

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

In the Matter of:	)	
	)	
Bardo LLC	)	Case No.: 15-PRO-00114
t/a Bardo Big River	)	License No: 100646
	)	Order No: 2016-120
Application for a New	)	
Retailer's Class DT License	)	
	)	
at premises	)	
25 Potomac Avenue, S.E.	)	
Washington, D.C. 20003	)	

**BEFORE:** Donovan Anderson, Chairperson  
Nick Alberti, Member  
Mike Silverstein, Member  
Ruthanne Miller, Member  
James Short, Member

**ALSO PRESENT:** Bardo LLC, t/a Bardo Big River, Applicant  
  
William Stewart, Owner, on behalf of the Applicant  
  
Dr. Coralie Farlee, Advisory Neighborhood Commission (ANC) 6D,  
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**

The Application for a New Retailer's Class DT License filed by Bardo LLC, t/a Bardo Big River, ("Applicant" or "Bardo") represents the second time that an applicant has attempted to open a large, open air tavern next to Nationals Park at 25 Potomac Avenue, S.E. *In re Dos Ventures, LLC, t/a Riverfront at the Ball Park*, Case No. 13-PRO-00088, Board Order No. 2013-512, 1 (D.C.A.B.C.B. Nov. 13, 2013).

In the first case, the Alcoholic Beverage Control Board was presented with a proposal to operate a tavern authorized to provide live entertainment on an open field that could hold up to 12,200 people, which was located near high volume roads with a history of accidents. *Id.* at ¶¶ 40, 42, 47. The Board denied the first application because, among other concerns, the prior applicant could not show that it had the ability to control the potential noise generated by its operations or ensure the safety of pedestrians crossing nearby roads. *Id.* at ¶ 42.

While Bardo has presented a modified Application, the Board is not convinced that this new business plan alleviates the problems previously identified at this site. Specifically, the Board is still not convinced that an open air tavern has the capability to prevent unreasonable noise disturbances; that the neighborhood has a sufficient amount of parking; that Bardo can coexist or be included in the neighborhood's official traffic plan; that encouraging stadium attendees to cross Potomac Avenue, S.E., is safe; and that Bardo can exist without delaying or interfering with people and vehicles attempting to leave Nationals Park after games or other events. Consequently, Board finds itself compelled to once again deny an application at this location.

### ***Procedural Background***

The Notice of Public Hearing advertising Bardo's Application was posted on October 16, 2015, and informed the public that objections to the Application could be filed on or before November 30, 2015. *ABRA Protest File No. 15-PRO-00114*, Notice of Public Hearing [*Notice of Public Hearing*]. The Alcoholic Beverage Regulation Administration (ABRA) received a protest letter from Advisory Neighborhood Commission (ANC) 6D. *ABRA Protest File No. 15-PRO-00114*, Roll Call Hearing Results.

The parties came before the Board's Agent for a Roll Call Hearing on December 14, 2015, where the above-mentioned objector was granted standing to protest the Application. On January 20, 2016, the parties came before the Board for a Protest Status Hearing. Finally, the Protest Hearing in this matter occurred on February 10, 2016.

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 (West Supp. 2015). 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 6D. The Board addresses the ANC's concerns in the Board's conclusions of law.

Based on the issues raised by the Protestants, the Board may only grant the Application if the Board finds that the request will not have an adverse impact on peace, order, and quiet and residential parking and vehicular and pedestrian safety in 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. 2016).

## 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. Bardo has submitted an Application for a New Retailer's Class DT License at 25 Potomac Avenue, S.E., Washington, D.C. *Notice of Public Hearing*.
2. ABRA Investigator John Suero investigated the Application and prepared the Protest Report submitted to the Board. *ABRA Protest File No. 15-PRO-00114, Protest Report*, 1 (Feb. 2016) [*Protest Report*]. Four 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 4.
3. According to the public notice, Bardo's proposed hours of operation are as follows: 11:00 a.m. to 2:00 a.m., Sunday through Thursday, and 11:00 a.m. to 3:00 a.m. on Friday and Saturday. *Notice of Public Hearing*. The establishment's proposed hours of alcoholic beverage sales, service, and consumption, are as follows: 11:00 a.m. to 2:00 a.m., Sunday through Thursday, and 11:00 a.m. to 3:00 a.m. on Friday and Saturday. *Id.*
4. According to the Protest Report, "The applicant's property will encompass 100,000 square feet, which will contain four (4) large shipping containers on the property." *Id.* at 4. The proposed establishment will operate entirely outdoors and have a brewpub endorsement. *Id.* Bardo will have a capacity of 750 people. *Id.* Two containers will be used for restrooms, one container will house beer coolers, and another will hold cleaning supplies. *Transcript (Tr.)*, February 10, 2016 at 36.
5. The proposed location sits across from Nationals Park. *Id.* at 51. The property is currently designated as a "planned unit development site" by the District of Columbia Office of Zoning. *Id.* at 41. The site will likely be designated C-3-C in the future. *Id.* The location of the proposed establishment is at the corner of 25 Potomac Avenue, S.E., and South Capitol Street, S.E. *Id.* at 42. No permanent building will cover the licensed premises. *Id.* at 42.
6. Public transportation is available near the proposed location. *Protest Report*, at 6. The A42, A46, A48, P6, and the V1 bus lines operate in the neighborhood. *Id.* Furthermore, the Navy Yard/Ballpark Metro Station is located nearby. *Id.*
7. Investigator Suero discussed the parking situation near the proposed location. *Tr.*, 2/10/16 at 16. The area near Potomac Avenue, S.E., 1st Street, S.E., and Half Street, S.E. has "limited parking" and a limited number of parking meters. *Id.* at 46-47. The other side of South Capitol Street, S.W., has a public parking area. *Id.* A parking garage owned by Colonial operates near Half Street, S.E., and M Street, S.E. *Id.* The Yards, located on 1st Street, S.E.,

also has three public parking lots. *Id.* Investigator Suero has observed that parking is almost impossible to find when the Washington Nationals play home games at Nationals Park. *Id.* at 49.

8. Investigator Suero further discussed the ability of pedestrians to access the proposed location. *Id.* at 51. 25 Potomac Avenue, S.E., borders both the baseball stadium and Bardo's proposed location. *Id.* While the street running between the stadium and Bardo's location has a crosswalk, there is no traffic light. *Id.*

9. The proposed location will share the lot with a 306 unit apartment building. *Id.* at 58, 67-68; *New Ground Floor Plan*, Sheet No. A3. The apartment building is currently undergoing construction on the northeast portion of the property. *Id.* at 60. The building is scheduled to be completed during the summer of 2016. *Id.* at 61. The apartment building and the proposed establishment will solely be separated by an above ground parking lot. *Id.* at 61.

## II. William Stewart

10. William Stewart will own and operate Bardo. *Id.* at 81-82. Bardo's maximum occupancy will be 750 people. *Id.* at 82. Bardo will not have entertainment. *Id.* Bardo will operate a dog park, bicycle parking lot, and food truck area that will be separated from the premises by a six foot fence. *Id.* at 140-41. The premises will occupy a 40,000 square foot area. *Id.* The licensed establishment will have tables and chairs and a dishwashing area. *Id.* at 152-53.

11. Bardo is located approximately 200 feet away from the Dock 57 apartment building. *Id.* at 91. Bardo and the apartment building are located on the same property and have the same landlord. *Id.* Dock 57 has an outdoor parking lot, which has 275 parking spots. *Id.* at 142.

12. William Stewart discussed Bardo's parking plans. *Id.* at 88. Bardo will install a gate on the premises to allow patrons to access the parking lot on the property. *Id.* at 85. The establishment will also provide 300 parking spots for bicycles. *Id.* at 89. Bardo does not have an agreement to use Dock 57's parking lot at this time and fans attending the game would be able to use the lot. *Id.* at 147-48.

13. Mr. Stewart discussed the establishment's security plan. *Id.* at 86. Bardo will agree to hire two police officers with the Metropolitan Police Department (MPD) Reimbursable Detail. *Id.* at 85-86. The establishment's own security guards will be licensed with MPD. *Id.* at 86. Bardo intends to have six staff members present on non-peak days, and a minimum of thirty staff on peak days. *Id.* at 154, 159, 162. Bardo also intends to erect a six foot chain link fence around the property where people will drink. *Id.* Bardo will not permit people to drink the dog park area or food truck area. *Id.* The bar area will also have a tower that will allow Bardo's manager to observe the entire premises. *Id.* at 109-10.

14. During days when the Washington Nationals play at home, Bardo intends to have at least seven security members on staff, with three having special police officer certification. *Id.* at 163, 165. The establishment intends to have security present at least three hours before the game and one hour after the game ends. *Id.*

15. Mr. Stewart discussed the establishment's plan to promote traffic safety. *Id.* at 87. Bardo will post a traffic officer outside to help prevent jay walking and ensure order. *Id.*

16. Mr. Stewart admitted that Bardo will only operate until the District begins various transportation projects in the community. *Id.* at 121-22. However, there is no indication in the record as to when Bardo will actually cease operations.

### **III. MPD District Commander Contee**

17. MPD District Commander Robert Contee supervises the First District. *Id.* at 177. Commander Contee has been employed with MPD since 1989. *Id.* In prior postings, he commanded the Second District, the Sixth District, and the Special Operations Division. *Id.* at 178.

18. Commander Contee indicated that the area is relatively safe during games. *Id.* at 213. When games are not being played at the baseball stadium, the streets are not frequented by pedestrians. *Id.* at 213-14.

19. Commander Contee discussed his concerns regarding potential noise issues related to the Application. *Id.* at 180-81. He has concerns that the food trucks operating generators on the site to support their operations will generate high levels of late night noise. *Id.* at 181. He is also concerned that the large number of people permitted in the venue will generate a lot of crowd noise, because the premises are not enclosed. *Id.* at 182. Furthermore, there is nothing that would dampen or muffle any recorded music played on the premises. *Id.* at 196-97.

20. Commander Contee also expressed his concerns regarding the Applicant's proposed operations on days when the Washington Nationals have home games. *Id.* at 183. Specifically, before and during games, police, transportation officials, and traffic control aids are used to provide security and traffic control for the area outside the stadium. *Id.* Nevertheless, once the game ends, the officers and transportation officials leave and traffic aids are removed. *Id.* Furthermore, once the game ends, Potomac Avenue, S.E., is reopened to traffic. *Id.*

21. Commander Contee also had concerns regarding the availability of the parking lot at the proposed location. *Id.* at 190. Specifically, on game days, because the lot is not owned or controlled by the Applicant, it is likely that the lot will be used by fans attending the baseball game. *Id.* at 190-91.

### **IV. Gregory McCarthy**

22. Gregory McCarthy serves as the Vice-President for Community Engagement with the Washington Nationals Baseball Club. *Id.* at 219-20. The Washington Nationals have used the stadium near the proposed location to play baseball for at least eight years. *Id.* at 220. In total, approximately 1,000 events have been held at the stadium in the last eight years. *Id.*

23. Mr. McCarthy discussed the traffic control plan related to the use of the stadium. *Id.* at 222. During events, the city relies on a Transportation Operations and Parking Plan (TOPP)

negotiated between the local ANC, the District Department of Transportation, the Metropolitan Police Department, and the Capitol Riverfront Business Improvement District. *Id.* The TOPP is adjusted on a yearly basis and does not take into account the Applicant's proposed operations outside the stadium. *Id.* at 222, 236.

24. Mr. McCarthy noted that the TOPP describes the ideal amount of people and resources needed for game days; however, it does not guarantee that the necessary amount of staff and resources will be present. *Id.* at 228. Indeed, on one occasion a vehicle broke down on South Capitol Street, S.E., which forced police officers to be diverted from their station at a nearby intersection. *Id.*

25. Further, on game days, as part of the TOPP, Potomac Avenue, S.E., "is [only] closed to outside traffic," and 1st Street, S.E., M Street, S.E., and the nearby bridge entrance are closed to outside traffic as well. *Id.* On game days, 600 cars using the stadium's "Garage C" and the 150 cars using the "Lot A" parking lot, all enter and exit these areas by means of Potomac Avenue, S.E. *Id.* at 222-23. Therefore, at least 750 vehicles will use Potomac Avenue, S.E., after the 7th inning on game days. *Id.* at 223.

26. Mr. McCarthy also discussed the public transportation available in the neighborhood. *Id.* at 223. Specifically, the last train on the Red Line ends service at 11:20 p.m. between Sunday and Thursday; therefore, all baseball game attendees that rely on Metro must be on the train at that time. *Id.* at 223.

27. Mr. McCarthy discussed the parking available in the neighborhood. *Id.* at 223. Specifically, many parking lots available during game days over the last eight years are undergoing construction and will be converted into residences. *Id.* at 223. As a result, the neighborhood will soon lose approximately 2,000 to 3,000 parking spaces. *Id.*

28. Finally, Mr. McCarthy discussed pedestrian and vehicular safety. *Id.* at 224. Specifically, in the past, the area has had issues with people crossing South Capitol Street, S.E., which led to one traffic fatality. *Id.* In response, barriers were placed on the South Capitol Street, S.E., to prevent dangerous street crossings. *Id.* In 2015, another fatality almost occurred near the corner of South Capitol Street, S.E., and Potomac Avenue, S.E., because vehicles coming from the bridge cannot see the traffic light, the cross walk, and crossing guard due to the curve of the road. *Id.* at 227. The Board also credits testimony that after the 7th inning, large buses transporting game attendees park in the westbound lane of Potomac Avenue, S.E., which would reduce the visibility of Bardo's patrons as they attempt to cross the street and encourage them to cross between buses. *Id.* at 226.

## **V. ANC Commissioner Meredith Fascett**

29. ANC Commissioner Meredith Fascett represents Single Member District (SMD) 6D-07. *Id.* at 237. Bardo is located in her SMD. *Id.* at 238.

30. Commissioner Fascett expressed her concerns regarding Bardo's security and logistics plan. *Id.* at 240. Specifically, she does not believe the plan adequately explains how patrons will

enter the premises or where taxis would drop off patrons. *Id.* She also noted that biking is prohibited between the 11th Street Bridge and the Frederick Douglas Bridge that connects to South Capitol Street, S.E.; therefore, it is unclear how most bikers would access the site. *Id.* She also noted that the plan does not expressly state that “busy” days are all “game days.” *Id.* at 241. She also was concerned that patrons that are denied entrance due to the premises reaching capacity would have to cross Potomac Avenue, S.E., again. *Id.* at 242.

31. Commissioner Fascett also raised concerns about the proposed dog park. *Id.* at 241. Specifically, she had concerns that Bardo did not have a plan to deal with dog excrement. *Id.* Moreover, she was concerned that dog waste would enter the river. *Id.*

32. The proposed location will eventually contain two new residential buildings. *Id.* at 261. The first building will be Dock 79. *Id.* In addition, a second building will be constructed almost 100 feet away from Bardo, which may or may not eventually replace Bardo. *Id.* at 260-62.

## **VI. Katherine Brown**

33. Katherine Brown serves on the ANC’s Alcoholic Beverage Control Committee. *Id.* at 270. Ms. Brown compared Bardo’s proposal to other establishments in the neighborhood. *Id.* She noted that Justin’s Café regularly closes at 10:00 p.m. on Sunday. *Id.* She further noted that Blue Jacket has an outdoor café, but has an awning that helps with noise mitigation. *Id.*

## **CONCLUSIONS OF LAW**

34. The Board may approve an Application for a New Retailer's Class DT 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. 2016). Specifically, the question in this matter is whether the Application will have a negative impact on the peace, order, and quiet and residential parking and vehicular and pedestrian safety in 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. 2016). 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. BARDO FAILED TO ADEQUATELY ADDRESS SIGNIFICANT CONCERNS REGARDING NOISE, PARKING, AND VEHICULAR AND PEDESTRIAN SAFETY, WHICH RENDER THE APPLICATION INAPPROPRIATE.**

35. The Board denies the Application because Bardo has not demonstrated that it has sufficient ability to prevent unreasonable noise disturbances; has not demonstrated that the neighborhood has sufficient parking to accommodate Bardo’s operations during game days; that it is safe for pedestrians to cross Potomac Avenue, S.E.; or that Bardo can operate without interfering or delaying people and vehicles attempting to leave Nationals Park.

36. 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. 2016). 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).

37. 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).

38. During the hearing, the operations of the Fairgrounds, LLC, t/a The Bullpen, (Bullpen) holder of ABRA License 086735, located at 25 M Street, S.E., was cited as an establishment similar to Bardo; namely, as an establishment that operated completely outside without a building that the Board could look to as a model. *Id.* at 20, 53, 118. Nevertheless, the Board has never ruled on the appropriateness of the Bullpen, because no protest related to the Bullpen has ever been adjudicated by the Board, which means that the Bullpen’s appropriateness is deemed presumed as a matter of law. D.C. Official Code § 25-311(a) (discussing the presumption of appropriateness when no objections to the license are received). Unlike the Bullpen, a protest has been filed against, which means that the Board must determine whether the Application is appropriate. In that vein, the Board finds the *Riverfront* case more persuasive, because that case involved a similar proposal at the same address. *In re Dos Ventures, LLC, t/a Riverfront at the Ball Park*, Case No. 13-PRO-00088, Board Order No. 2013-512, 2, ¶¶ 1, 13, 43 (D.C.A.B.C.B. Nov. 13, 2013) *aff'd* Board Order No. 2014-043 (D.C.A.B.C.B. Feb. 12, 2014).

**a. Bardo cannot demonstrate that it has the ability to prevent unreasonable noise disturbances.**

39. As in *Riverfront*, the Board deems Bardo inappropriate on the grounds that the premises lack sufficient soundproofing and noise mitigation features to ensure that nearby residents are not unduly disturbed by noise.

40. “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); 23 DCMR § 400.1(a) (West Supp. 2016). Furthermore, the Board “may consider an applicant’s efforts to address or alleviate operational concerns” including the establishment’s soundproofing features and noise mitigation practices related to both amplified music and the human voice.” *In re Inner Circle 1223, LLC t/a Dirty Maritni Inn Bar/Dirty Bar*, Case No. 13-PRO-00172, Board Order No. 2014-507, ¶ 34 (D.C.A.B.C.B. Dec. 10, 2014).

41. In *Riverfront*—a case involving the same property and a similar business plan—the Board doubted that the applicant could properly control noise “when the property is an undeveloped lot that lacks any noise mitigation or soundproofing features.” *In re Dos Ventures, LLC, t/a Riverfront at the Ball Park*, Board Order No. 2013-512 at 2, ¶¶ 1, 13, 43.

42. The Board recognizes that Bardo has not applied for an entertainment endorsement; nevertheless, it will still have the right to play recorded music, it will have an occupancy of 750 people, and it will have the right to operate until 2:00 a.m. during the week and 3:00 a.m. during the weekend. D.C. Official Code §25-101(21A); *supra*, at ¶¶ 3, 10. Dock 57, a large apartment building, will open in the summer and will be located within 200 feet of Bardo. *Supra*, at ¶ 11. Under these circumstances, Bardo has no means to mitigate noise and cannot satisfactorily demonstrate that it can prevent its amplified music or crowd noise from bothering nearby residents or emanating throughout the neighborhood and beyond.

43. During its case-in-chief, Bardo argued that the distance between the establishment and residences was sufficient to mitigate noise concerns, a noise agreement involving the residents and the residents of the landlord adequately addressed noise concerns, and the nearby apartment building had sufficient soundproofing. *Tr.*, 2/10/16 at 93, 204, 295, 300. The Board does not credit these arguments, because (1) the Applicant did not present anyone with sufficient knowledge or expertise to effectively argue that nearby residences will have sufficient soundproofing or that the distance is sufficient to mitigate any noise created on the property; and (2) a private agreement between the landlord and residents does not ensure compliance with the District’s noise laws, which include the disorderly conduct law and the decibel requirements. Therefore, as in *Riverfront*, Bardo has not demonstrated that it can adequately control the potential noise generated by the establishment. *In re Dos Ventures, LLC, t/a Riverfront at the Ball Park*, Board Order No. 2013-512 at ¶ 43.

**b. Bardo cannot demonstrate that it can avoid a negative impact on residential parking and vehicular and pedestrian safety.**

44. The Board further deems Bardo inappropriate on the grounds that it will negatively impact residential parking and poses a likely danger to vehicles and pedestrians in the area.

45. “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 prior cases, the Board has also considered the availability of public transportation, which may alleviate the demand for parking. *In re Cham Restaurant Group, t/a New Town Kitchen and Lounge*, Case No. 14-PRO-00055, Board Order No. 2014-526, ¶ 40 (D.C.A.B.C.B. Jan. 7, 2015).

**i. If Bardo is approved, the neighborhood will likely have insufficient parking when the Nationals play at home.**

46. Bardo has not demonstrated that it can exist without detrimentally impacting residential parking. A large establishment like Bardo, with an occupancy of 750 people, requires a large amount of public transportation or parking facilities. *Supra*, at ¶ 10. Yet, as noted by Investigator Suero, parking is nearly impossible to find when the Washington Nationals have home games. *Supra*, at ¶ 7. While Bardo indicated that its patrons could use the Dock 57 parking facilities, which are located on the same property, Bardo does not have exclusive use of the parking facility. *Supra*, at ¶¶ 9, 12. Indeed, fans attending the games at the stadium would be able to use the lot as well. *Supra*, at ¶ 12. It should be further noted that the demand for Dock 57’s parking facilities can only increase over time, because the neighborhood is due to lose 2,000 to 3,000 parking spaces as current parking lots are replaced with residential buildings. *Supra*, at ¶ 27. On a final note, it is questionable whether there will be sufficient public transportation available during home games that occur between Sunday and Thursday, because Metro service potentially ends at 11:20 p.m., which makes Bardo’s late night operations inappropriate. *Supra*, at ¶ 26. Under these circumstances, the addition of Bardo, as conceived by the Applicant, threatens to increase the demand for parking beyond a level that the neighborhood can adequately handle given its location near the baseball stadium.

**ii. Bardo cannot guarantee the safety of vehicles and pedestrians during game days based on its location on Potomac Avenue, S.E.**

47. The Board is additionally concerned that Bardo will negatively impact vehicular and pedestrian safety. Previously, in *Riverfront*, the Board deemed the location unsafe for pedestrians because a large occupancy venue across the street from the baseball stadium encouraged jaywalking near major roads. *In re Dos Ventures, LLC, t/a Riverfront at the Ball Park*, Board Order No. 2013-512 at ¶ 47. In addition, the Board also deemed the establishment

unsafe in light of an accident involving a police officer near the site and the need for the area around the stadium to operate under a traffic safety plan. *Id.* The current Application does not address these concerns.

48. First, the TOPP or traffic safety plan used to manage traffic during baseball games does not include or consider the presence of Bardo. *Supra*, at ¶ 23. As Mr. McCarthy indicated, even with the TOPP in place, various resources may not always be available to fulfill the plan. *Supra*, at ¶ 24. It should also be noted that the TOPP is the creation of a number of district agencies and does not include ABRA as a party. *Supra*, at ¶ 23. Consequently, the Board finds it inappropriate to license Bardo when the existing TOPP does not account for Bardo's existence and the Board cannot legally compel other agencies to modify the plan. *See* D.C. Official Code § 25-201.

49. Second, after the Nationals game is finished, it is critical for the city and the neighborhood, that the large crowd attracted to the game disperses in an orderly and efficient fashion; otherwise, MPD and other government agencies would likely be forced to maintain extra resources in the area beyond the expected time. *Supra*, at ¶¶ 14, 20. Further, vehicles using the stadium's garages exit onto Potomac Avenue, S.E. and buses load passengers and drive away on Potomac Avenue, S.E. *Supra*, at ¶¶ 25, 28. If Bardo is permitted to operate, baseball attendees would regularly cross Potomac Avenue, S.E., which would delay or interfere with the orderly exit of vehicles and buses from the stadium. The Board finds this scenario likely because Potomac Avenue, S.E., lacks appropriate traffic control aids to manage the use of the road by a high volume of pedestrians while vehicles attempt to leave the area. *Supra*, at ¶¶ 20, 25.

50. Third, the Board has concerns that adding Bardo across from the stadium will negatively impact traffic safety. The record shows that the corner of South Capitol Street, S.E., and Potomac Avenue, S.E., is located on a major road that has limited visibility. *Supra*, at ¶ 28. Already, there has been one fatality and an officer engaged in traffic control was injured. *Id.* Moreover, having patrons walk between buses and crossing Potomac Avenue, S.E., while attendees attempt to Board buses and vehicles exit the stadium appears unsafe and contradictory to the goal of an orderly exit of crowds after events at Nationals Park. *Supra*, at ¶¶ 28, 49. Under these circumstances, the Board is afraid that licensing Bardo will likely increase fatalities and injuries on South Capitol Street, S.E., and Potomac Avenue, S.E.

51. The Board recognizes that Bardo proposed providing a staff member outside the establishment to promote traffic safety. *Supra*, at ¶ 15. In *Club Illusions*, the Board previously found that the mere posting of crossing guards on a dangerous road was not sufficient to ensure pedestrian and vehicular safety. *In re 2101 Venture, LLC, t/a Club Illusions*, Case No. 12-PRO-00054, Board Order No. 2013-004, ¶ 46 (D.C.A.B.C.B. Jan. 16, 2013). Likewise, in this case, based on evidence that a police officer was hurt while engaging in traffic control near the establishment, Bardo has not shown that it has the ability to provide a sufficient level of safety for pedestrians crossing near the establishment. *Supra*, at ¶ 28.

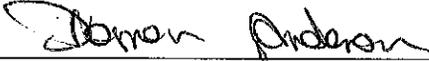
## **ORDER**

Therefore, the Board, on this 16th day of March 2016, hereby **DENIES** the Application for a New Retailer's Class DT License at premises 25 Potomac Avenue, S.E. filed by Bardo LLC, t/a Bardo.

**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 and ANC 6D.

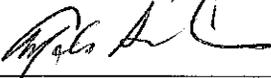
District of Columbia  
Alcoholic Beverage Control Board

  
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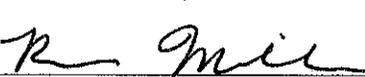
Donoyan Anderson, Chairperson

  
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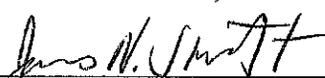
Nick Alberti, Member

  
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Mike Silverstein, Member

  
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Ruthanne Miller, Member

  
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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; (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).