

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

In the Matter of:)	
)	
Upshur Burger Concepts, LLC)	Case No.: 19-PRO-00084
t/a Lucky Buns)	License No.: ABRA-107929
)	Order No.: 2020-080
Application to Renew a)	
Retailer's Class CR License)	
)	
at premises)	
2000 18th Street, N.W.)	
Washington, D.C. 20009)	

BEFORE: Donovan Anderson, Chairperson
James Short, Member
Bobby Cato, Member
Rema Wahabzadah, Member
Rafi Aliya Crockett, Member

ALSO PRESENT: Upshur Burger Concepts, LLC, t/a Lucky Buns, Applicant

Amir Irani, Commissioner, Advisory Neighborhood Commission (ANC)
1C, Protestant

Dennis James, President, Kalorama Citizens Association (KCA),
Protestant

Ashley Williams, Designated Representative, A Group of Five or More
Residents and Property Owners, Protestant

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 to Renew a Retailer's Class CR License filed by Upshur Burger Concepts, LLC, t/a Lucky Buns (hereinafter "Applicant" or "LB") subject to the condition that it (1) submit all current and unexpired public space permits to the Board for review; (2) have trash removed twice per day when in operation; (3) remove the refrigerator from the trash area; (4) refrain from storing grease in an inappropriate manner; and (5) construct a new fence and keep it in good repair. The Board imposes these conditions based on compelling evidence submitted by the Protestants that LB is causing a negative impact on the community by failing to maintain its trash area in an appropriate manner, failing to keep its immediate environs clean, and contributing to blight in the community by failing to properly maintain its fence. The Board's specific conditions and reasoning are provided in detail below.

Procedural Background

The Notice of Public Hearing advertising LB's Application was posted on May 10, 2019, and informed the public that objections to the Application could be filed on or before June 24, 2019. *ABRA Protest File No. 19-PRO-00084*, Notice of Public Hearing [*Notice of Public Hearing*]. The records of the Alcoholic Beverage Regulation Administration (ABRA) indicate that Advisory Neighborhood Commission (ANC) 1C, the Kalorama Citizens Association (KCA), and a Group of Five or More Residents and Property Owners (collectively, the "Protestants") have filed a protest against the Application. *ABRA Protest File No. 19-PRO-00084*, Roll Call Hearing Results.

The parties came before the Board's Agent for a Roll Call Hearing on July 8, 2019, where all of the above-mentioned objectors were granted standing to protest the Application. On September 18, 2019, the parties came before the Board for a Protest Status Hearing. Finally, the Protest Hearing in this matter occurred on December 4, 2019.

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 1C, which indicated that its protest is based on concerns regarding LB'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.

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 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. 2020).

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. Lucky Buns has submitted an Application to Renew a Retailer's Class CR License at 2000 18th Street, N.W., Washington, D.C. *Notice of Public Hearing*.
2. ABRA Investigator Mark Ruiz investigated the Application and prepared the Protest Report submitted to the Board. *ABRA Protest File No. 19-PRO-00084, Protest Report* (Nov. 2019) [*Protest Report*].
3. The proposed establishment is located in a Mixed Use (MU-4) zone. *Protest Report*, at 3. Thirty-one 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. *Id.* at 5.
4. LB's hours of operation begin at 8:00 a.m. and end at 2:00 a.m., Sunday through Thursday, and 3:00 a.m. on Friday and Saturday. *Id.* at 6. The establishment's hours of sale, service, and consumption of alcoholic beverages are approximately the same as its hours of operation. *Id.* LB's entertainment hours end at 2:00 a.m., Sunday through Thursday, and 3:00 a.m. on Friday and Saturday. *Id.* at 6-7. The establishment's sidewalk café begins operations at 11:00 a.m., and ends operations at midnight, Sunday through Thursday, and at 1:00 a.m. on Friday and Saturday. *Id.* at 7.
5. ABRA investigators visited the establishment on seven separate occasions between October 7, 2018, and November 22, 2019. *Id.* at 8. Investigators reported observing no issues regarding noise and trash or any other peace, order, and quiet issues. *Id.* at 7-8.
6. The records of ABRA's Noise Task Force indicate that between January 1, 2018, through November 18, 2019, ABRA received no noise complaints related to the establishment. *Id.* at 8.
7. LB's investigative history indicates that the establishment received a warning for failing to file a quarterly report in August 2019. *Id.* The establishment's history of violations do not show any violations. *Id.*
8. LB has hired a trash removal company to provide trash removal services seven days per week. *Id.* at 6. Investigator Ruiz also observed LB's trash area on multiple occasions. *Transcript (Tr.)*, December 4, 2019 at 40. During his visits, he saw no trash bags outside trash bins and no overflowing bins. *Id.* The trash area is located on the Vernon Street, N.W., side of the establishment. *Id.* The establishment also shares its trash bins with the neighboring establishments. *Id.* at 41, 45-46. He noted that LB's owner, Alex McCoy, showed him various rat holes and dead rats on other properties near the establishment. *Id.* at 42.

II. Alex McCoy

9. Alex McCoy took over LB in 2017. *Id.* at 49. The space included an existing trash area shared with another establishment. *Id.* Trash pickup occurs once per day. *Id.* at 84.
10. He further indicated that Adams Morgan has a well-known “rat problem.” *Id.* at 50. He indicated that his neighbors contributed to the problem by not engaging in proper rat abatement. *Id.* at 55. He also noted that other trash areas in the community are not kept clean and have holes in their trash containers, which further exacerbates the rat issue. *Id.* at 60-61.
11. In order to address the issue with vermin, LB took several steps. *Id.* at 52. For example, the business hired a pest control company, plugged holes, and put glass in planter boxes. *Id.* LB also engages in regular cleaning, including power washing on a weekly basis. *Id.* He noted that the pest control company comes twice per month to conduct spraying. *Id.* at 67.
12. Mr. McCoy admitted that LB had improperly placed a walk-in cooler in the trash area, which reduced the space available for trash. *Id.* at 62, 74. He indicated that he is taking steps to address that issue and it should be remedied by December 17, 2019. *Id.* at 62-63.
13. Mr. McCoy further indicated that LB moved its grease container to a trash area across the street after LB’s grease removal service spilled grease into the street. *Id.* at 72. At this time, LB has to move buckets of grease “across the street” in order to dispose of its grease. *Id.* He also indicated that he changed trash companies when it was not performing adequately. *Id.* at 80.
14. Mr. McCoy further admitted that his staff used to break down cardboard boxes outside. *Id.* at 88. Now, his staff breaks down the boxes in LB’s basement before taking them to the trash area. *Id.*

III. Marcus Mirra

15. Marcus Mirra lives in a building abutting LB, and has lived there for approximately six years. *Id.* at 95, 144. His patio abuts LB’s trash area and sidewalk café on Vernon Street, N.W. *Id.* at 99. Based on the slope of the property, his patio sits above LB’s fenced trash area. *Id.* The fenced trash area is located next to the establishment’s sidewalk café. *Id.* at 101. He noted that he has previously expressed his concerns regarding the cleanliness of trash area with representatives of LB, but has not seen any improvement. *Id.* at 117-18. In light of the problem, Mr. Mirra is considering replacing his front yard garden with cement. *Id.* at 122, 124.
16. Photographic evidence shows that the fence surrounding the trash area creates a rectangle. *Protestant Exhibit* (Image 1). A metal refrigerator sits on one side, while approximately five trash cans sit on the other side. *Id.* In one photo, various unbroken and broken down boxes sit on top of one or two of the trash cans. *Id.*; *see also Protestant Exhibits* (Images 5-6). In addition, one of the trash cans has a black plastic bag sticking out of the top. *Id.* Another photo shows the trash area littered with cardboard boxes and pieces. *Protestant Exhibit* (Image 2). There is also litter on the ground in the trash area. *Id.* Other photos show

that when LB cleans the trash area, it places trash cans on the public sidewalk outside the trash area. *Protestant Exhibit* (Image 14). Photographic evidence further shows litter in nearby tree boxes and on the sidewalk. *Protestant Exhibits* (Images 7-10, 13).

17. In his experience, the prior restaurant tenant at LB's location did not have a trash or vermin issue or line up trash cans next to the abutting residence. *Id.* at 105, 135. In the years prior to LB's opening, the prior tenant did not keep a fridge outside, had fewer trash bins, and generated less trash. *Id.* at 145.

18. Mr. Mirra has observed that LB is creating piles of garbage and overflowing and open trash cans in the trash area on a regular basis. *Id.* at 105-06.¹ He also has observed holes in trash bins and large numbers of rats feeding in the trash containers. *Id.* at 107; *Protestant Exhibits* (Image 17-20). This has led to an increase in animal feces and odors in his patio. *Tr.*, 12/4/19 at 110.

19. Mr. Mirra complained that LB stores and leans items on his yard's fence that faces the establishment. *Id.* Items left on the fence include things like brooms, furniture, and ladders. *Id.* He has observed that LB's fence is in disrepair. *Id.* at 160. The establishment's employees also loiter near his residence, smoke, and leave cigarette butts. *Id.* at 121; *Protestant Exhibits* (Images 7-13).

20. Finally, Mr. Mirra met with an official with the District of Columbia Department of Transportation (DDOT). *Tr.*, 12/4/19 at 119. Mr. Mirra indicated that there may be an issue with the placement of the sidewalk café next to the trash area. *Id.* Mr. Mirra also believes that LB's planters are currently located outside the approved sidewalk café area. *Id.* at 145-46.

IV. Lorrie Clark

21. Lorrie Clark lives in the same building as Mr. Mirra. *Id.* at 168. Ms. Clark has a lawn and has taken steps to combat rats burrowing in her yard. *Id.* at 169. Specifically, she has installed five rat stations with poison and snap traps. *Id.* She has also hired exterminators to treat the property. *Id.* She has been informed that her lawn will consistently have rat problems so long as food sources are available near her home. *Id.* at 170, 172. Moreover, the rats are killing the plants in her garden. *Id.* at 175. She indicated that she previously had no issues with the trash area at LB when it was under different ownership. *Id.* at 179-80.

V. ANC Commissioner Amir Irani

22. ANC Commissioner Amir Irani has made attempts to have the D.C. Government address the community's problems with LB. *Id.* at 197. After a meeting with various parts of the government and conducting a neighborhood walkthrough with various agencies, he is aware that DDOT cited LB for having non-permitted items on the sidewalk café, such as the refrigerator, garbage cans, ladders, and umbrellas. *Id.* at 198, 208, 210-11. He is also aware that LB required

¹ The Board further credits Mr. Mirra's testimony regarding the trash area, despite the investigator's observations during a few individual visits, because Mr. Mirra has had more opportunities to observe the trash area over a longer period of time.

a new unexpired Certificate of Use for the sidewalk café. *Id.* at 199. Nevertheless, he is aware that LB obtained a new one and that LB was issued a stay of enforcement by DDOT. *Id.* at 218-19. On another occasion, he observed an inspector from the Department of Public Works write LB a ticket for having broken trash containers and commingling recycling with trash goods. *Id.* at 206, 211.

23. During the walkthrough, he witnessed a grease trail coming from LB's trash area. *Id.* at 205-06, 226. He further observed that the grease trail ran down the sidewalk by LB. *Id.* at 206. He has observed that LB stores its grease waste behind El Tamarindo, another licensed establishment. *Id.* at 213. He also observed that LB stored grease in plastic buckets located in the trash area. *Id.* at 217; *Protestant's Exhibit* (Image 26).

CONCLUSIONS OF LAW

24. The Board may approve an Application to Renew 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. 2020). Specifically, the question in this matter is whether the Application will have a negative impact on the peace, order, and quiet and real property values of the area located within 1,200 feet of the establishment. D.C. Code § 25-313(b); 23 DCMR §§ 1607.2; 1607.7(b) (West Supp. 2020).

I. The Establishment is Only Appropriate for the Neighborhood Subject to Conditions to Remedy the Litter and Trash Issues.

25. The Protestants have established that LB has failed to consistently manage its trash area in a manner that prevents litter and vermin and has a detrimental impact on the cleanliness of the neighborhood, which must be addressed if the Board is to renew LB's license. 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. 2020). 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).

26. 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 *Pamutat, 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 record shows that LB has failed to maintain its trash area in an appropriate manner, which has encouraged litter and vermin in the community.**

27. “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. 2020). Under § 25-726(a),

- (a) The licensee under a retailer's license shall take reasonable measures to ensure that the immediate environs of the establishment, including adjacent alleys, sidewalks, or other public property immediately adjacent to the establishment, or other property used by the licensee to conduct its business, are kept free of litter.
- (b) A licensee under a retailer’s license shall ensure that all solid waste inside the property and in the outdoor spaces immediately surrounding the property are stored and containerized for collection in a manner that will not provide food, harborage, or breeding places for insects or rodents, or other animals, or create a nuisance or fire hazard.

D.C. Official Code § 25-726.

28. In *Union Kitchen*, the Board found that determining non-compliance with § 25-726(a) required an examination of two elements. *In re Union Kitchen, LLC, t/a Union Kitchen*, Case No. 15-CMP-00662, Board Order No. 2016-381, ¶ 12 (D.C.A.B.C.B. Jun. 15, 2016). First, the Board will consider whether the retail license holder has engaged in unreasonable practices regarding the prevention of litter. *Id.* In that vein, the Board has previously reasoned that noncompliance with the District’s litter, trash, and waste regulations constitute an unreasonable measure. *Id.* Second, the Board will consider whether any litter has been present near the establishment and how frequently litter is present. *Id.* In determining the presence of litter, the

Board has relied upon the dictionary definition of litter as “[a] disorderly accumulation of objects [and] . . . carelessly discarded trash.” *Id.* at ¶ 12. Therefore, if the retail license holder has engaged in unreasonable measures, and there is also evidence of regular litter present during the last licensing period, then the Board may deem the Application inappropriate. *Id.* at ¶¶ 12-13.

29. In considering the reasonableness of the Applicants’ trash disposal and litter prevention “measures,” the Board considers a number of regulations found in Chapter 7 of Title 21 of the D.C. Municipal Regulations. In particular, according to § 707.4 of Title 21 of the D.C. Municipal Regulations, “Containers shall be kept clean and in good repair.” 21 DCMR § 707.4 (West Supp. 2020). Section 707.11 further requires that trash can “lids be kept closed at all times other than when the container is being filled or emptied” and the area remain “free of spilled waste at all times.” 21 DCMR § 707.11 (West Supp. 2020). According to § 707.9 of Title 21 of the D.C. Official Code, “Grease held for recycling or disposal shall be stored in a tightly-sealed metal drum.” 21 DCMR § 707.9 (West Supp. 2020). The grease container and the area where the grease is stored shall be free of spilled grease.” 21 DCMR § 707.9 (West Supp. 2020).

30. It is further required in § 314.9 of Title 24 of the D.C. Municipal Regulations that “Trash and refuse storage shall not be located in the vicinity of a sidewalk cafe.” 24 DCMR § 314.9 (West Supp. 2020). Section 314.10 provides that “A structure or enclosure to accommodate the storage of garbage shall not be erected, maintained, or placed adjacent to a sidewalk cafe.” 24 DCMR § 314.10 (West Supp. 2020). Section 314.3 further prohibits food preparation and food storage within a sidewalk café area. 23 DCMR § 314.3 (West Supp. 2020).

31. The Protestants have identified several problems with the manner in which LB manages its trash area. First, testimony provided by Mr. Mirra establishes that LB’s trash area regularly features open trash containers and overflowing bins, which violates § 707.11 of the solid waste regulations. *Supra*, at ¶¶ 16, 18. Second, testimony provided by Mr. Mirra shows that LB’s trash containers have had numerous holes that provide rats with easy access to food, and does not meet the standard provided by § 25-726(b) or § 707.4. *Supra*, at ¶ 18. Third, testimony provided by Mr. Mirra establishes that litter related to the operation of LB is present near his residence. *Supra*, at ¶¶ 16, 19. Fourth, until the refrigerator is moved, the illegal use of the sidewalk café area for storage space reduces the space available for trash storage and removal, which contributes to issues with overflowing trash containers. *Supra*, at ¶ 16. Fifth, the storage of grease in plastic buckets rather than metal containers and transporting the grease across the street creates a substantial risk of spills and violations of § 707.9. *Supra*, at ¶ 23. Consequently, without conditions addressing the trash and litter issue, the Board cannot find LB appropriate under the peace, order, and quiet standard without conditions.

32. The Board notes that it appears DDOT has issued valid permits for the sidewalk café and is apprised of the issue regarding the location of the trash area. *Supra*, at ¶¶ 20, 22. The Board cannot act as a court of appeals over other agencies and must presume that LB’s permits are valid and appropriately issued. *Craig v. D.C. Alcoholic Beverage Control Bd.*, 721 A.2d 584, 588 (D.C. 1998) *citing Kopff v. District of Columbia Alcoholic Beverage Control Bd.*, 413 A.2d 152, 154 (D.C.1980). Therefore, the Board cannot find that DDOT’s permits were improperly issued or otherwise overturn DDOT’s decision to issue the permits.

b. So long as LB fixes the fence in disrepair, there is no evidence LB is having a negative impact on real property values.

33. 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). The Board credits Mr. Mirra's testimony that the fence is in disrepair and finds that the fence constitutes a source of blight in the community. *Supra*, at ¶ 19. Therefore, the Board will not find the establishment appropriate unless LB is required to keep the fence in good repair as a condition of licensure.

II. The Board Imposes Conditions on the License.

34. 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).

35. The Board imposes several conditions to address the impact of the establishment on the cleanliness of the community and real property values. First, as noted above, while the Board cannot overturn DDOT's decision to issue LB a sidewalk café permit, the Board can ensure that LB has current permits allowing the use of the sidewalk café in accordance with D.C. Official Code § 25-311(c). Therefore, the Board will require that LB submit a current and unexpired public space permit. Second, in order to avoid an accumulation of trash in the trash area, LB shall have twice per day trash pickup whenever the business is in operation. Third, LB's manner of grease storage makes spills likely. In order to prevent spills, the Board prohibits the storage of grease outside LB in any container except the container where the grease will be removed from the property. Fourth, LB is required to remove the refrigerator in the trash area in order to ensure there is sufficient space for trash storage. Fourth, in order to avoid blight in the community, LB is ordered to construct a new fence, as promised during the hearing, and ensure that the fence has no missing or cracked posts, pickets, or backer rails. *Tr.*, 12/4/20 at 9. With these conditions in place, the Board is able to permit LB to renew its license.

III. The Establishment's Record of Compliance Merits Renewal.

36. Under § 25-315, "[t]he Board shall consider the licensee's record of compliance with this title and the regulations promulgated under this title and any conditions placed on the license during the period of licensure, including the terms of a settlement agreement." D.C. Code § 25-

315(b)(1). The Board's records indicate that no formal alcohol violations have been entered against LB. Therefore, LB's record of compliance further supports renewal of the license.

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

37. 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. 2020). 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 5th day of February 2020, hereby **APPROVES** the Application to Renew a Retailer's Class CR License at premises 2000 18th Street, N.W., filed by Upshur Burger Concepts, LLC, t/a Lucky Buns subject to the following conditions:

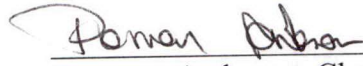
1. LB shall submit any and all current and unexpired public space permits authorizing the use of a sidewalk café to the Board within 30 days of receipt of this Order;
2. LB shall have trash removed from its trash area at least two times per day whenever the business is in operation. One trash pickup shall occur in the morning and the second trash pickup shall occur in the afternoon, evening, or night;
3. LB shall refrain from having a refrigerator in its sidewalk café or trash area. This provision shall go into effect 30 days from the date of receipt this Order.
4. LB shall refrain from storing grease outside the premises except in the metal container that will be emptied by LB's grease collection servicer.
5. LB shall construct a new fence within 6 months from the date of this Order. LB shall ensure that all fencing under its control has no missing or cracked posts, pickets, or backer rails. LB may avoid a violation under this provision if it replaces or fixes any missing or broken pieces of the fence within 30 days of receiving written notice of the violation.

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.

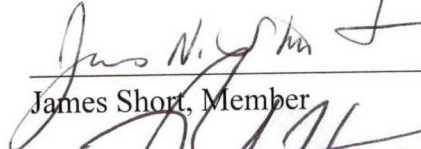
LB is further **ADVISED** to abide by the terms of its settlement agreement.

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

District of Columbia
Alcoholic Beverage Control Board



Donovan Anderson, Chairperson

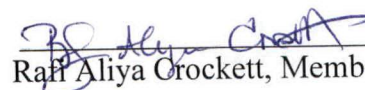


James Short, Member



Bobby Cato, Member

Rema Wahabzadah, Member



Rafi Aliya Crockett, 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).