

**OFFICE OF THE DIRECTOR OF EXCISE AND LICENSES
CITY AND COUNTY OF DENVER, COLORADO**

RECOMMENDED DECISION

**IN THE MATTER OF THE APPLICATION OF 1439 RESTAURANT, LLC, DOING
BUSINESS AS KAOS PIZZERIA, FOR AN ACOUSTIC CABARET LICENSE FOR THE
PREMISES KNOWN AND DESIGNATED AS 1439 SOUTH PEARL STREET, DENVER,
COLORADO**

This matter came to hearing on Friday, September 6, 2013, pursuant to an application and prior notice filed by 1439 Restaurant, LLC (“Applicant”), doing business as Kaos Pizzeria, for an acoustic cabaret license for the premises known and designated as 1439 South Pearl Street, Denver, Colorado.

The Applicant was represented by attorney Sandra Simms. The Licensing Authority was represented by Assistant City Attorney Dan Douglas. Six parties in interest appeared in support of the application. Three parties in interest appeared in opposition to the application. Greg Jacobson served as representative for the opposition. All witnesses were sworn-in to testify.

After reviewing the testimony and exhibits received into evidence as summarized below, and applying the law, the Hearing Officer finds and concludes as follows:

1. The Applicant is a limited liability company authorized to do business in the State of Colorado.
2. The proposed premises are suitable and adaptable for the intended purpose. The Applicant’s Zoning Use Permit states that the proposed acoustic cabaret license is “indoors only.” The Applicant has the right to possession of the premises.
3. The following exhibits were offered and admitted into evidence at the hearing:

City’s Exhibit C-1, the notice of publication, indicating that notice of the hearing was duly published in The Daily Journal; City’s Exhibit C-2, a map of the designated neighborhood area; City’s Exhibit C-3, a listing of a total three (3) cabaret licenses issued to liquor licensed establishments in the designated area; City’s Exhibit C-4, the compliance check, demonstrating that the premises were properly posted; and City’s Exhibit C-5, the floor plan of the premises indicating the area to be licensed.

Applicant’s Exhibit A-1, the hearing posting affidavit; Applicant’s Exhibit A-2, petitions with a total of one hundred and three (103) signatures of residents and business owners/managers in the designated area in support of the liquor license application; Applicant’s Exhibit A-3, a Good Neighbor Agreement between the Applicant and Platt

Park People's Association; and Applicant's Exhibit A-4, a letter in support of the application from Platt Park People's Association.

Protestor's Exhibit P-1, a photograph of the Applicant's premises; Protestor's Exhibit P-2, a second photograph of the Applicant's premises; Protestor's Exhibit P-3, a copy of Applicant's cabaret license application; Protestor's Exhibit P-4, a copy of Applicant's proposed licensed premises diagram; Protestor's Exhibit P-5, a copy of a neighborhood zoning overlay from the City of Denver's website; Protestor's Exhibit P-6, a copy of a Facebook online posting regarding crowds and music at Kaos Pizzeria; Protestor's Exhibit P-7, a copy of a previous building inspection card for 1441 South Pearl Street; Protestor's Exhibit P-8, a listing of dates live music was played at Applicant's premises; and Protestor's Exhibit P-9, a copy of a previous construction permit for 1439 South Pearl Street.

4. Pursuant to the Denver Revised Municipal Code, Councilman Chris Nevitt was given notice of the hearing, and the following registered neighborhood organizations were given notice of the hearing: Inter-Neighborhood Cooperation, Denver Neighborhood Association, Inc., Old South Pearl Merchants Association, and Platt Park People's Association. Denver Police Department's Division Chief of Patrol, David Quinones, was also notified of the hearing.
5. Mr. Patrick Mangold-White testified in support of the application. He is a managing member of the Applicant. He testified that the purpose of this acoustic cabaret license application is to allow the establishment to offer live music to its customers. The establishment currently holds a hotel and restaurant liquor license. He stated that the Applicant is a family-oriented, neighborhood restaurant. He believes that live music will contribute to the neighborhood's vibrancy. He acknowledged that some residents who live close to the Applicant have expressed concerns with its live music in the past. He stated, however, that he believes the majority of neighborhood residents support the application to allow acoustic music. He testified regarding a Good Neighbor Agreement (GNA) between the Applicant and Platt Park People's Association (3PA), a registered neighborhood organization. *See* Applicant's Exhibit A-3. He discussed key terms of the agreement, such as hours of operation of the cabaret license, and stated that the Applicant will abide by the GNA. He further stated that the Applicant requests that the Department include four (4) conditions on the license as specified in the GNA, if the license is issued.

Upon questioning by the Assistant City Attorney, he testified that the Applicant has not been issued a noise citation, although it did receive an official warning from the City regarding noise earlier in 2013. He also stated that the Applicant has not received any liquor license violations in its four (4) years of operation. Additionally, he discussed the physical layout of the proposed cabaret licensed premises, as depicted in City's Exhibit C-5.

Upon questioning by Mr. Greg Jacobson, representative for the opposition to the application, Mr. Mangold-White discussed the layout of the proposed cabaret premises. He stated that Protestor's Exhibit P-1 is an accurate photo of the "band area" where live music will be played. He explained that during the summer months, the canvas is rolled up and the garage door is opened, effectively creating an open-air setting. He discussed the placement of bands

and the direction that the sound will travel. He further explained the overall outdoor seating and layout of the Applicant. He testified that Protestor's Exhibit P-6 is an accurate copy of a Facebook online posting from the Applicant regarding live music and outdoor crowds.

Finally, upon questioning by the Hearing Officer, Mr. Mangold-White testified that he understood that acoustic cabaret licenses allow unamplified live music only, including instruments and vocals.

6. Mr. Brian Ferrer testified in support of the application. He is the landlord of the Applicant's premises. He also owns several residential rental units located in the designated area, and personally lives in the designated area. He testified that he is quite familiar with the area, and believes that the Applicant is a good fit for the neighborhood and an acoustic cabaret license would be a positive addition. He personally attested to the honesty and integrity of the Applicant's owners. He testified that the area depicted in Protestor's Exhibit P-1 has been an open/outdoor area since he has owned the property. He testified that he has no business or financial connection to the Applicant, other than as its landlord. He further testified that he is at least twenty-one years of age and occasionally consumes an alcoholic beverage. He stated that there is a need for the applied-for license, and he personally desires that the license application be approved. He believes that issuance of the license would have a positive effect on the health, safety, welfare, and morals of the neighborhood.
7. The Hearing Officer notes that Mr. Mitchell Stevens began testifying in support of the application. Upon questioning by representatives in opposition, it was determined that Mr. Stevens did not reside within the designated area. Therefore, his testimony was not credited.
8. Mr. Rick Huner testified in support of the application. He is a resident of the designated area, and has lived there for forty-nine (49) years. He testified that he grew up in the neighborhood, attended its local schools, and is very familiar with the character of the area. He noted that he and his wife frequently patronize the Applicant's restaurant. He believes it is a good meeting place for neighbors, and that a cabaret license would promote the Applicant's community feeling. He stated that he was not concerned with additional noise that could result with a cabaret license. He testified that there is a need for the applied-for license, and he personally desires that the license application be approved. He believes that issuance of the license would have a neutral effect on the health, safety, welfare, and morals of the neighborhood.
9. Mr. Dagan Thomas testified regarding the petitions circulated in support of the application. *See Applicant's Exhibit A-2.* He is an employee of the Applicant. He testified that he personally circulated the petitions, mostly to patrons of the restaurant. He explained the nature of the petition to each person who signed it, verified the person's eligibility to sign, included the map of the designated area with the petition, and witnessed each signature. The petitions in support of the application (Applicant's Exhibit A-2) were offered and admitted into evidence.
10. Mr. Andre van Hall testified in support of the application. He appeared on behalf of the Platt Park People's Association, and is also a resident of the designated area. He explained the

particulars of the 3PA neighborhood association and its boundaries. He stated that 3PA met with the Applicant regarding its plans for the proposed cabaret license, and that 3PA supports the application. 3PA submitted a letter in support of the application. *See Applicant's Exhibit A-4.* He understands the concerns expressed by some neighbors regarding noise, but believes that the Applicant's proposed addition of music is a net benefit for the neighborhood. He discussed the GNA between 3PA and the Applicant and described its key terms. *See Applicant's Exhibit A-3.* He noted that the two parties request that the Department include four (4) specific conditions on the license as described in the GNA, if the license is issued.

Upon questioning by the Assistant City Attorney and the Hearing Officer, both Mr. van Hall and the Applicant stated that they did not object to the Department modifying requested condition 5.d., as the text of the condition would not physically fit on the face of a license. In accordance with Department policies and procedures, conditions imposed on licenses must be: (a) legal, (b) enforceable, and (c) displayable on the face of the license.

11. Mr. Greg Jacobson testified in opposition to the application. He is a resident of the designated area, and has lived there for the past ten (10) months. He explained that he lives across the alley from the Applicant. He testified that he is concerned that the Applicant's proposed cabaret license would not actually be indoors. He discussed Protestor's Exhibits P-1 and P-2, photographs depicting the proposed band area. He believes that the music will emanate towards his house and other nearby residences, creating a negative impact. He testified that loud music and large crowds at Kaos Pizzeria have caused disturbances in the neighborhood, and pointed to Protestor's Exhibit P-6, a copy of a Facebook online posting referencing large crowds and drink specials. He believes that based on past noise issues, he is not confident that the Applicant would lawfully operate if the cabaret license is granted. He testified that he is over the age of twenty-one, and that there is not a need for the applied-for license, and he personally desires that the license application not be approved.
12. Mr. Matt Baumgartner testified in opposition to the application. He is a resident of the designated area, and has lived there for the past twenty (20) years. He testified that he has concerns regarding the credibility of the Applicant. He stated that there are discrepancies in the property's allowable seating and occupancy, as reflected in City's Exhibit C-5 and Protestor's Exhibit P-9. He explained that he is primarily concerned with excessive noise from the proposed cabaret license, based on the Applicant's past live music offerings. He does not believe that the proposed band area is in fact indoors. He further agrees with Mr. Jacobson's testimony. He believes that the Applicant is not well-suited for large crowds, especially in the outdoor patio areas. He testified that he is over the age of twenty-one, and that there is not a need for the applied-for license, and he personally desires that the license application not be approved.

ACCORDINGLY, having considered the evidence in its entirety, it is concluded by the weight thereof that the Applicant, 1439 Restaurant, LLC, doing business as Kaos Pizzeria, for an acoustic cabaret license for the premises known and designated as 1439 South Pearl Street, Denver, Colorado, has sustained its burden to show that there is a need for the applied-for license to meet the reasonable requirements of the neighborhood; that the residents and business

owners/managers within the designated area desire that the license issue; and that issuance of the license would not be injurious to the health, safety, welfare, or morals of the neighborhood. The Hearing Officer finds that the conditions imposed on the license, listed below, fairly address many of the concerns regarding noise. **It is recommended that the license application be approved. It is recommended that the following conditions, agreed to by Kaos Pizzeria and Platt Park People's Association, be attached to the license:**

- 1. Hours of live music shall be limited to 8:45 PM Sunday through Thursday and 9:45 PM Friday and Saturday and no more than three (3) days in a single week. Live music shall only be played seasonally. Live music shall be limited to the period of March 15th through October 15th.**
- 2. There shall be no amplified music or vocals at any time in accordance with the nature of the cabaret license for unamplified live entertainment, which prohibits amplified music or vocals.**
- 3. Licensee shall provide adequate sound mitigation measures in order to reduce the noise emitted from the premises, including trellises and vegetation. All bands and performers playing live music shall setup and play within the enclosed structure shown on its cabaret license premises diagram.**
- 4. Licensee shall notify 3PA no less than 30 calendar days prior to any proposed transfer of the license or licensee's interest in the premises or any transfer of control of the licensee. Licensee shall include all terms of the September 2013 GNA with 3PA in any transfer of the cabaret license or the premises. Licensee agrees to meet with representatives of 3PA at least one month in advance of the anticipated renewal of the license to review compliance with the September 2013 GNA.**

RECOMMENDED this 12th day of September, 2013.

/s/ John Jennings

John Jennings
Hearing Officer

Any party in interest may file objections to the foregoing Recommended Decision within ten (10) calendar days from the date above.

All filings shall be made by email to the Director, tom.downey@denvergov.org, copying daniel.douglas@denvergov.org, ruthie.sullivan@denvergov.org, and any opposing parties.

The Director of the Department of Excise and Licenses will issue a **FINAL DECISION** in this matter following review and consideration of the Recommended Decision, and if applicable, any objections.

CERTIFICATE OF SERVICE

The undersigned hereby states and certifies that one true copy of the foregoing Recommended Decision was sent via email, on the date above, to the following:

Tom Downey, Director, Dept. of Excise and Licenses
tom.downey@denvergov.org

Dan Douglas, Assistant City Attorney
daniel.douglas@denvergov.org

Ruthie Sullivan, Dept. of Excise and Licenses
ruthie.sullivan@denvergov.org

Sandra Simms
Attorney for Applicant
destin@rs-legal.com

Greg Jacobson
gajake99@yahoo.com

Matt Baumgartner
m.baumgartner@comcast.net

Karen Jacobson
karenj@skybeam.com

Andre van Hall
Platt Park People's Assoc.
andre@vanhall.biz

/s/ John Jennings_____

John Jennings
Hearing Officer