

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

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In the Matter of:	)		
	)		
Wi Mila, Inc.	)	Case No.:	19-PRO-00108
t/a New Seven Market	)	License No.:	ABRA-113576
	)	Order No.:	2020-155
Application for a Substantial Change to a Retailer's Class B License (Class Change)	)		
	)		
at premises	)		
1406 Good Hope Road, S.E.	)		
Washington, D.C. 20020	)		

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

**ALSO PRESENT:** Wi Mila, Inc., t/a New Seven Market, Applicant

Kevin Lee, Counsel, on behalf of the Applicant

Advisory Neighborhood Commissioner Dorcas Agyei, Designated  
Representative, on behalf of a Group of Residents and Property Owners,  
Protestant

Martha Jenkins, General Counsel  
Alcoholic Beverage Regulation Administration

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

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**INTRODUCTION**

The Alcoholic Beverage Control Board (Board) approves the request to change the class of the current license to a Retailer's Class B License (Application) filed by Wi Mila, Inc., t/a New Seven Market (hereinafter "Applicant" or "NSM").

## ***Procedural Background***

The Notice of Public Hearing advertising New Seven Market's Application was posted on August 23, 2019, and informed the public that objections to the Application could be filed on or before October 7, 2019. *ABRA Protest File No. 19-PRO-00108*, Notice of Public Hearing [*Notice of Public Hearing*]. The records of the Alcoholic Beverage Regulation Administration (ABRA) indicate that a Group of Five or More Residents and Property Owners (hereinafter "Protestants" or "Group") has filed a protest against the Application. *ABRA Protest File No. 19-PRO-00108*, Roll Call Hearing Results.

The parties came before the Board's Agent for a Roll Call Hearing on October 21, 2019, where the above-mentioned objector was granted standing to protest the Application. On November 20, 2019, the parties came before the Board for a Protest Status Hearing. Finally, the Protest Hearing in this matter occurred on January 15, 2020.

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 8A, which indicated that its protest is based on concerns regarding NSM's impact on peace, order, and quiet. *Letter from Advisory Neighborhood Commission (ANC) 8A to the Alcoholic Beverage Control Board* (Oct. 4, 2019). 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 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. New Seven Market has submitted an Application for a Substantial Change to a Retailer's Class B License at 1406 Good Hope Road, S.E., Washington, D.C. *Notice of Public Hearing*. ABRA Investigator Jovan Miller investigated the Application and prepared the Protest Report submitted to the Board. *ABRA Protest File No. 19-PRO-00108, Protest Report* (Jan. 2020) [*Protest Report*]. NSM requests that the Board change the current license into a full Retailer's Class B License. *Protest Report*, at 2. NSM currently holds a Retailer's Class B License that

caps its alcohol sales at 25 percent of its “total volume of gross receipts on an annual basis.” *Id.*; D.C. Code § 25-332(e).

2. The proposed establishment is located in a MU-4 zone. *Protest Report*, at 4. Six licensed establishments are located within 1,200 feet of the proposed location. *Id.* The District’s Geographic Information System shows that no schools, recreation centers, public libraries, or daycare centers are located within 400 feet of the establishment. *Id.* at 5 (See Exhibit No. 12). NSM has trash pickup up five days per week. *Id.* at 6. The establishment’s proposed hours of operation are 7:00 a.m. to midnight. *Id.* The

3. ABRA investigators visited the establishment on 12 separate occasions between December 2, 2019, and January 6, 2020. *Id.* at 7. During one visit, NSM received a warning for excessive advertisements posted on the windows and NSM eventually corrected the violation. *Id.* The “[i]nvestigators did not observe any issues with peace, order, and quiet.” *Id.* They also did not observe issues with trash, crowds, or criminal activity. *Id.*

4. The records of the Metropolitan Police Department (MPD) indicate that MPD received 46 calls for service related to the area around NSM. *Id.* at 8. Nevertheless, only eight calls for service were associated with NSM, and none of the calls led a violation of the District’s alcohol laws. *Id.* ABRA’s records show no prior convictions of the District’s alcohol laws. *Id.*

5. Investigator Miller described NSM as a “regular corner store.” *Transcript (Tr.)*, January 15, 2020 at 32. The store sold grocery items such as prepackaged deli meats, household goods, over the counter medicines, noodles, snacks, and other odds and ends. *Id.* at 28-32.

## **II. Wi Park**

6. Wi Park serves as the President of NSM. *Id.* at 54-55. Ms. Park indicated that she operates a convenience store with three employees. *Id.* She previously has operated two convenience stores and a liquor store. *Id.* at 57. She does not currently have plans to change her business model but is looking to obtain a less restrictive license for the business. *Id.* at 58-60.

7. Ms. Park discussed her establishment’s security measures. *Id.* at 60. Currently, the business has sixteen security cameras and flood lights at the establishment. *Id.* at 60-62.

## **III. Steve Kang**

8. Steve Kang owns the building occupied by NSM. *Id.* at 72. He previously operated NSM but sold it to the current owner. *Id.* He indicated that he previously got a Class B license with the sales restriction because no other licenses were available under a legal quota and moratorium imposed under the District’s alcohol laws. *Id.* at 73. He indicated that the store has operated at the same location for approximately 40 years. *Id.* He also currently manages the store at night. *Id.* at 74. Currently, the store is usually open from 6:00 a.m. until 10:00 p.m. *Id.* at 82. He also believes that the neighborhood is safe. *Id.* at 87.

#### **IV. Clarence Jones**

9. Clarence Jones lives near the establishment and works there. *Id.* at 101. He has no concerns regarding its operations or received any complaints about the store. *Id.*

#### **V. ANC Commissioner Dorcas Agyei**

10. Advisory Neighborhood Commissioner Dorcas Agyei opposes the Application because NSM does not appear to need it. *Id.* at 107, 111. She also believes that the store is too close to a daycare and Ketcham Elementary School. *Id.* at 106. She also has observed that the store currently has alcohol mixed with other products. *Id.* at 118-19. She admitted that loitering near the store has “dissipated” since the nearby bus stop was moved, but there is still some loitering because of the proximity of social service providers. *Id.* at 120-21.

### **CONCLUSIONS OF LAW**

11. The Board may approve an Application for a Substantial Change to a Retailer's Class B 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 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 Class Change is Appropriate for the Neighborhood.**

12. 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).

13. 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. Granting the class change will not have a negative impact on peace, order, and quiet.**

14. "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).

15. There is no credible evidence in the record that NSM is having a negative impact or serving as a source of noise, rowdiness, loitering, litter, or criminal activity. *Supra*, at ¶ 3. The establishment has been in operation for many years and the record contains no indication that its prior operations have had a substantial negative impact on the community. *Supra*, at ¶¶ 4, 8, 10. As a result, the Board cannot reasonably presume that granting the Application would exacerbate any existing issues.

16. The Board has also not been presented with any valid basis for denying the Application. First, while Investigator Miller observed one alleged violation while performing an inspection, the violation at issue is not sufficiently significant to merit denial of the Application. *Supra*, at ¶ 1. Second, the Applicant's underlying reasons for obtaining a less restricted license are not relevant to the appropriateness test, which only focuses on quality of life issues as a matter of law; therefore, it has no bearing on the present matter. *Supra*, at ¶ 6. Third, there is no credible evidence in the record demonstrating that NSM will have a negative impact or interfere with the operation of any school, recreation, daycare centers, libraries, and similar facilities. *Supra*, at ¶ 2. There is also no credible evidence that the store is legally too close to those facilities in light of the official map provided in the Protest Report. *Id.* Finally, the Group failed to provide sufficient evidence that significant loitering or crime issues exist in the neighborhood, and that they are so severe that they merit denial of the Application. Therefore, the Board finds the Application appropriate.

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

17. 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 11th day of March 2020, hereby **APPROVES** the class change to a Retailer’s Class B License at premises 1406 Good Hope Road, S.E., filed by Wi Mila, Inc., t/a New Seven Market.

**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.

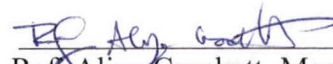
The ABRA shall deliver a copy of this order to the Parties.

District of Columbia  
Alcoholic Beverage Control Board

  
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Donovan Anderson, Chairperson

  
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James Short, Member

  
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Bobby Cato, Member

  
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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).