

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

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In the Matter of:	)	
	)	
Inner Circle 1223, LLC	)	Case No.: 13-PRO-00172
t/a Dirty Martini Inn Bar/Dirty Bar	)	License No: 083919
	)	Order No: 2014-507
	)	
Application to Renew a	)	
Retailer's Class CN License	)	
	)	
at premises	)	
1223 Connecticut Avenue, N.W.	)	
Washington, D.C. 20036	)	
	)	

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

**ALSO PRESENT:** Inner Circle 1223, LLC, t/a Dirty Martini Inn Bar/Dirty Bar, Applicant

Emanuel Mpras, Counsel, of the Mpras Law Offices, on behalf of the Applicant

Abigail Nichols, Chair, Advisory Neighborhood Commission (ANC) 2B, Protestants

Sarah Peck and Carl Nelson, on behalf of a Group of Nineteen Residents and Property Owners (Peck Group), Protestants

Martha Jenkins, General Counsel  
Alcoholic Beverage Regulation Administration

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

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## INTRODUCTION

Advisory Neighborhood Commission (ANC) 2B and the Group of Nineteen Residents and Property Owners (Peck Group) have made it clear that the primary issue in this protest is whether, under D.C. Official Code § 25-313(b)(2), Inner Circle 1223, LLC, t/a Dirty Martini Inn Bar/Dirty Bar, (hereinafter “Applicant” or “Dirty Martini”) remains appropriate for the neighborhood in light of the late-night noise that regularly emanates from the establishment. *Transcript (Tr.)*, April 10, 2014 at 22-24. Because the record in this case demonstrates that Dirty Martini regularly permits its amplified music to be heard in nearby residences, the Alcoholic Beverage Control Board (Board) conditions approval of the Application to Renew a Retailer’s Class CN License (Application) on Dirty Martini ceasing this nuisance behavior by (1) refraining from allowing its amplified music to be heard in a residence, and (2) keeping the door to its rooftop seating area closed at all times, except for the normal ingress and egress of patrons and staff.

### *Procedural Background*

The Notice of Public Hearing advertising the Application was posted on October 11, 2013, and informed the public that objections to the Application could be filed on or before November 25, 2013. *ABRA Protest File No. 13-PRO-00172*, Notice of Public Hearing [*Notice of Public Hearing*]. The Alcoholic Beverage Regulation Administration (ABRA) received protest letters from ANC 2B and the Peck Group (collectively the “Protestants”). *ABRA Protest File No. 13-PRO-00172*, Roll Call Hearing Results.

The parties came before the Board’s Agent for a Roll Call Hearing on December 9, 2013, where all of the above-mentioned objectors were granted standing to protest the Application. On February 19, 2014, the parties came before the Board for a Protest Status Hearing. Finally, the Protest Hearing in this matter occurred on April 10, 2014.

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. Code §§ 1-309.10(d); 25-609 (West Supp. 2014). 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 received a written recommendation from ANC 2B; therefore, the ANC’s issues and concerns shall be addressed by the Board in its Conclusions of Law.

Based on the filings of the Protestants, the formal issues raised by the parties is whether renewing the Applicant’s license will have an adverse impact on the peace, order, and quiet 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. Dirty Martini Inn Bar/Dirty Barhas submitted an Application to Renew a Retailer's Class CN License at 1223 Connecticut Avenue, N.W., Washington, D.C. *Notice of Public Hearing*. ABRA Investigator Jason Peru investigated the Application and prepared the Protest Report submitted to the Board. *ABRA Protest File No. 13-PRO-00172, Protest Report (Apr. 2014) [Protest Report]*.
2. The proposed establishment is located in a C-3-C zone. *Protest Report*, at 3. Thirty-seven licensed establishments are located within 1,200 feet of the proposed location. *Id.* at 3. There are no schools, recreation centers, public libraries, or day care centers located within 400 feet of the establishment. *Id.* at 5. Residents live directly behind the establishment and are only separated from the establishment by an alley. *Tr.*, 4/10/14 at 33-35.
3. Dirty Martini's hours of operation, alcoholic beverage sales, service, and consumption, and summer garden operation hours are as follows: 11:30 a.m. to 2:00 a.m., Sunday through Thursday, and 11:30 a.m. to 2:00 a.m. on Friday and Saturday. *Protest Report*, at 6.
4. Investigator Peru monitored the establishment between February 20, 2014, and March 22, 2014, and did not find any violations. *Id.* at 7. During his visits, he noted that many licensed establishments in the area emanate noise into the alley behind the establishment. *Tr.*, 4/10/14 at 33-34, 61-62. He noted that the music in the alley was loud enough for him to identify the song being played inside the various establishments. *Id.* at 62.
5. The photographs taken by Investigator Peru show that the property is not blighted. *Protest Report*, at Exhibit Nos. 3-8.
6. Investigator Peru described the establishment's roof deck. *Tr.*, 4/10/14 at 41. The roof deck is not fully enclosed. *Id.* at 42. Instead, the roof deck is covered by an aluminum and glass awning that spans over the deck. *Id.*

### II. John Fiorito

7. John Fiorito serves as a part-time sound engineer. *Id.* at 73-74. Mr. Fiorito is employed by Dirty Martini. *Id.* at 75. As part of his employment, he designed the establishment's sound system. *Id.* at 75.
8. Mr. Fiorito described the establishments in the area. *Id.* at 78. He noted that many establishments in the neighborhood have outdoor patio areas, including Midtown, Public Bar, and Rosebar. *Id.* at 79.

9. He also described the neighborhood. *Id.* at 80. He noted that the area of Connecticut Avenue, N.W., near the establishment merges with 18th Street, N.W.; therefore, the area is very busy with pedestrians and traffic. *Id.* at 80-81. This leads to very loud ambient sound levels in the area. *Id.* at 81.

10. Mr. Fiorito described Dirty Martini's sound system. *Id.* at 75. The first floor has ceiling speakers and a disc jockey system. *Id.* at 75-76. The second floor has a separate sound system installed in the ceiling. *Id.* at 76. The third floor has a bar and full disc jockey sound system. *Id.* The outdoor roof deck has a disc jockey playback system. *Id.*

11. He also described the roof deck speaker system. *Id.* at 77. According to Mr. Fiorito, the speakers are small, weather-proof speakers. *Id.* There is no "sub bass" installed on the roof deck. *Id.* Mr. Fiorito admitted that the speakers could produce a maximum sound level between 90 and 95 decibels. *Id.* at 99.

12. As part of his employment, Mr. Fiorito conducted a sound meter reading at the establishment. *Id.* at 86. There is insufficient evidence in the record to determine whether the sound meter readings were taken in accordance with Chapter 29 of Title 20 of the District of Columbia Municipal Regulations (Title 20). *Id.* at 86-88; 20 DCMR §§ 2900-2999 (West Supp. 2014).

13. According to Mr. Fiorito, Dirty Martini has taken several steps to soundproof the establishment. *Id.* at 83. Specifically, the establishment installed Owens acoustical fiberglass insulation on its sheetrock walls to prevent sound from traveling between the floors of the establishment. *Id.* In the rooftop area, the establishment installed framing and angled its speakers in a manner that encourages sound to stay in the area. *Id.* at 84.

14. During his testimony, Mr. Fiorito identified a number of issues with the establishment's sound control measures. *Id.* at 83, 92, 94-95. First, the outdoor sound system is currently locked in a manner so that it cannot produce more than 80 decibels of sound; yet, it may go as high as 85 decibels depending on the production quality of the music. *Id.* at 92, 94. Second, an interior dance floor sits near the door to the outdoor seating area, which has its own speaker system set at a limit of between 105 and 110 decibels. *Id.* at 103. Third, the physical features of the alley may result in sound reverberating off buildings and increasing the decibel level of any sound transmitted into the alley. *Id.* at 107. Finally, Mr. Fiorito admitted that "it's virtually impossible" to prevent sound from escaping the rooftop area. *Id.* at 83.

15. Based on Paragraph 14, the Board finds that there is insufficient evidence in the record to credit Mr. Fiorito's testimony that the sound system on the roof does not have the capability to be heard in Ms. Peck's residence across the street. *Id.* at 101-02.<sup>1</sup>

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<sup>1</sup> Even if true, the fact that the establishment leaves the rooftop door open provides a sufficient alternative explanation as to why Ms. Peck hears music in her home. *Infra*, at ¶ 19.

### III. Sarah Peck

16. Sarah Peck has resided on 18th Street, N.W., for the past two years. *Id.* at 121-22. Her residence is located in a ninth floor condominium that faces the alley and various clubs. *Id.* at 122, 146.

17. Ms. Peck began experiencing noise problems in her residence in November of 2013. *Id.* During the first incident, she got dressed and went down to the street. *Id.* She was able to tell that the music came from Dirty Martini, because the music was blasting out of the establishment's open door. *Id.* When she asked the establishment's door person to turn down the music, they refused to do so. *Id.*

18. On another occasion, Ms. Peck was on the establishment's roof deck. *Id.* at 129. She noted that as the music played, the door to the dance floor was wide open, which made the area very loud. *Id.* The owner of Dirty Martini admitted to Ms. Peck that he regularly kept the door open when the weather was nice. *Id.*

19. On another night, Ms. Peck was sitting in her home watching 60 Minutes when she heard music emanating through her closed window. *Id.* at 129-30, 151. Upon hearing the noise, she left her residence and went outside to follow the sound. *Id.* at 130. Once outside, she observed that the noise she heard came from Dirty Martini's roof. *Id.* She also could identify Dirty Martini as the source of the noise, because no other clubs were in operation at that time. *Id.* This meant that the noise was emanating from the roof, past the World Bank building, and into Ms. Peck's ninth story apartment. *Id.* She further noted that she has heard noise from Dirty Martini inside her residence on multiple occasions. *Id.* at 144.

### IV. ANC Commissioner Abigail Nichols

20. ANC Commissioner Abigail Nichols lives at the Palladium Condominium. *Id.* at 164. She has lived there since 1987. *Id.* The building is located on 18th Street, N.W., approximately 400 feet away from Dirty Martini. *Id.* at 165. Commissioner Nichols noted that noise became a problem in the neighborhood around 2009. *Id.* at 168.

21. Commissioner Nichols has visited Dirty Martini's roof deck while it is in operation. *Id.* at 174. She observed that Dirty Martini was not playing soft lounge music on the roof. *Id.* Furthermore, on another occasion, she also heard the establishment's music outside the World Bank building. *Id.* at 176.

### CONCLUSIONS OF LAW

22. The Board may approve an Application to Renew a Retailer's Class CN 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. 2014). Specifically, the question in this matter is whether the Application will have a negative impact on the peace, order, and quiet 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).

23. Furthermore, “. . . 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 APPLICATION IS INAPPROPRIATE UNDER § 25-313(b)(2) DUE TO THE UNREASONABLE AMOUNT OF LATE-NIGHT NOISE GENERATED BY DIRTY MARTINI THAT REGULARLY DISTURBS RESIDENTS IN THEIR HOMES.**

24. The Board concludes that Dirty Martini is permitting its amplified music to unreasonably disturb residents in their homes, and that the establishment has failed to engage in commercially reasonable soundproofing and noise mitigation practices. As such, there is ample support in the record to conclude that (1) the noise generated by Dirty Martini violates the “quiet” standard required by § 25-313(b)(2); (2) Dirty Martini has insufficient soundproofing and noise mitigation practices to satisfy the appropriateness test; (3) the establishment’s continued operations without restrictions will result in a violation of the noise level and noise disturbance standard provided by Title 20; and (4) the establishment’s continued operations without restrictions will result in a violation of the disorderly conduct law.

25. 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). Furthermore, 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. 2014).

26. The appropriateness test has never been limited to mere compliance with the law. *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”). It has been said, that each location where an establishment is located is “unique,” which requires the Board to evaluate each establishment “. . . according to the particular circumstances involved.” *Le Jimmy, Inc. v. D.C. Alcoholic Beverage Control Bd.*, 433 A.2d 1090, 1093 (D.C. 1981). Under this test, the Board must consider the “prospective” effect of the establishment on the neighborhood.” *Id.* Among other considerations, this may include the Applicant’s efforts to mitigate or alleviate operational concerns,<sup>2</sup> the “character of the neighborhood,”<sup>3</sup> the character of the establishment,<sup>4</sup> and the license holder’s future plans.<sup>5</sup>

<sup>2</sup> *Donnelly v. District of Columbia Alcoholic Beverage Control Board*, 452 A.2d 364, 369 (D.C. 1982); *Upper Georgia Ave. Planning Comm. v. Alcoholic Beverage Control Bd.*, 500 A.2d 987, 992 (D.C. 1985).

<sup>3</sup> *Citizens Ass’n of Georgetown, Inc. v. D.C. Alcoholic Beverage Control Bd.*, 410 A.2d 197, 200 (D.C. 1979).

**a. The noise generated by Dirty Martini that may be heard in Ms. Peck's apartment is unreasonable and inappropriate under § 25-313(b)(2).**

27. Based on the record in this case, the Board agrees with the Protestants that Dirty Martini is generating too much disturbing noise to satisfy the “quiet” standard provided by § 25-313(b)(2).

28. “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. 2014).

29. In interpreting this test, the Board has explained that it may “. . . consider whether an establishment is generating little or no sound.” *In re Solomon Enterprises, LLC, t/a Climax Restaurant & Lounge*, Case No. 13-PRO-00152, Board Order No. 2014-474, ¶ 32 (D.C.A.B.C.B. Nov. 15, 2014) *citing In re 19th and K, Inc., t/a Ozio Martini & Cigar Lounge*, Case No. 13-PRO-00151, Board Order No. 2014-366, ¶ 37 (D.C.A.B.C.B. Oct. 1, 2014); *see also Panutat, LLC, v. District of Columbia Alcoholic Beverage Control Bd.*, 75 A.3d 269, 276-77 n. 12 (D.C. 2013). The Board further explained that the appropriateness test seeks to “. . . determine the appropriate amount of sound in light of the reasonable expectations of residents.” *Id.*; *see also* 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).<sup>6</sup>

30. Previously, the Board has looked to the court’s decision in *T.L.* as a means of determining the reasonable expectations of residents. *Climax Restaurant & Lounge*, Board Order No. 2014-366 at ¶ 33; *see also Ozio Martini & Cigar Lounge*, Board Order No. 2014-366 at ¶ 6. There, the court found that the government has a substantial interest in preventing noise from disturbing people in their homes. *In re T.L.*, 996 A.2d 805, 812 (D.C. 2010). Therefore, the government has the authority to prevent noise so unreasonably loud that it “. . . unreasonably intrude[s] on the privacy of a captive audience or so loud and continued as to offend[] a reasonable person of common sensibilities and disrupt[] the reasonable conduct of basic nighttime activities such as sleep.” *Id.* at 813 (quotation marks removed).

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<sup>4</sup> *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, 801 (D.C. 1970).

<sup>5</sup> *Sophia's Inc.*, 268 A.2d at 800.

<sup>6</sup> In another part of the report, the Committee advised that the District’s noise laws were based on a “reasonable man standard.” 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, 27 n. 5 (Nov. 12, 1986).

31. In practice, this has led to amplified music being deemed inappropriate when it could be heard in nearby residences. For example, in *Ozio*, the Board determined that it was unreasonable for the licensee to have its amplified music emanate into a residence approximately 100 feet away from the establishment. *Ozio Martini & Cigar Lounge*, Board Order No. 2014-366 at ¶ 59. Likewise, in *Climax*, the Board found that it was inappropriate for the licensee to have its amplified music emanate into an apartment located 700 feet away from the establishment. *Climax Restaurant & Lounge*, Board Order No. 2014-366 at ¶ 35; see also *In re Dos Ventures, LLC, t/a Riverfront at the Ball Park*, Case No. 13-PRO-00088, Board Order No. 2013-512, ¶ 43 (D.C.A.B.C.B. Nov. 13, 2013) (denying license, in part, because the applicant lacked the ability to prevent amplified music from emanating into the surrounding neighborhoods).

32. The Board credits Ms. Peck's uncontroverted testimony that amplified music from Dirty Martini emanates into her condominium, which is located in a nearby building, on a regular basis. *Supra*, at ¶ 19. Consequently, as in *Ozio* and *Climax*, this manner of operation on the part of Dirty Martini is unreasonable on its face and must be deemed inappropriate under § 25-313(b)(2).

**b. Dirty Martini has failed to establish that its soundproofing measures are sufficient.**

33. The Board further finds that Dirty Martini has failed to show that it has installed sufficient soundproofing and has reasonable noise mitigation practices, which also renders the establishment inappropriate.

34. Under the appropriateness test, the Board may consider an applicant's efforts to address or alleviate operational concerns. *Donnelly v. District of Columbia Alcoholic Beverage Control Board*, 452 A.2d 364, 369 (D.C. 1982); *Upper Georgia Ave. Planning Comm. v. Alcoholic Beverage Control Bd.*, 500 A.2d 987, 992 (D.C. 1985). Accordingly, the Board may consider the establishment's soundproofing features and noise mitigation practices related to both amplified music and the human voice.<sup>7</sup> See *Panutat, LLC*, 75 A.3d at 267-77 n. 12.

35. In considering an establishment's soundproofing efforts, the Board found in *Riverfront* that providing amplified music in an open field could not satisfy the appropriateness test when the field had no physical sound proofing features. *In re Dos Ventures, LLC, t/a Riverfront at the Ball Park*, Case No. 13-PRO-00088, Board Order No. 2013-512, ¶ 43 (D.C.A.B.C.B. Nov. 13, 2013). Similarly, in *Romeo & Juliet*, the Board disapproved of full operational hours for an outdoor seating area, because the proposed tree enclosure was not sufficient to prevent the leakage of sound. *In re 301 Romeo, LLC, t/a Romeo & Juliet*, Case No. 13-PRO-00136, Board Order No. 2014-045, ¶ 46 (D.C.A.B.C.B. Jan. 29, 2014).

36. Here, the Board credits evidence that Dirty Martini has taken some steps to soundproof the establishment. *Supra*, at ¶ 13. Nevertheless, the record contains sufficient evidence to rebut

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<sup>7</sup> See *Kingman Park Civic Association v. Alcoholic Beverage Control Bd.*, Case No. 11-AA-831, 5 (D.C. 2012) (unpublished) (saying that the establishment's location in a "sound-proofed basement venue without windows" constituted substantial evidence of appropriateness).



this showing and demonstrate that Dirty Martini does not have sufficient soundproofing features or noise mitigation practices. First, Dirty Martini has a speaker system on a rooftop that is not completely enclosed, which permits the establishment's amplified music to emanate throughout the neighborhood. *Supra*, at ¶¶ 6, 10-11, 13-14, 21. Second, Dirty Martini allows its interior music to escape into the neighborhood by regularly keeping the door to the rooftop open, which makes the soundproofing installed by the establishment effectively useless. *Supra*, at ¶¶ 13-14. Therefore, as in *Riverfront* and *Romeo & Juliet*, the establishment is inappropriate, because Dirty Martini has not taken sufficient steps to prevent the emission of sound.

**c. Dirty Martini has failed to establish that it has the means to ensure it complies with the noise level requirements of Title 20.**

37. The Board further finds that Dirty Martini has not shown that it has the ability or mechanisms to comply with the noise level requirements of Title 20.

38. "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 . . . provision[] set forth in §[] 25-725 . . ." § 25-313(b)(2). Under the appropriateness test, the applicant must demonstrate that the prospective impact of the establishment will not have a negative effect on the neighborhood. D.C. Official Code §§ 25-311(a), 25-313(b)(2); *Pamutat, LLC*, 75 A.3d at 276; *Le Jimmy, Inc. v. D.C. Alcoholic Beverage Control Bd.*, 433 A.2d 1090, 1093 (D.C. 1981).

39. Section 25-725(c) states that ". . . licensees . . . shall comply with the noise level requirements set forth in Chapter 27 of Title 20 of the District of Columbia Municipal Regulations." D.C. Official Code § 25-725(c). Chapter 27 requires that licensees not create noise that violates the maximum noise levels described by § 2701.1. 20 DCMR § 2701.1 (West Supp. 2014). Specifically, under § 2701.1, a licensee located in a commercial zone cannot generate noise between the hours of 9:00 p.m. and 7:00 a.m. that exceeds 60 dBA. *Id.*; 20 DCMR § 2799 (West Supp. 2014).

40. In this case, the Board finds that Dirty Martini has failed to meet its burden that it can ensure that the noise generated by the establishment will fall below the 60 dBA threshold described in § 2701.1. First, Dirty Martini has a speaker system on a rooftop that is not completely enclosed, which permits the establishment's amplified music to emanate throughout the neighborhood. *Supra*, at ¶¶ 6, 10-11, 13-14, 21. Second, Dirty Martini allows interior music played at approximately 105 to 110 decibels to escape into the neighborhood by regularly keeping the door near the rooftop open. *Supra*, at ¶ 14. Third, Mr. Fiorito admitted that the speakers on the roof have the capability to produce music at anywhere between 90 to 95 decibels and that the sound limitations placed on the speakers may permit higher levels than intended depending on the production quality of the music. *Id.* Fourth, Mr. Fiorito admitted that the alley that borders the establishment may amplify the decibel level of any music emitted by the establishment. *Id.* Under these circumstances, the Board finds that Dirty Martini failed to present sufficient evidence that its continued operation without restrictions can satisfy the appropriateness test.

**d. Dirty Martini's continued operation without restrictions will result in a violation of the noise disturbance standard provided by Title 20.**

41. The Board finds that Dirty Martini cannot operate without restrictions without violating the noise disturbance standard.

42. Under the appropriateness test, the Board may consider whether an applicant's continued operations will have a negative impact on "order," which requires the Board to determine that the applicant will comply with "[t]he rule of law . . . or . . . prescribed procedure." § 25-313(b)(2); WEBSTER'S II NEW COLLEGE DICTIONARY, at 771 ("order"); *see also* 23 DCMR § 400.1 (permitting the Board to consider "criminal activity" as part of the appropriateness analysis). Thus, in all protests, the Board must consider whether the establishment's future operations will comply with the laws of the District of Columbia. *Supra*, at ¶ 26.

43. Relevant to this proceeding, § 25-823 prohibits licensees from violating the alcohol laws or ". . . any other laws of the District." D.C. Official Code § 25-823(1). The District of Columbia regulates "excessive or unnecessary noises within the District" in Chapter 27 of Title 20. 20 DCMR § 2700.1 (West Supp. 2014); *Delegation of Authority Under D.C. Law 2-53*, District of Columbia Noise Control Act of 1977, Mayor's Order 97-60, § 2 (Mar. 21, 1997). Specifically, § 2700.14, requires all individuals to refrain from creating a "noise disturbance." 20 DCMR § 2700.14 (West Supp. 2014). A noise disturbance is defined under § 2799 as "any sound which is loud and raucous or loud and unseemly and unreasonably disturbs the peace and quiet of a reasonable person of ordinary sensibilities in the vicinity thereof . . ." 23 DCMR § 2799 (West Supp. 2014) ("Noise disturbance").

This determination is made by consider[ing] the location, the time of day when the noise is occurring or will occur, the duration of the noise, its magnitude relative to the maximum permissible noise levels permitted under the Act, the possible obstruction or interference with vehicular or pedestrian traffic, the number of people that are or would be affected, and such other factors as are reasonably related to the impact of the noise on the health, safety, welfare, peace, and quiet of the community."

*Id.* Title 20 further states that persons playing amplified music are subject to the noise disturbance standard. 20 DCMR §§ 2700.3, 2800.1-2800.2 (West Supp. 2014). Finally, it has also been said that the District's noise laws should be interpreted using a "reasonable man standard." *Report on Bill 13-449, "the Title 25, D.C. Code Enactment and Related Amendments Act of 2000*, Committee on Consumer and Regulatory Affairs, Council of the District of Columbia, 27 n. 5 (Nov. 20, 2000).

44. The record in this case shows that Dirty Martini's continued operations will result in a noise disturbance under § 2799, if unabated. The totality of the circumstances weighs against the Applicant. Late-night commercial activity at Dirty Martini is appropriate given the establishment's zoning; nevertheless, the zoning code was not intended to allow operators to engage in nuisance activity that disturbs nearby residents in their homes on a continuous basis. § 2799; *supra*, at ¶¶ 18-19. The evidence in this case shows that Dirty Martini is generating noise late at night, which can be heard in a nearby residential building on a regular basis. *Supra*, at ¶¶

18-19. Furthermore, it is reasonable to presume that the noise heard by Ms. Peck may be heard by other residents of the same building. *Supra*, at ¶¶ 18-19. While Dirty Martini has not been subject to a noise level violation in the past, the most likely explanation, based on the record in this case, is that investigators with ABRA and the District of Columbia Department of Consumer and Regulatory Affairs have not been available at the appropriate time to catch the violation. *Protest Report*, at 8. Furthermore, this fact does not rebut the uncontroverted testimony of the witnesses. Therefore, the record contains sufficient evidence to find that Dirty Martini's continued operation without restrictions will result in a violation of the noise disturbance standard. "Any other conclusion would permit [Dirty Martini] to burden residents by imposing unwelcome noise that interferes with the privacy of residents captive in their homes as they attempt to sleep." *Climax Restaurant & Lounge*, Board Order No. 2014-366 at ¶ 42 *citing In re T.L.*, 996 A.2d 805, 812-13 (D.C. 2010) *citing City of Marietta v. Grams*, 531 N.E.2d 1331, 1336 (O.H. 1987) (quotation marks removed).

**e. Dirty Martini's continued operation without restrictions will result in a violation of the disorderly conduct law.**

45. The Board finds that Dirty Martini cannot operate without restrictions without violating the disorderly conduct law.

46. A licensee may not permit unlawful or disorderly conduct under § 25-823(2). D.C. Official Code § 25-823(2). The Board may consider the applicant's compliance with § 25-823 for the reasons discussed above in Paragraph 42.

47. Under § 22-1321(d), "[i]t is unlawful for a person to make an unreasonably loud noise between 10:00 p.m. and 7:00 a.m. that is likely to annoy or disturb one or more other persons in their residences." D.C. Official Code § 22-1321(d). In prior decisions, the Board has stated that it will not find a licensee at risk of violating § 22-1321(d) in a protest proceeding when the "... licensee has taken commercially reasonable steps to soundproof its establishment and is not otherwise in violation of the District of Columbia's noise laws." *In re Krakatoa, Inc., t/a Chief Ike's Mambo Room*, Case No. 10-PRO-00160, Board Order No. 2011-205, ¶ 35 (D.C.A.B.C.B. May, 18, 2011).

48. The legislative history of the disorderly conduct law shows that the drafters intended to curb "excessive loudness" that disturbs people in their homes. The Disorderly Conduct Arrest Project Subcommittee of the Council for Court Excellence, *Revising the District of Columbia Disorderly Conduct Statutes: A Report and Proposed Legislation*, 9-10 (Oct. 14, 2010) [CCE Report] found in Committee on Public Safety and Judiciary, *Report on Bill 18-425, the Disorderly Conduct Amendment Act of 2010*, Council of the District of Columbia (Nov. 18 2010).<sup>8</sup> Indeed, based on the hour limitations included in the laws, it is clear that the legislature intended to preserve the rights of residents to "conduct . . . basic nighttime activities such as

<sup>8</sup> The Committee states that it was relying on the recommendations provided by the Council for Court Excellence (CCE). Committee on Public Safety and Judiciary, *Report on Bill 18-425, the Disorderly Conduct Amendment Act of 2010*, Council of the District of Columbia, 9 (Nov. 18 2010) also available at <http://dcclims1.dccouncil.us/images/00001/20110128161004.pdf>.

sleep.” *In re T.L.*, 996 A.2d 805, 813 (D.C. 2010) citing *City of Marietta v. Grams*, 531 N.E.2d 1331, 1336 (O.H. 1987); *CCE Report*, at 9 n. 15.

49. As noted above, Dirty Martini’s soundproofing efforts are insufficient and its continued operations will likely result in a violation of the District’s noise laws. *Supra*, at ¶¶ 33-44. Consequently, if permitted to continue without restrictions, Dirty Martini’s operations will result in a violation of the disorderly conduct law, which renders the establishment’s continued operation without restrictions inappropriate under D.C. Official Code § 25-313(b)(2).

## **II. DIRTY MARTINI SATISFIES § 25-313(B)(1), BECAUSE THE RECORD SHOWS THAT THE PROPERTY IS NOT BLIGHTED.**

50. Separately, the Board finds that Dirty Martini satisfies § 25-313(b)(1). 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, the record shows that the Dirty Martini’s premises are not blighted. *Supra*, at ¶ 5. Protestants have not submitted evidence that rebuts this fact or otherwise demonstrates through substantial evidence that the establishment is having a negative impact on real property values. Therefore, renewing Dirty Martini’s license will not result in an adverse impact on real property values.

## **III. THE BOARD IMPOSES CONDITIONS ON THE LICENSE TO RESOLVE THE NOISE ISSUES RAISED BY THE PROTESTANTS.**

51. The Board’s finding of inappropriateness under § 25-313(b)(2) justifies the imposition of conditions on Dirty Martini’s license.

52. Under § 25-104(e), “[t]he 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 [neighborhood] . . . where the licensed establishment is to be located.” D.C. Official Code § 25-104(e). Among other purposes, the Board uses conditions to address “. . . valid concerns regarding appropriateness that may be fixed through the imposition of specific operation[al] limits or requirements on the license.” *Riverfront*, Board Order No. 2013-512 at ¶ 49.

53. The first condition imposed by the Board is that Dirty Martini shall not generate music or other amplified sounds that may be heard in a residence. This condition will resolve the noise concerns raised by the Protestants by protecting the ability of residents to enjoy peace and quiet in their homes. Furthermore, this condition will not overly burden the Applicant, because it will have the flexibility to determine the best manner to comply with the condition.

54. The second condition imposed by the Board requires Dirty Martini to keep the door to its outdoor seating area closed except for the normal ingress and egress of patrons and staff. This

condition is justified, because the establishment's failure to keep the door closed solves one aspect of the noise problem identified by the Protestants.

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**IV. THE BOARD HAS SATISFIED THE GREAT WEIGHT REQUIREMENT BY ADDRESSING ANC 2B'S ISSUES AND CONCERNS.**

55. ANC 2B's written recommendation submitted in accordance with D.C. Official Code § 25-609(a) indicated that its protest was based on concerns regarding Dirty Martini's impact on peace, order, and quiet. *Letter from Will Stephens, Chair, to Ruthanne Miller, Chair, Alcoholic Beverage Control Board*, (Nov. 25, 2013). The Board notes that it specifically addressed these concerns in Paragraphs 24 through 49 of this Order.

**V. THE APPLICATION SATISFIES ALL REMAINING REQUIREMENTS IMPOSED BY TITLE 25.**

56. 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 10th day of December 2014, hereby **APPROVES** the Application to Renew a Retailer's Class CN License at premises 1223 Connecticut Avenue, N.W. filed by Inner Circle 1223, LLC, t/a Dirty Martini Inn Bar/Dirty Bar, subject to the following conditions:

1. The license holder shall not permit or otherwise allow any amplified music or amplified sounds to be heard in a residence or residential unit.
2. The license holder shall keep the door to its outdoor seating area or areas closed at all times except for the normal ingress and egress of patrons and staff.

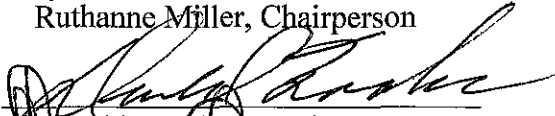
**IT IS FURTHER ORDERED** that the Board's findings of fact and conclusions of law contained in this Order shall be deemed severable. If any part of this determination is deemed invalid, the Board intends that its ruling remain in effect so long as sufficient facts and authority support the decision.

The ABRA shall deliver a copy of this order to the Applicant, ANC 2B, and the Peck Group.

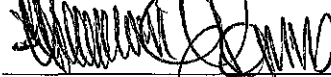
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Alcoholic Beverage Control Board



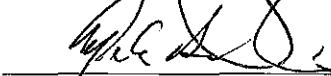
Ruthanne Miller, Chairperson



Donald Brooks, Member



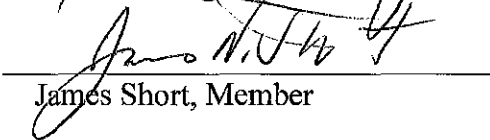
Herman Jones, Member



Mike Silverstein, Member



Hector Rodriguez, Member



James Short, Member

Pursuant to 23 DCMR § 1719.1, 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; (202/879-1010). 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).