate occupancy of 86 people. Id. The second floor will have an occupancy of approximately 92 people. Id. at 295-96. The third floor will have an occupancy of approximately 76 people. Id. at 296.

28. Mr. Ostadhosseini noted that the landlord of the premises is providing the money for the construction and infrastructure of the establishment. Id. at 330. Firehouse will begin paying rent once the establishment opens for business. Id. at 331.

V. Ben Tesfaye

29. Ben Tesfaye serves as the Director of Operations for U Street Parking. Id. at 352-53. He noted that the lot further away from Firehouse is currently operating as a parking lot. Id. at 354. This lot has eighty parking spots at present. Id. at 355. Mr. Tesfaye believes this lot will provide sufficient parking spots for the establishment. Id. at 355. The

other lot, next to Firehouse, is not currently operating as a parking lot. Id. His employer is currently negotiating with the owner of the lot next to Firehouse to convert it into a parking lot. Id. at 356. Based on his experience in the parking business, Mr. Tesfaye estimates that the Firehouse will attract approximately twenty to thirty vehicles from customers and twenty to thirty employee vehicles. Id. at 358, 367. Mr. Tesfaye estimates that valet parking will cost customers \$10.00 per vehicle. Id. at 365-66.

VI. John Davis

30. John Davis lives near the proposed establishment on R Street, N.W. Id. at 267, 281. Mr. Davis has concerns about potential noise. Id. at 267. According to Mr. Davis, Firehouse will be the largest establishment in the neighborhood. Id. at 268. Based on the Application, Mr. Davis is concerned that the establishment will have the ability to operate as a nightclub if the owners choose to do so. Id. at 270.

VII. Mary McDaniel

31. Mary McDaniel lives two blocks from Firehouse's proposed location. Id. at 379. Ms. McDaniel is concerned that that late-night activity at the establishment will disturb the neighborhood when large crowds of people leave the establishment. Ms. McDaniel complained that it is difficult to find parking in the neighborhood. Id. at 380. She frequently observes drivers parking their vehicles illegally near her home. Id. In addition, the District Department of Transportation (DDOT) intends to reduce the amount of resident-only parking available in the neighborhood. Id. at 381.

VIII. Rodney Powell

32. Rodeny Powell lives on R Street, N.W. Id. at 384. Mr. Powell objects to the hours of operation chosen by the establishment, because of the potential for late-night noise. Id. at 385. He is also concerned about the potential of the establishment to encourage litter and attracting pests. Id. at 385, 390. He also does not believe the Applicant has a clear parking plan. Id. at 391.

IX. Meron Askenachew

33. Meron Askenachew lives on Quincy Place, N.W., and lives eight houses away from the establishment. Id. at 406, 410. Ms. Askenachew has two young babies and is concerned about the establishment's impact on parking and noise in the neighborhood. Id. at 406, 411. She fears that the establishments' patrons will park in the alley by her home. Id. at 408. She also believes that the establishment has the potential to create a number of noise problems; specifically, she fears that noise from the establishment's outdoor seating area will disturb her family, as well as the noise from patrons waiting in line or walking to their vehicles. Id. at 411-413.³

³ The Board does not describe the testimony of Helina Askenachew in this Order, because it was similar to the testimony given by Meron Askenachew. *Tr.*, 1/29/14 at 416-422; D.C. Official Code § 25-442(c) ("The Board may exclude any . . . unduly repetitious evidence or testimony.")

X. Kathie Shahan

34. Kathie Shahan lives on R Street, N.W., and her home borders the alley that faces Firehouse. *Id.* at 423-24.⁴ Ms. Shahan noted that many of the side streets near the neighborhood contain residences. *Id.* at 426.⁵

XI. Jane Young

35. Jane Young lives at 14 Quincy Place, N.W., which is directly across from the Firehouse. *Id.* at 440. Ms. Young complained that she cannot find parking in the neighborhood when she returns home from work. *Id.* at 441. She noted that her side of the street does not have access to off-street parking, because there is no alley. *Id.* at 451.

XII. Teri Janine Quinn

36. Teri Janine Quinn, the Vice-Chair of ANC 5E described the potential impact of the establishment on her neighborhood. *Id.* at 456. She is aware that the average home price in the Bloomingdale neighborhood is over \$600,000. *Id.* at 456. Commissioner Quinn is concerned that music emanating from the summer garden will disturb nearby residents. *Id.* at 464-65.

XIII. Karla Lewis

37. Karla Lewis lives R Street, N.W. *Id.* at 475. She is concerned about the establishment's impact on noise and parking. *Id.* at 476. She noted that parking is constrained in the neighborhood between May and November when a local farmers market opens on Sundays. *Id.* at 476, 493. She noted that many residents have to park far away from their homes due to the unavailability of parking spaces. *Id.* at 476; *Group of 43's Exhibits Nos. 8, 12, 14, 16, 28.*

⁴ Ms. Shahan urged the Board to rely on the Board's decision in Club Illusions as a model for resolving the present controversy. *Tr.*, 1/29/14 at 424-25; *Group of 43's Exhibit No. 25*. In Club Illusions, the Board denied the license based on concerns that the nightclub with an occupancy of 1,200 patrons was located near a dangerous intersection that posed a safety concern for pedestrians and vehicles. In re 2101 Venture, LLC, t/a Club Illusions, Case Number 12-PRO-00054, Board Order No. 2013-004, ¶ 23 (D.C.A.B.C.B. Jan. 16, 2012). Nevertheless, the Board does not find Club Illusions persuasive or controlling the outcome of the present matter, because Firehouse is a much smaller establishment, and there is no compelling evidence of danger to pedestrians or vehicles in the record.

⁵ The Protestants attempted to raise the issue of whether the Applicant has satisfied the legislation authorizing the city to sell the property sought by the Applicant and covenants controlling the use of the property. *Tr.*, 1/29/14 at 429-30; *Group of 43's Exhibit Nos. 1, 2*. The issue of whether the Applicant is compliant with the terms of the land disposition legislation and the covenants running with the land is not one for the Alcoholic Beverage Control Board. If the Protestants have concerns regarding these issues, the Protestants should address them with the appropriate government body with jurisdiction. Dupont Circle Citizens Ass'n v. District of Columbia Alcoholic Bev. Control Bd., 766 A.2d 59, 62 (saying the Board should not act "as a court of appeals over other coordinate administrative departments The correct avenue for pursuing any alleged violations [outside of the Board's jurisdiction] is a complaint to the appropriate government entity involved.")

XIV. DDOT

38. The records of DDOT show that North Capitol Street, N.W., averages 40,200 vehicle trips per day. *Applicant's Exhibit No. 7.*

XV. Metropolitan Police Department

39. The records of the Metropolitan Police Department (MPD) show the following between January 1, 2013 and December 1, 2013, in the area within 1500 feet of 1626 North Capitol Street N.W.: (1) violent crime has dropped 18 percent; and (2) property crime has dropped 28 percent. *Applicant's Exhibit No. 8.* In total, crime in the area has dropped 26 percent in 2013. *Id.*

CONCLUSIONS OF LAW

40. 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; 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. 2014).

41. The Board is persuaded that Firehouse's operations will not have a negative impact on crime or real property values; and that Protestants' reasonable and valid concerns regarding noise and parking, will be addressed by the conditions described below that will attach to the license. Therefore, the Board finds that Firehouse merits the issuance of a license.

I. FIREHOUSE IS APPROPRIATE FOR THE NEIGHBORHOOD.

42. 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 . . . litter provisions set forth in § . . . 25-726." D.C. Code § 25-313(b)(2) (West Supp. 2014).

a. Firehouse's operations will not cause an increase in crime or other antisocial behavior.

43. The Board finds that issuing the license will not result in an increase in crime or antisocial behavior. In prior cases, the Board has looked to the prevalence of crime and antisocial behavior when determining whether a license for a given neighborhood is appropriate. See e.g., *In re Multi-Management, Inc., t/a Habana Village*, Case Number 13-PRO-00094, Board Order No. 2014-033, 10 (D.C.A.B.C.B. Feb. 5, 2013). Here, the Board notes that total crime in the neighborhood surrounding Firehouse's proposed location has decreased by 26 percent in 2013. *Supra*, at ¶ 39. Furthermore, there is no convincing evidence in the record that Firehouse's operations will lead to increased criminal activity.

44. In addition, the Board does not find that the establishment's operations will encourage loitering or public drinking. The Board similarly found a tavern license appropriate in All Souls even though there was evidence in the record that individuals were engaging in public drinking and drug activity in the area near the establishment. In re All Souls, LLC, t/a All Souls, Case Number 11-PRO-00090, Board Order No. 2012-278, 7 (D.C.A.B.C.B. Jun. 20, 2012). Nevertheless, the Board found the tavern appropriate, because the license issued by the Board would not permit the tavern to sell closed containers; therefore, the Board determined that the tavern would not contribute to these problems. Id. Further, the Board concluded that replacing the vacant property with a vibrant tavern would discourage antisocial behavior in the vicinity. Id.

45. Here, Investigator Brooks observed loitering in the neighborhood; nevertheless, as in All Souls, the Board finds that Firehouse will not contribute to this behavior, because it will only be authorized to sell open containers on its premises under the terms of its license. Supra, at ¶¶ 7-8; D.C. Official Code § 25-113(a)(2). Finally, as in All Souls, the Board finds that converting the abandoned building into an operating establishment will discourage loitering in the vicinity. For these reasons, the Board finds that granting the Application will not lead to an increase in crime or antisocial behavior.

b. Firehouse's operations will not cause an increase in trash or litter.

46. 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. Here, the Applicant demonstrated that it will have access to two large dumpsters and ordered trash pickup seven days week. Supra, at ¶ 25. In addition, the pest control contract supplied by Firehouse shows that the Applicant is taking reasonable steps to prevent infestations by vermin. Supra, at ¶ 26. Based on this evidence, the Board is convinced that the Applicant has adequate facilities and means to deal with any trash or litter generated by the establishment or its patrons, as well as the ability to deal with any potential infestations by vermin.

c. Firehouse's operations will not have a negative impact on real property values.

47. The Board finds that Firehouse will not have an adverse impact on real property values. In determining whether an establishment is appropriate, the Board shall consider “[t]he effect of the establishment on real property values.” D.C. Official Code § 25-313(b)(1).

48. In Rail Station Lounge, the Board found that vacant and blighted properties have a detrimental impact on property values. In re Rail Station Lounge, LLC, t/a Rail Station Lounge, Case Number 10-PRO-00153, Board Order No. 2011-216, ¶ 62 (D.C.A.B.C.B. Jun. 15, 2011). Furthermore, the Board found that converting such buildings into viable businesses have a positive impact on property values. Id.

49. Here, the building sought by Firehouse is abandoned and pictures of the neighborhood show that some buildings have boarded up windows and are tagged with graffiti. Supra, at ¶¶ 12, 14. The Board further credits Mr. Lee’s testimony that the introduction of Firehouse into the neighborhood will likely cause property values to rise as more people become familiar with the neighborhood. Supra, at ¶ 14. For these reasons, the Board finds that Firehouse will not have a negative impact on the neighborhood’s property values once it begins occupying the abandoned firehouse.

II. CONDITIONS ON THE LICENSE ARE WARRANTED BASED ON THE PROXIMITY OF RESIDENTS AND LIMITED PARKING RESOURCES.

50. The Board notes that Title 25 does not describe how to weigh each of the appropriateness factors; rather, the matter is left to the discretion of the Board. § 25-313(b). “In practice, [rather than deny a license,] 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 operation[al] limits” In re Dos Ventures, LLC, t/a Riverfront at the Ball Park, Case Number 13-PRO-00088, Board Order No. 2013-512, 11 (D.C.A.B.C.B. Nov. 13, 2013).

51. Although the Board has decided to issue a license to the Applicant, the Board finds that the imposition of certain conditions is warranted in light of the concerns brought forward by the Protestants.

52. 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).

- a. Firehouse’s operations will not adversely impact parking in the neighborhood in light of the parking and valet arrangements that Firehouse has implemented, as well as the condition imposed herein for free parking for Firehouse employees**

53. The Board finds that Firehouse’s proximity to nearby residents merits conditions placed on its outdoor seating hours in order to prevent noise from disturbing residents.

54. 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").

55. The Board has addressed the issue of residents living near outdoor seating areas in a number of prior cases. 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). The Board also imposed similar restrictions in Romeo & Juliet, based on the Board's finding that the placement of a tree enclosure around the outdoor seating was not sufficient to prevent noise leakage. In re 301 Romeo, LLC t/a Romeo & Juliet, Case Number 13-PRO099136, Board Order No. 2014-045, ¶ 46 (D.C.A.B.C.B. Jan. 29, 2014).

56. Based on these cases, the Board is persuaded that Firehouse merits similar restrictions. First, Firehouse abuts residents and is located in a highly residential neighborhood. Supra, at ¶¶ 11, 22, 33-34, 36. Second, similar to Romeo & Juliet the Board does not find Firehouse's proposal to place plants around the summer garden sufficient to prevent noise generated by the establishment from disturbing nearby residents. Supra, at ¶ 22. As a result, the Board finds it reasonable to conclude that without restrictions, noise from the establishment's outdoor seating area will disturb nearby residents. In that vein, in order to balance the interests of residents and Firehouse, the Board will limit Firehouse's outdoor seating hours as it did in Duffy's Irish Restaurant.

a. Based on the neighborhood's limited parking resources, Firehouse must provide free parking for its employees that drive to work.

57. The records supports requiring Firehouse to provide parking for employees that drive to work. Under § 25-313(b)(3), the Board must consider the "[t]he effect of the establishment upon residential parking needs and vehicular and pedestrian safety." D.C. Official Code § 25-313(b)(3).

58. Here, neighbors report that residential parking is very limited in the neighborhood. Supra, at ¶ 31, 35. For this reason, the Board finds it reasonable to require the Applicant to provide free parking for any employee that drives to work. The benefit of this condition is that it will eliminate any competition between residents and the establishment's employees for parking.

59. The Board emphasizes that it rejects finding Firehouse inappropriate under § 25-313(b)(3) or imposing additional conditions related to this issue. First, the neighborhood is located near a Metro Station and has access to two bus lines; as a result, the Board is not sufficiently persuaded that the bulk of the establishment's patrons will drive to the establishment. Supra, at ¶ 10. Second, there is no convincing evidence that the establishment will cause any danger to pedestrians or vehicles. Finally, the Board notes that the Applicant's hiring of a valet company is a reasonable attempt to mitigate the

Protestants' concerns on this issue.⁶ Supra, at ¶¶ 24, 29. Therefore, the Board finds the establishment appropriate under § 25-313(b)(3) subject to the condition described in Paragraph 58.

III. THE BOARD HAS SATISFIED THE GREAT WEIGHT REQUIREMENT BY ADDRESSING ANC 5E'S ISSUES AND CONCERNS.

60. ANC 5E's written recommendation submitted in accordance with D.C. Official Code § 25-609(a) indicated that its protest was based on concerns regarding Firehouse's impact on peace, order, and quiet; residential parking and safety; and real property values. Letter from ANC 5E to Ruthanne Miller, Chair, Alcoholic Beverage Control Board, 2 (Sept. 30, 2013). The Board notes that it specifically addressed these concerns in Paragraphs 41 through 59 of this Order.

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

61. 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 2nd day of April 2014, hereby **APPROVES** the Application for a New Retailer's Class CT License, Sidewalk and Summer Garden Endorsement, and Entertainment Endorsement filed by Historic Restaurants, Inc., t/a Washington Firehouse Restaurant, Washington Smokehouse, subject to the following conditions:

- (1) Firehouse's summer garden shall not operate between 11:00 p.m. and 8:00 a.m., Sunday through Thursday, nor operate between 12:00 a.m. (midnight) and 8:00 a.m. on Friday and Saturday.
- (2) Firehouse shall provide free employee parking.
- (3) Firehouse shall provide live entertainment only on the establishment's second floor.⁷

⁶ The Board does not make the provision of valet service a requirement, because the Board does not want to restrict the Applicant's ability to adjust the provision of valet based on the needs of the establishment and its impact on traffic and parking.

⁷ The Board imposes this condition based on the testimony provided by the Applicant's representatives during the Protest Hearing. *Tr.*, 1/29/14 at 170.

- (4) Firehouse's shall not transmit music or other sounds generated by live entertainment on the second floor to the first floor of the establishment or outside.⁸
- (5) The Board also accepts the following enforceable stipulations agreed to by the parties as conditions of licensure:⁹
- a. Firehouse shall not use Square 3524 and Lots 800, 802, and 803 as a parking lot for the establishment.¹⁰
 - b. "Applicant shall make efforts in its control . . . to ensure that its waste management vendor collects all trash, garbage, bottles and other recyclables daily during the hours between 9:00 a.m. and 3:00 p.m. Further, Applicant shall ensure that no glass bottles are deposited by staff in to the outdoor recycle dumpster between the hours of 10:00 p.m. and 8:00 a.m., and that all trash is properly stored for the next daily pickup. As long as such action is not prohibited by D.C. Department of Health Code." *Applicant's Exhibit No. 15*.
 - c. "Applicant shall engage a professional pest control company with baiting and other necessary services provided monthly and as needed so as to prevent infestation. Applicant shall provide rodent resistant dumpsters and shall see that the dumpster covers fit properly and remain fully closed except when trash, garbage or recyclables are being added or removed. Applicant shall ensure that the area around the dumpsters is kept clean at all times." Id.
 - d. "Applicant shall contract with a grease disposal company to maintain grease traps that comply with the D.C. Code and regulations, and to insure that grease containers are maintained within the Premises and that no grease escapes from the interior of the Premises." Id.
 - e. "Applicant shall keep the sidewalk (up to and including the curb), tree boxes and adjoining alley free and clear of litter, bottles, cigarette butts and other debris in compliance with D.C. Code and Municipal Regulations. Applicant shall police these areas twice daily for refuse and other material." Id.
 - f. "Applicant will provide security to monitor the alley located behind the establishment in efforts to prevent patrons from parking in the alley. Applicant will ensure to have adequate security and/or MPD for events that

⁸ The Board also imposes this condition based on the testimony provided by the Applicant's representatives during the Protest Hearing. *Tr.*, 1/29/14 at 191.

⁹ The Board notes that the Applicant's concessions in this matter further supports the Board's conclusion that the establishment is appropriate.

¹⁰ Based on the testimony of Sylvia Pinkney during the hearing, the parties stipulated that the Applicant would not use the Lots identified in the transcript for parking. *Tr.*, 1/29/14 at 374, 376-77.

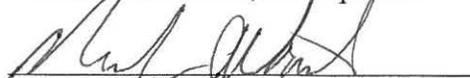
may require such. Security will be hired through a third party contractor to be bonded and insured.” Id.

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



Hector Rodriguez, Member



James Short, 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).