

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

In the Matter of:)	
)	
Big Bear Café LLC)	Case No.: 17-PRO-00036
t/a Big Bear Café)	License No: 084379
)	Order No: 2018-034
Application for a Substantial Change to a)	
Retailer's Class CR License)	
)	
at premises)	
1700 First Street, N.W.)	
Washington, D.C. 20001)	

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

ALSO PRESENT: Big Bear Café LLC, t/a Big Bear, Applicant

Matthew Devendorf and Risa Hirao, Counsels, on behalf of the Applicant

Bradley Thomas, Chair, Advisory Neighborhood Commission 5E,
Protestants

Karla Lewis, Group of Five or More Residents and Property Owners,
Protestants

Martha Jenkins, General Counsel
Alcoholic Beverage Regulation Administration

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

INTRODUCTION

The Alcoholic Beverage Control Board (Board) approves the Application for a Substantial Change to a Retailer's Class CR License filed by Big Bear Café LLC, t/a Big Bear, (hereinafter "Applicant" or "Big Bear"). Nevertheless, the Board is persuaded by the Protestants that an open rooftop seating area in a highly residential neighborhood may become a source for

noise disturbances in the neighborhood. Therefore, in order to mitigate this potential disturbance, the Application is approved subject to the following conditions: (1) the rooftop seating area shall cease operation at 10:00 p.m.; (2) the rooftop seating area shall have a maximum occupancy of 45 people; (3) no amplified sounds shall be generated on the rooftop; and (4) Big Bear shall install the soundproofing described by the owner in the rooftop seating area and second floor. The Board's reasoning and Order are described below.

Procedural Background

The Notice of Public Hearing advertising Big Bear's Application was posted on May 19, 2017, and informed the public that objections to the Application could be filed on or before July 3, 2017. *ABRA Protest File No. 17-PRO-00036*, Notice of Public Hearing [*Notice of Public Hearing*]. The records of the Alcoholic Beverage Regulation Administration (ABRA) indicate that Advisory Neighborhood Commission (ANC) 5E and a Group of Five or More Residents and Property Owners have filed a protest against the Application. *ABRA Protest File No. 17-PRO-00036*, Roll Call Hearing Results.

The parties came before the Board's Agent for a Roll Call Hearing on July 17, 2017, where all of the above-mentioned objectors were granted standing to protest the Application. On September 27, 2017, the parties came before the Board for a Protest Status Hearing. Finally, the Protest Hearing in this matter occurred on December 6, 2017.

The Board recognizes that an ANC's properly adopted written recommendations are entitled to great weight from the Board. D.C. Code §§ 1-309.10(d), 25-609; *Foggy Bottom Ass'n v. District of Columbia Alcoholic Beverage Control Bd.*, 445 A.2d 643, 646 (D.C. 1982). 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 5E. The ANC's issues and concerns shall be addressed by the Board in its Conclusions of Law, below.

Based on the issues raised by the Protestants, the Board may only grant the Application if the Board finds that the request will not have an adverse impact on the peace, order, and quiet; residential parking and vehicular and pedestrian safety; and real property values of the area located within 1,200 feet of the establishment. D.C. Code § 25-313(b); 23 DCMR §§ 1607.2; 1607.7(b) (West Supp. 2018).

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. Big Bear has submitted an Application for a Substantial Change to a Retailer's Class CR License at 1700 First Street, N.W., Washington, D.C. *Notice of Public Hearing*. Big Bear

proposes to add a rooftop summer garden with 68 seats. *Id.* The Applicant further proposes to expand the number of seats on the second floor to 65 and change the total occupancy of the second floor to 85. *Id.* The new total occupancy of the business will be 202 people. *Id.*

2. ABRA Investigator Vernon Leftwich investigated the Application and prepared the Protest Report submitted to the Board. *ABRA Protest File No. 17-PRO-00036, Protest Report* (Nov. 2017) [*Protest Report*].

3. The proposed establishment is located in a MU-4 (Mixed Use) zone. *Protest Report*, at 4; *Applicant's Exhibit No. 3*. Nineteen licensed establishments are located within 1,200 feet of the proposed location. *Id.* There are no schools, recreation centers, public libraries, or day care centers located within 400 feet of the establishment. *Protest Report*, at 5.

4. According to the public notice, Big Bear's hours of operation are as follows: 6:00 a.m. to midnight, Sunday through Thursday, and 6:00 a.m. to 12:30 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: 10:00 a.m. to midnight on Sunday; 8:00 a.m. to midnight, Monday through Thursday, and 8:00 a.m. to 12:30 a.m. on Friday and Saturday. *Id.* Big Bear proposes to have the same operational hours and hours of sale, service, and consumption for the proposed summer garden. *Id.*

5. Big Bear is located on the corner of 1st Street, N.W., and R Street, N.W. *Transcript (Tr.)*, December 6, 2017 at 60. The entrance is located on R Street, N.W. *Id.* A park is located across the street from Big Bear's premises. *Id.* Residents surround the establishment on both sides of the street. *Id.* at 61.

6. Investigator Leftwich monitored Big Bear on several occasions while it was in operation. *Id.* at 63. Specifically, he visited the establishment on Friday, September 29, 2017; Wednesday, October 11, 2017; Thursday, November 2, 2017; Tuesday, November 14, 2017; and Friday, November 24, 2017. *Id.* at 64. He observed that on occasion patrons left dogs outside the establishment on the sidewalk while on their leashes, but did not observe the dogs cause any issues while their owners patronized the establishment. *Id.* at 63, 76, 83. He also observed that the establishment never allowed a disc jockey to perform and that during his visits the establishment only had 30 people patronizing the premises. *Id.* at 63, 85. He also observed that Big Bear had a permit to install a trash compactor. *Id.* at 69. He did not observe any issues related to peace, order, and quiet during his visits. *Id.* at 78-79.

7. Based on a search of the records of the Metropolitan Police Department, Investigator Leftwich found thirteen calls for service related to Big Bear's location. *Id.* None of the calls led to an ABRA violation. *Id.* He also did not feel unsafe while visiting the area. *Id.* at 76-77.

8. During his visit, Investigator Leftwich observed open parking spaces during his visits. *Id.* at 77-78. He did not observe any parking garages or public parking lots in the neighborhood during his visits. *Id.* at 79.

II. Eliza Young

9. Eliza Young serves as Big Bear's Events and Programming Manager. *Id.* at 89. Ms. Young has lived in the Bloomingdale neighborhood, where Big Bear is located, for approximately seven years. *Id.* at 91, 93. She has observed that Bloomingdale has many families with children living in the neighborhood. *Id.* at 92.

10. Big Bear has a kitchen on the first floor. *Id.* at 122. An extended kitchen is located in the basement. *Id.* Ms. Young indicated that after the expansion, the establishment will be able to accommodate more patrons inside the premises and allow the establishment to serve more customers when the weather is bad. *Id.* at 125.

11. Big Bear's business model focuses on serving the local community. *Id.* at 97. Big Bear frequently hosts daytime brunches and hosts private events in the evening. *Id.* at 98. The establishment closes its outdoor patio at 10:30 p.m. and requires all events occurring inside the premise to end at 11:30 p.m. *Id.* at 101. Big Bear tends to be busy in the mornings and between 7:30 p.m. and 10:30 p.m. *Id.* at 127.

12. Big Bear does not permit patrons holding events at the establishment to bring speakers or sound systems. *Id.* The establishment also uses a decibel meter to measure the sound when recorded music is being played to ensure that amplified sounds do not create disturbing noise. *Id.* at 101-02. Big Bear also has employees go outside to ensure sound is not disturbing the surrounding neighborhood. *Id.* at 102.

13. Many patrons walk or take rideshare vehicles to the establishment. *Id.* at 98. Ms. Young has never had issues trying to find parking near the establishment. *Id.* at 102-03.¹

14. Ms. Young recalls that on one occasion, in September 2017, patrons hosting an event at Big Bear got a permit to use the street outside the premises. *Id.* at 106, 109-10. Under the auspices of their permit, the patrons had a private outdoor event related to their wedding that was not facilitated by Big Bear. *Id.* at 109. As part of the private event, event organizers had drummers and petty cabs come down the street and police provided by the District were present. *Id.* at 109-110. After the outdoor event, the patrons finished their event at Big Bear. *Id.*

III. Stuart Davenport

15. Stuart Davenport owns Big Bear. *Id.* at 132. Mr. Davenport lives approximately five doors away from the premises on 1st Street, N.W. *Id.* Mr. Davenport is aware that property values in the neighborhood have increased dramatically since he began living in the neighborhood. *Id.* at 142.

¹ During the hearing, the Applicant introduced a survey titled "Big Bear Petition Parking Survey" surveying customers on how they reached the establishment. *Tr.*, December 6, 2017 at 22. The Board could not sufficiently judge the response rate versus Big Bear's total customer base in the survey; as a result, the Board did not rely on the survey to make any findings of fact. Nevertheless, the Board did find witness statements regarding their observations on how customers arrived at Big Bear credible, and relied on them where appropriate.

16. The proposed second floor will be accessible from the first floor and have a bathroom. *Applicant's Exhibit No. 7*. The proposed rooftop will be accessible from the second floor. *Id.* The rooftop will have a bar area and a bathroom. *Id.* People will be able to sit and stand in both new spaces. *Tr.*, 12/6/17 at 159.

17. A zoning map of the neighborhood shows that residences are located behind Big Bear. *Applicant's Exhibit No. 2*. The residences behind Big Bear are zoned RF-1 (Residential). *Id.*

18. Big Bear primarily focuses on food service. *Tr.*, 12/6/17 at 144-45. The establishment also hosts events like bike sales. *Id.* at 151. The purpose of the proposed expansion is to accommodate events, like weddings, birthdays, and rehearsal dinners, when the weather is bad. *Id.* at 162. During events in which the establishment hosts events, Big Bear provides family style food with large platters or buffets. *Id.* at 183-84d.

19. In order to control sound, the establishment prohibits live performers from using amplification equipment. *Id.* at 154. The establishment also maintains control over the opening of windows. *Id.*

20. Big Bear has undertaken several steps to address trash generated by the establishment. *Id.* at 176. The restaurant's trash service comes five times per week. *Id.* Big Bear also received a grant to install a trash compactor, which will help control odors and vermin. *Id.* at 176-77. The trash compactor will be delivered to the establishment a few weeks after the present hearing. *Id.* at 197.

21. Big Bear will also undertake measures to control noise. *Id.* at 177. The new rooftop will have walls with soundproofing material on the sides facing residential areas. *Id.* at 177-78. The second floor will have a hallway to create barriers that muffle sound. *Id.* at 178.

22. Big Bear's alcohol sales represent less than 10 percent of Big Bear's total food and alcohol sales. *Id.* at 195.

23. Mr. Davenport indicated that Big Bear ceased allowing dogs on the patio in order to comply with the District's health rules regarding animals in licensed establishments. *Id.* at 196. Nevertheless, he plans to allow dogs in Big Bear's patio in compliance with new rules allowing the practice. *Id.* at 196-97, 350.

IV. Jessica Russell

24. Jessica Russell serves as Big Bear's Front House Manager and Coffee Director. *Id.* at 201.

25. Ms. Russel described Big Bear. *Id.* at 205. The first floor of Big Bear features an entrance for the public on 1st Street, N.W., another one on R Street, N.W. *Id.* During the day, the establishment operates as a coffee shop. *Id.* at 206. The establishment also hosts events for the community. *Id.* at 208-210.

26. Ms. Russel described Big Bear's efforts to control sound. *Id.* The establishment does not use amplification devices or permit DJs. *Id.* at 206-07. Furthermore, by expanding Big Bear's interior, this will allow Big Bear to encourage more customers to sit inside rather than outside. *Id.* at 211. Ms. Russel also noted that sound generated by Big Bear is reasonable and not disruptive. *Id.* at 212.

V. Ed Jones

27. Ed Jones lives and works on 1st Street, N.W. *Tr.*, 225. His home is located directly across the street from Big Bear. *Id.* at 225, 231. Mr. Jones indicated that he has had issues finding parking in the neighborhood on a regular basis. *Id.* at 231. He indicated that some Big Bear customers drive to the establishment in their cars. *Id.* at 233. Mr. Jones indicated that residential parking stickers are available that allows him to park in certain areas. *Id.* at 238.

28. He also indicated that on some occasions he hears patrons coming and going from Big Bear; however, he can prevent noise from coming into his home by closing his windows. *Id.* at 232-33.

VI. Michelle Johnson

29. Ms. Johnson lives on R Street, N.W. *Id.* at 259. She indicated that when she comes home from work around 8:00 p.m. it sometimes takes her approximately 30 minutes to find a parking space. *Id.* She indicated that dedicated parking for Ward 5 residents is available in the neighborhood. *Id.* at 267-68. She also indicated that Uber and Lyft drivers engaged in picking up and dropping off patrons occasionally cause congestion near Big Bear. *Id.* at 269. Ms. Johnson further indicated that on October 21, 2017, she heard singing outside Big Bear in the early evening. *Id.* at 269, 271.

VII. Joyce Johnson

30. Joyce Johnson lives on R Street, N.W. *Id.* at 275. On one occasion, she saw an SUV illegally park outside the establishment and the occupants attend an event at Big Bear. *Id.* at 275-76. The occupants also took pictures with a photographer on the street outside Big Bear. *Id.* at 278. She further indicated that finding parking after work is difficult and that, in her experience, she often has to park a few blocks away to find parking when she returns from work. *Id.* at 278.

VIII. Jean Watkins

31. Jean Watkins lives on R Street, N.W. *Id.* at 280. She reported that she has issues finding parking after work and on Sundays in the neighborhood. *Id.* at 281. Ms. Watkins also discussed the trash and litter situation near Big Bear. *Id.* at 283. She has seen the establishment fail to close the lids of its trash cans and observed spilled grease in the alley. *Id.*

IX. Kathleen Shahan

32. Kathleen Shahan lives on R Street, N.W. *Id.* at 291. Ms. Shahan indicated that she occasionally cannot find parking within two blocks of her home. *Id.* at 293-94. She further indicated that she hears noise from patrons leaving the establishment and walking down the street. *Id.* at 294.

X. Karla Lewis

33. Karla Lewis lives on R Street, N.W. *Id.* at 306. She indicated that pedestrians on the sidewalk have a hard time walking past the café when people have their dogs tied up outside and the outdoor seating area is in operation. *Id.* at 311, 321-22.

34. In her experience as a resident, she has found that noise and rodents have increased as Big Bear has expanded over the years. *Id.* at 338. On one occasion, she heard patron voices outside of her home at 9:30 p.m. *Id.* at 339.

CONCLUSIONS OF LAW

35. The Board may approve an Application for a Substantial Change to a Retailer's Class CR License when the proposed establishment will not have an adverse impact on the neighborhood. D.C. Code §§ 25-104, 25-313(b); 23 DCMR §§ 1607.2; 1607.7(b) (West Supp. 2018). Specifically, the question in this matter is whether the Application will have a negative impact on the peace, order, and quiet; residential parking and vehicular and pedestrian safety; and real property values of the area located within 1,200 feet of the establishment. D.C. Code § 25-313(b); 23 DCMR §§ 1607.2; 1607.7(b) (West Supp. 2018).

I. The Establishment is Appropriate For The Neighborhood Subject to Conditions.

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. 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. 2018). 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).

a. The Board Finds the Application Appropriate So Long As Conditions Are Imposed to Address Potential Noise Caused by the Proposed Rooftop Seating Area.

38. The Board generally finds that the Applicant is not currently having a negative impact on peace, order, and quiet; however, in light of the highly residential nature of the community, the Board finds grounds for limiting the proposed rooftop seating area and ensuring the premise is properly soundproofed.

39. “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. Code § 25-313(b)(2); *see also* D.C. 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. 2018).

40. First, the Board agrees with Big Bear that it is highly unlikely that Big Bear will have a negative impact on trash and litter. As noted above, the Board can consider a licensee’s efforts to alleviate or mitigate potential impacts. In this case, Big Bear has frequent trash pickups and the establishment will install a trash compactor in the near future. *Supra*, at ¶ 20. In light of these affirmative actions, the Board finds in favor of Big Bear on this ground.

41. Second, there is no evidence in the record that Big Bear or its patrons create crime or engage in high levels of anti-social behavior. Furthermore, the Board finds no reasonable basis for presuming that an increase in Big Bear’s occupancy would encourage crime or anti-social behavior. The Board is also aware that the Protestants complained about dogs tied up by patrons outside the establishment. *Supra*, at ¶ 33. Nevertheless, the Board does not find that any issue associated with the dogs rises to an appropriateness issue when residents are free to ask other District agencies to enforce the city’s animal and leash laws. 24 DCMR § 900.3 (West Supp.

2018 (barring dogs from being left alone in public spaces tied to a leash). As a result, the Board finds in favor of Big Bear on this ground.

42. Third, the Board is not convinced that Big Bear's current operations cause or encourage unreasonable levels of noise. In the past, the Board's noise analysis has focused on noise heard in resident's homes during normal sleeping hours. *In re Solomon Enterprises, LLC, t/a Climax Restaurant & Lounge*, Case No. 13-PRO-00152, Board Order No. 2014-474, ¶¶ 33, 35 (D.C.A.B.C.B. Nov. 19, 2014). In this case, there is no evidence that Big Bear is currently generating noise that can be heard in residents' home during late night hours or preventing residents from sleeping. Moreover, the Board is not persuaded that daytime noise or noise that can be blocked by closing one's windows and doors rises to the level of inappropriate noise. *Supra*, at ¶¶ 28, 34.

43. Nevertheless, the Board is convinced that late night activity and outdoor seating on the rooftop may create ongoing noise problems. Unlike interior seating, there are no walls and ceilings to block the transmission of sound when patrons sit outside. Moreover, in light of Big Bear being located in a highly residential neighborhood, concentrated patron noise can be especially disturbing late at night. *Supra*, at ¶¶ 5, 17, 50. Consequently, the Board is persuaded that conditions are warranted in order to prevent the proposed outdoor seating area from becoming a source for disturbing noise.

b. The Application Will Not Have a Negative Impact on Residential Parking Needs and Vehicular and Pedestrian Safety.

44. "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. Code § 25-313(b)(3); *see also* D.C. 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. 2018). In this case, while some residents testified that parking is difficult on occasions, various witnesses indicated that parking is available within a few blocks of their home. *Supra*, at ¶¶ 30, 32. Furthermore, residential parking permits are available to residents in the neighborhood. *Supra*, ¶¶ 27, 29. The Board has never interpreted the appropriate test as standing for the right of residents to have parking immediately outside their homes. Consequently, the Board is not convinced that the proposed expansion will have a sufficient impact on residential parking to render the proposed expansion inappropriate.

c. The Application Will Not Have a Negative Impact on Real Property Values.

45. 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. Code § 25-313(b)(1). The Board has noted in the past that the presence of blight may have a negative impact on property values. *In re Historic Restaurants, Inc., t/a Washington Firehouse Restaurant, Washington Smokehouse*, Case No. 13-PRO-0031, Board Order No. 2014-107, ¶ 48

(D.C.A.B.C.B. Apr. 2, 2014) citing *In re Rail Station Lounge, LLC, t/a Rail Station Lounge*, Case No. 10-PRO-00153, Board Order No. 2011-216, ¶ 62 (D.C.A.B.C.B. Jun. 15, 2011). In this case, there is no evidence of blight or that the proposed change to the establishment will cause blight. Therefore, the Board rejects the Protestants' claim that the Application will have a negative impact on property values.

II. The Board Reduces the Hours of the Rooftop Seating Area and Mandates the Installation of Soundproofing on the Roof.

46. In light of the Board's findings regarding appropriateness, the Board finds it necessary to impose conditions on the Applicant's license. See *In re Dos Ventures, LLC, t/a Riverfront at the Ball Park*, Case No. 092040, Board Order No. 2014-512. ¶ 49 (D.C.A.B.C.B. Nov. 13, 2013) (saying "[i]n practice, the Board has imposed conditions when it is shown that there are valid concerns regarding appropriateness that may be fixed through the imposition of specific operational limits and requirements on the license"). Under § 25-104(e), the Board is granted the authority to impose conditions on a license when ". . . the inclusion of conditions will be in the best interest of the [neighborhood]" D.C. Code § 25-104(e).

47. Above, the Board agreed in part with the Protestants' concerns regarding noise. In light of Big Bear's location in a highly residential area, the Board requires the following as a condition of licensure to prevent Big Bear from becoming a source of disturbing noise in the community: (1) the rooftop seating area shall cease operation at 10:00 p.m.; (2) the rooftop seating area shall have a maximum occupancy of 45 people; (3) no amplified sounds shall be generated on the rooftop; and (4) Big Bear shall install the soundproofing described by the owner in the rooftop seating area and second floor. *In re Solomon Enterprises, LLC, t/a Climax Restaurant & Lounge*, Board Order No. 2014-474 at ¶ 50 (finding that unenclosed seating located near residents merits reduced hours).

III. The Board Has Satisfied the Great Weight Requirement BY Addressing ANC 5E's Issues and Concerns.

48. ANC 5E's written recommendation submitted in accordance with D.C. Code § 25-609(a) indicated that its protest was based on concerns regarding Big Bear's impact on peace, order, and quiet; residential parking and safety; and real property values. The Board notes that it specifically addressed these concerns in the Conclusions of Law contained in this Order.

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

49. 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. 2018). 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 31st day of January 2018, hereby **APPROVES** the Application for a Substantial Change to a Retailer's Class CR License at premises 1700 First Street, N.W. filed by Big Bear Café LLC, t/a Big Bear, subject to the following **CONDITIONS**:

- (1) the rooftop seating area shall cease operation at 10:00 p.m.;
- (2) the rooftop seating area shall have a maximum occupancy of 45 people;
- (3) no amplified sounds shall be generated on the rooftop;
- (4) the license holder shall install and maintain in the rooftop seating area soundproof walls with soundproofing materials on all sides of the roof directly facing residents; and
- (5) the license holder shall construct and maintain a hallway on the second floor to mitigate sound.²

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

The ABRA shall deliver a copy of this order to the Parties.

² For additional guidance on complying with the Board's soundproofing conditions see pages 178 and 179 of the protest hearing transcript, which the Board will look to in order to determine compliance.

District of Columbia
Alcoholic Beverage Control Board

Donovan Anderson, Chairperson



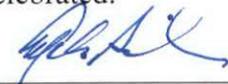
James Short, Member



Donald Isaac, Sr., Member

I concur in granting the substantial change application. Nevertheless, I would have also approved later hours because I do not believe the neighborhood's peace, order, and quiet or residential character would be disrupted by allowing the rooftop to close slightly later in the evening.

I further recognize that a portion of the Protestants' case was based on the impact of a wedding where the event organizers received permits to close a street and also the operation of a local farmer's market. I am not convinced that these types of community events are inappropriate or unreasonable, nor do they necessarily constitute a serious breach of peace, order, or quiet. In fact, I believe both wedding celebrations and farmers' markets are part of a vibrant symphony of neighborhood life that should be promoted and celebrated.



Mike Silverstein, 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. Code § 2-510 (2001), and Rule 15 of the District of Columbia Court of Appeals, any party adversely affected has the right to appeal this Order by filing a petition for review, within thirty (30) days of the date of service of this Order, with the District of Columbia Court of Appeals, 430 E Street, N.W., Washington, D.C. 20001. However, the timely filing of a Motion for Reconsideration pursuant to 23 DCMR § 1719.1 stays the time for filing a petition for review in the District of Columbia Court of Appeals until the Board rules on the motion. *See* D.C. App. Rule 15(b) (2004).