

**THE DISTRICT OF COLUMBIA
ALCOHOLIC BEVERAGE AND CANNABIS BOARD**

In the Matter of:)	
)	
I Egg You CH, LLC)	Case No.: 23-PRO-00050
t/a I Egg You)	License No.: ABCA-124054
)	Order No.: 2023-487
Application for a New)	
Retailer’s Class CR License)	
)	
at premises)	
517 8th Street, S.E.)	
Washington, D.C. 20003)	

BEFORE: Donovan Anderson, Chairperson
James Short, Member
Bobby Cato, Member
Jeni Hansen, Member
Edward S. Grandis, Member

ALSO PRESENT: I Egg You CH, LLC, t/a I Egg You, Applicant

Andrew Kline, Counsel, on behalf of the Applicant

Chandar Jayaraman and Ellen Opper-Weiner, Commissioners, on behalf of Advisory Neighborhood Commission (ANC) 6B Protestants

Martha Jenkins, General Counsel
Alcoholic Beverage and Cannabis Administration

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

INTRODUCTION

The Alcoholic Beverage and Cannabis Board (Board) approves the Application for a New Retailer's Class CR License filed by I Egg You CH, LLC, t/a I Egg You (hereinafter “Applicant” or “I Egg You”) where the Applicant demonstrated through substantial evidence that it is unlikely to exacerbate any existing rodent, trash, or litter problems experienced by the surrounding community and otherwise not have a negative impact on peace, order, and quiet.

Procedural Background

The Notice of Public Hearing advertising the Application was posted on April 14, 2023. *ABCA Protest File No. 23-PRO-00050*, Notice of Public Hearing [*Notice of Public Hearing*]. The records of the Alcoholic Beverage and Cannabis Administration (ABCA) indicate that ANC 6B has filed a protest against the Application. *ABCA Protest File No. 23-PRO-*, Roll Call Hearing Results.

The parties came before the Board's Agent for a Roll Call Hearing on June 20, 2023, where the above-mentioned objector was granted standing to protest the Application. On July 26, 2023, the parties came before the Board for a Protest Status Hearing. Finally, the Protest Hearing in this matter occurred on August 9, 2023.

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 6B, which indicated that its protest is based on concerns regarding the proposed establishment's impact on peace, order, and quiet. The ANC's issues and concerns shall be addressed by the Board in its Conclusions of Law below.

At the outset of the hearing, the Applicant moved to limit the issues to peace, order, and quiet based on the issues outlined in the ANC's initial protest letter in accordance with D.C. Official Code § 25-602(a), which requires protestants to state the grounds of their objections in their initial filing. As a matter of due process, the Applicant is entitled to demand that the issues be limited to those stated in the initial protest letter. Therefore, the Board grants the motion because the ANC's initial protest letter solely referred to peace, order, and quiet and no other issues recognized under D.C. Official Code § 25-313, such as residential parking or other issues. *ANC Protest Letter*, at 1 (May 29, 2023); *Transcript (Tr.)* August 9, 2023 at 13.

Based on the issues raised by the Protestants, the Board may only grant the Application if the request will not have an adverse impact on the peace, order, and quiet 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. 2023).

FINDINGS OF FACT

The following statements represent the Board's findings of fact based on the evidentiary record. In reaching its determination, the Board considered the evidence, the testimony of the witnesses, the arguments of the parties, and all documents comprising the Board's official file. The Board credits all testimony and evidence identified or cited below unless otherwise stated.

I. Background

1. The Applicant has submitted an Application for a New Retailer's Class CR License at 517 8th Street, S.E., Washington, D.C. *Notice of Public Hearing*.

2. ABCA Investigator Tavril Prout investigated the Application and prepared the Protest Report submitted to the Board. *ABCA Protest File No. 23-PRO-00050, Protest Report* (Jul. 2023) [*Protest Report*]. The proposed establishment is in a MU-25 zone. *Id.* at 3. The premises appear well-maintained. *Id.* at Exhibit No. 7. Thirty-one licensed establishments are located within 1,200 feet of the proposed location. *Id.* at 4-6.

3. The establishment's proposed hours of operation are from 8:00 a.m. to 1:00 a.m., which includes the operations of the interior and the sidewalk café. *Id.* at 7. The establishment's hours of sale, service, and consumption of alcohol run for the same time. *Id.*

4. ABCA investigators visited the proposed location three times and did not observe any issues in the neighborhood. *Id.* at 8. As a new establishment, there is no history of violations related to this location. *Tr.*, 8/9/23 at 43.

5. Investigator Prout observed residences abutting the alley near the establishment. *Id.* at 49. He did not see many trash containers in the alley but is aware that the alley was recently repaved, which could have affected the regular condition of the alley. *Id.* at 49. Based on his observations, he did not see any open trash containers in the vicinity. *Id.* at 49-50. He did see rodents and small holes near the wall in the alley. *Id.* at 52.

II. Danny Lee

6. Danny Lee is a co-owner of the business. *Id.* at 71. He has worked in the restaurant industry in one form or another since 1997. *Id.* at 72. He currently owns other establishments, including Chiko, with multiple locations, and Anju. *Id.* at 74. He further noted that he and his establishments have been nominated for various awards. *Id.* at 76-77.

7. The business model of the proposed establishment focuses on breakfast items. *Id.* at 77-78. In particular, the establishment's food offerings are influenced by current trends in Seoul, South Korea. *Id.* at 78. Food offerings will include breakfast sandwiches, fruit bowls, parfaits, and juices. *Id.* The business plans to offer breakfast and lunch seven days per week. *Id.* at 79. The establishment intends to focus its alcohol service on providing "light brunch cocktails from all around the world." *Id.* The establishment will operate in the evening; however, the menu will remain focused on breakfast and lunch options. *Id.* at 80. Finally, the business intends to host parties and events in its proposed location. *Id.*

8. Mr. Lee currently operates one of its Chiko locations down the street from the present location. *Id.* Chiko's liquor license has been renewed several times and he is not aware of any issues related to that operation. *Id.* Indeed, he noted that no one protested the renewal of Chiko's license and none of his other establishments in D.C. have ever been protested (excluding the present matter). *Id.*

9. Mr. Lee is aware of the ANC's concern regarding trash and rodents. *Id.* at 80-81. He is also aware of the presence of rodents in the area, including vacant properties. *Id.* at 82-83. As part of his operations, he is aware that his business must comply with District health law regarding pest control, which includes having the establishment serviced routinely by a pest control company. *Id.* at 82.

10. He noted that he takes pest control seriously because a rat problem at a food service establishment can be very harmful to the reputation of the business. *Id.* at 86. In that vein, the business trains its staff to properly manage and dispose of trash and discusses the installation of appropriate commercial equipment of trash disposal with its landlords. *Id.* at 97. In particular, the business has discussed including dumpsters rather than smaller containers in its locations and the scheduling of power washing. *Id.* He further noted that his businesses have purchased their own power washers to help mitigate pest problems. *Id.*

11. Mr. Lee indicated that it is not sustainable for the business to store trash inside the premises given the limited space occupied by the business. *Id.* at 84 *see also id.* at 125. In particular, he objects to storing trash inside the premises because it could create a food contamination risk and encourage pest problems inside the premises. *Id.* at 85.

III. Scott Drewno

12. Scott Drewno is a co-owner of the business. *Id.* at 119. He has many years of experience in the restaurant industry. *Id.* at 119-20. He also has won awards based on his work as a restaurateur. *Id.* at 120. The business will have a patio outside and seating inside. *Id.* at 124-25. There will also be a bar area inside. *Id.* at 125. The establishment will also have a kitchen and two bathrooms. *Id.*

13. Mr. Drewno discussed the Applicant's plans regarding trash management. *Id.* at 128. In particular, the business has a trash removal contract with Waste Management. *Id.* at 127-28. The business plans to have one trash dumpster and one recycling dumpster, which have been delivered. *Id.* at 129, 164-65. As part of its discussions with Waste Management, the business obtained the removal of "bungs" in the dumpster—a device that makes it easier to clean the dumpster—because bungs provide a pathway for rodents. *Id.* at 128. The business also obtained chains to keep the dumpster shut overnight. *Id.* at 128, 130. The establishment will also routinely power wash the trash area and has installed cameras to monitor the trash area. *Id.* at 128, 130, 166-67. The business will also engage in composting to reduce food waste. *Id.* at 129. Trash pickup will be four times per week. *Id.* at 171.

14. Mr. Drewno is aware that trash management is an issue in other locations in the neighborhood. *Id.* at 133-34. He is also aware of rodent and trash issues throughout the neighborhood. *Id.* at 134-151. In order to address the traffic caused by delivery trucks, the business intends to provide its suppliers with keys in order to accommodate early morning deliveries and to avoid delays during deliveries. *Id.* at 306.¹

¹ The Board notes that the issue of delivery vehicles blocking traffic has come up in multiple cases; nevertheless, parties making such a claim need to be aware of the laws and regulations on this topic. In particular, it could be

15. Mr. Drewno indicated that due to the steps outside the building, moving trash inside and outside the establishment would be difficult. *Id.* at 307. He further indicated that the establishment was willing to replace any container with gaps in the lid. *Id.*

IV. Cory Fritz

16. Cory Fritz lives approximately five blocks away from the proposed location. *Id.* at 110. He does not believe that the neighborhood suffers from an overconcentration of licensed establishments. *Id.* at 110-11. He is also not aware of any trash issues related to the ownership's other food service locations. *Id.* at 111.

V. Chad Reese

17. Chad Reese lives approximately eight blocks away from Chiko. *Id.* at 186. He supports the Application. *Id.*

VI. Vicki Griffith

18. Vicki Griffith works as a health and safety professional in the restaurant industry. *Id.* at 193. She currently works for Pest Management Service, Inc. *Id.* As part of her work, she routinely addresses issues regarding pest and rodent control. *Id.* at 196. Based on her experience, the metal containers with closing lids used by the Applicant conform with best practices in the industry. *Id.* at 211, 227. She noted that metal containers prevent rodents from chewing through the container. *Id.* at 212. She also reviewed the Applicant's history regarding health inspections and noted that she found that the ownership has no prior history of pest violations. *Id.* at 225-26.

19. She further discussed the hypothetical proposal of the establishment bringing its trash bins inside. *Id.* at 213. She noted that moving containers inside and outside the premises risk bringing rodents inside the establishment. *Id.* at 213.

VII. Katherine Szafran

20. Katherine Szafran lives in the neighborhood and works from home. *Id.* at 247. She has observed the alley and seen trash tracks obstructed by delivery trucks. *Id.* at 248, 265-66. She confirmed that she saw the dumpsters discussed by the Applicant at the proposed location. *Id.* at

argued that the mere fact that delivery vehicles create traffic does not constitute an appropriateness issue under the law because mere traffic does not interfere with parking or create a danger to vehicles and pedestrians under the relevant concerns described in the text of the law. *See* D.C. Code § 25-313(b)(3); 23 DCMR § 400.1(b), (c) (West Supp. 2023). Of course, if the delivery vehicles are significantly denying access to residential parking, interfering with emergency vehicles on a regular basis, making crowd control harder, or routinely engaging in some sort of dangerous behavior then perhaps a protest based on such an issue could survive dismissal.

254. She indicated that based on her observations of the trash containers, she believes there is a gap between the lid and the dumpster. *Id.* at 256.²

CONCLUSIONS OF LAW

21. The Board may approve an Application for a New 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. 2023). Specifically, the question in this matter is whether the Application will have a negative impact on the peace, order, and quiet 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. 2023).

I. The Burden of Proof Lies with the Applicant to Prove its Case Through Substantial Evidence.

22. The burden of proof in this matter is assigned to the Applicant. D.C. Code § 25-311(a). “. . . [T]he Applicant in meeting its burden may rely on the record as a whole, which includes information provided in the Protest Report and the Protestant’s case, and not just what the Applicant presents during its case-in-chief.” *In re The New 7307, t/a Premier Lounge*, Case No. 22-PRO-000222, Board Order No. 2022-701, ¶ 1 (D.C.A.B.C. B. Oct. 19, 2022) *citing Esgar Corp. v. Commissioner of Internal Revenue*, 744 F.3d 648, 655 (10th Cir. 2014); *see also Washington Metro. Area Transit Auth. v. Dist. of Columbia Dept. of Employment Services*, 992 A.2d 1276, 1283 (D.C. 2010) *citing Dale v. S & S Builders, LLC*, 188 P.3d 554, 561 (Wyo. 2008) (saying in determining whether a party met its burden during an administrative hearing the court will look at the “record as a whole”). The Board further notes that where there is an “absence of evidence on an essential point [this] supports denial rather than granting of an application.” *Conrad v. Dist. of Columbia Alcoholic Beverage Control Bd.*, 21-AA-748, 2023 WL 163964, at *5 (D.C. Jan. 12, 2023).

23. Furthermore, in determining whether the Applicant has met its burden, the Board shall only base its decision on the “substantial evidence” contained in the record. 23 DCMR § 1718.3 (West Supp. 2023) *Choose an item.*). 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). It should be noted that “. . . hearsay evidence is admissible in administrative proceedings” and may constitute “substantial evidence.” *Compton v. Dist. of Columbia Bd. of Psychology*, 858 A.2d 470, 476 (D.C. 2004). In that vein, “The weight to be given to any piece of hearsay evidence is a function of its truthfulness, reasonableness, and credibility.” *Id.* at 477.

² The parties did not provide argument related to whether a small gap actually violates any District solid waste laws so long as the lid is otherwise secure or closed.

I. The Establishment is Appropriate for the Neighborhood.

24. 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). 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 Applicant will not have a negative impact on peace, order, and quiet.

25. “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. 2023).

26. The Protestants raised the issue of vehicle horns causing noise disturbances. *Tr.*, 8/9/23 at 19. The Board considered the potential impact of vehicle horns in *MAHK*. In that case, the Board found no potential impact related to noise where the establishment was too small to add a significant amount of traffic; residents located near a roadway should reasonably expect vehicle noises; and there is no indication that the establishment or its employees would purposefully use the horn to annoy or vex its neighbors. *In re MAHK Meetings, LLC, t/a TBD*, Case No. 20-PRO-00038, Board Order No. 2021-317, ¶ 49 (D.C.A.B.C.B. Jun. 16, 2021). Similar to *MAHK*, the Board finds no cause for concern regarding the use of vehicle horns related to the Applicant where the establishment’s size will not cause a significant increase in traffic and there is no

evidence that the establishment or its staff would intentionally use vehicle horns to annoy its neighbors.

27. Turning to the issue with trash, the Board agrees with the Protestants that the neighborhood suffers from a rodent, trash, and litter issues; however, the record does not support the contention that the Applicant will exacerbate these issues. First, the Applicant operates other establishments in the District, and there is no evidence that these other establishments have pest, trash, or litter problems, which makes it reasonable to presume that the Applicant will similarly manage its trash in a responsible manner. *Supra*, at ¶¶ 6, 18. Second, the business has an adequate trash removal contract and has committed to complying with its legal pest control obligations. *Supra*, at ¶¶ 9-10. Third, the establishment will routinely power wash its trash management area, obtained large dumpsters, and will lock the dumpsters to prevent unauthorized use. *Supra*, at ¶¶ 10, 18. Third, to the extent that the dumpsters have any gaps in the lids, the Applicant has committed to fixing the issue. *Supra*, at ¶¶ 13, 20. Consequently, for these reasons, the Board finds in favor of the Applicant on the issue of peace, order, and quiet.

28. The Board is further not persuaded by the evidence and argument presented by the Protestant. Based on the above, the Protestant's argument that the licensee will contribute or exacerbate existing rodent and trash issues are purely speculative. The Board is also not persuaded that traffic issues with delivery vehicles is the cause of any trash or rodent issues in the neighborhood as there is not persuasive evidence in the record that waste management companies are giving up and not taking trash from the alley. Finally, the Board has not been presented with evidence that indoor trash storage is superior or necessary where the Applicant has demonstrated that it has the ability to appropriately manage its trash, the District generally allows for outdoor trash storage by businesses and residents, there is no expert or official analysis demonstrating that indoor trash storage is better overall; or that it is practical in the present case. Therefore, the Board rejects denying the license or imposing conditions.

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

29. 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. 2023). 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 27th day of September 2023, hereby **APPROVES** the Application for a New Retailer's Class CR License at premises 517 8th Street, S.E., filed by the Applicant.

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 omission of any testimony or evidence in the Board's Order indicates that such testimony or evidence was contravened by the evidence or testimony credited by the Board, had no or minimal weight on the Board's findings and conclusions, was irrelevant, was not credible, was not truthful, was repetitious, was too speculative, or was otherwise inappropriate for consideration.

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

District of Columbia
Alcoholic Beverage and Cannabis Board

eSigned via SeamlessDocs.com
Donovan Anderson
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Donovan Anderson, Chairperson

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James Short, Member

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Edward S. Grandis, 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 and Cannabis 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).