

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

In the Matter of:)	
)	
2335, LLC)	Case No.: 17-PRO-00056
t/a Power Night Club)	License No: 104228
)	Order No: 2018-076
Application for a Substantial Change to a)	
Retailer's Class CT License)	
)	
at premises)	
2335 Bladensburg Road, N.E.)	
Washington, D.C. 20018)	

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

ALSO PRESENT: 2335, LLC, t/a Power Night Club, Applicant

Sidon Yohannes and Andrew Kline, Counsels, on behalf of the Applicant

Janet Drew, Gateway Community Association, 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 CT License filed by 2335, LLC, t/a Power Night Club, (hereinafter "Applicant" or "Power") subject to conditions requiring the submission of final plans regarding the summer garden and the permanent marking of the summer garden area. Furthermore, in order to address valid concerns regarding the impact on noise and residential parking, as well as patron safety, the Board further conditions approval on limiting the occupancy of the entire premises to 299 person; limiting the occupancy of the summer garden to

60 persons; limiting the hours of the summer garden to 11:00 p.m.; prohibiting the offering of amplified music in the summer garden and outside the establishment; requiring the submission of a security plan; requiring the installation of security cameras; and the installation of adequate lighting in the summer garden and parking lot. The Board's reasoning and the conditions placed on the license are described below.

Procedural Background

The Notice of Public Hearing advertising Power Night Club's Application was posted on August 25, 2017, and informed the public that objections to the Application could be filed on or before October 10, 2017. *ABRA Protest File No. 17-PRO-00056*, Notice of Public Hearing [*Notice of Public Hearing*]. The records of the Alcoholic Beverage Regulation Administration (ABRA) indicate that the Gateway Community Association (Protestant) has filed a protest against the Application. *ABRA Protest File No. 17-PRO-00056*, Roll Call Hearing Results.

The parties came before the Board's Agent for a Roll Call Hearing on October 23, 2017, where the above-mentioned objector was granted standing to protest the Application. On November 29, 2017, the parties came before the Board for a Protest Status Hearing. Finally, the Protest Hearing in this matter occurred on January 10, 2018.

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. Nevertheless, the Board has not received a recommendation from any affected ANC.

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 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. Power Night Club has submitted an Application for a Substantial Change to a Retailer's Class CT License at 2335 Bladensburg Road, N.E., Washington, D.C. *Notice of Public Hearing*. Power has requested approval to operate a summer garden with an occupancy of 96 seats. *Id.* During the hearing, Power indicated that they would limit the summer garden to 60 seats and only use half the parking lot. *Transcript (Tr.)*, January 10, 2018 at 24-25. Power further

indicated during its closing argument that it was willing to cap the maximum occupancy of the entire premises with the summer garden to 299 persons. *Id.* at 258.

2. ABRA Investigator Anthony Howze investigated the Application and prepared the Protest Report submitted to the Board. *ABRA Protest File No. 17-PRO-00056, Protest Report* (Jan. 2018) [*Protest Report*]. The proposed establishment is located in a PDR-2 zone. *Id.*, at 4. Thirteen licensed establishments are located within 1,200 feet of the proposed location, which include one tavern, Bliss, and two nightclubs, Echostage and Stadium. *Id.* at 5. There are no schools, recreation centers, public libraries, or day care centers located within 400 feet of the establishment. *Id.*

3. According to the public notice, Power's hours of operation are as follows: 2:00 p.m. to 2:00 a.m., Sunday through Thursday, and 2:00 p.m. to 3:00 a.m. on Friday and Saturday. *Notice of Public Hearing*. The establishment's hours of alcoholic beverage sales, service, and consumption, as well as entertainment are the same as the hours of operation. *Id.* The Applicant's proposed hours for the summer garden would be the same as the rest of the establishment. *Id.*

4. ABRA investigators monitored the establishment on twelve separate occasions between December 12, 2017, and January 3, 2017. *Protest Report*, at 7. During one of these monitoring periods, the investigators believed they observed the establishment commit a cover charge violation, while on December 24, 2017, they believed they observed an after hours violations. *Id.* Neither of these violations has been adjudicated as of the date of the Protest Hearing. *Id.* at 8. Investigator Howze visited the Applicant's establishment during the monitoring period. *Tr.* 1/10/18 at 40-41, 49-50. He did not observe the establishment when it was open. *Id.* at 49-50, 55.

5. According ABRA's records, one noise complaint was filed in 2017, but it did not lead to a violation. *Id.* In 2017, the licensee resolved an allegation that she committed an illegal substantial change by maintaining an unapproved summer garden by paying a \$1,000 fine. *Id.*

6. Investigator Howze estimated that a neighborhood with residents began approximately 100 feet from the establishment. *Id.* at 51-52.

7. During his visits to the premises, Investigator Howze observed limited street parking and parking spaces allotted to the establishment. *Id.* at 39. A parking lot also wraps around the premises. *Id.* at 52-53. He further observed a bus stop across the street from the Applicant's establishment. *Id.* at 60.

II. Mimi Beyene

8. Mimi Beyene has owned Power Night Club since 2017. *Id.* at 64-65. Power has an occupancy of 299 people. *Id.* at 91. Currently, the establishment only opens on Friday night and Saturday night after 10:00 p.m. *Id.* at 65-66, 83. The establishment employs 20 people. *Id.* at 66. When the establishment is in operation, Power generally employs between 7 and 10 security personnel. *Id.* Power also frequently hires a detail of police officers as part of the Metropolitan

Police Department (MPD) Reimbursable Detail program when the establishment is in operation. *Id.* at 75, 95, 121.

9. Power's parking lot is part of the building. *Id.* at 67, 79. The establishment provides valet parking. *Id.* at 74, 79. Parking is generally free, but on some nights parking costs \$20.00. *Id.* at 90. The parking lot has 35 spots, but when the valet parks vehicles it can hold up to 50 cars. *Id.* Power only permits its customers to park in its parking lot. *Id.* at 116-17. The parking lot is 1,700 square feet. *Id.* at 142. The valet at U Street Parking, another lot in the neighborhood, has a capacity of 200 cars. *Id.* at 91.

10. On the southern side of the building, Power intends to use half of the parking lot for the summer garden and half of the lot for parking. *Id.* at 53, 142 (the identification of the summer garden on the southern side comes from the testimony of the investigator). The summer garden will be located in the back of the building. *Id.* at 68. The summer garden will have no soundproofing. *Id.* at 80. She indicated that she plans to close the summer garden by 11:00 p.m. *Id.* at 81. If granted, the ownership would also like to open for happy hour around 5:00 p.m. *Id.* at 83.

11. Ms. Beyene estimates that the summer garden will be located approximately 500 feet from the Gateway neighborhood. *Id.* at 69-70. The summer garden will be an open space and have no natural barriers. *Id.* at 101. The property is mostly surrounded by a chain link fence. *Id.* at 118. The garden will be designated by removable fencing. *Id.* at 114. During her testimony, the Applicant indicated that she would submit exact measurements to the Board after the hearing. *Id.* at 114, 124, *see also* 131, *Applicant's Exhibit No. 1* (saying the diagram submitted into the record does not reflect the current plans for the summer garden).

12. Ms. Beyene indicated that she previously hired a sound engineer to examine the property. *Id.* at 79. While playing music at full volume inside the premises during a sound test, no music could be heard outside the premises. *Id.* If granted, Power will play recorded music in the summer garden. *Id.* at 83, 135, 140.

III. Henry Akinnuoye

13. Henry Akinnuoye serves as Power's general manager. *Id.* at 144. He is not aware of any complaints being made against the establishment since the establishment began operation in May 2017. *Id.* at 145. He further indicated that he believes that the placement of the summer garden will utilize the building to prevent the transmission of sound in residential areas. *Id.* at 155.

IV. Kevin Mullone

14. Kevin Mullone lives on Evarts Street, N.E., and has lived in the community for seven years. *Id.* at 165.

15. Mr. Mullone discussed the limited availability of parking in the neighborhood. *Id.* at 171. First, he observed that a nearby Metrobus garage is located on Bladensburg Road, N.E., between 24th Street, N.E., and 26th Street, N.E. *Id.* at 170. The garage operates twenty four hours per

day. *Id.* In his experience, Metro employees park on Bladensburg Road, N.E., 24 hours per day, which reduces the availability of parking spaces in the neighborhood. *Id.* Second, 2130 Queens Chapel Road, N.E., which is used for valet parking is no longer available for parking, and will cause a loss of approximately 50 parking spaces. *Id.* at 171, 188-89, 192. Third, the valet parking spots at 2000 Bladensburg Road, N.E., which is owned by the TEFCU Credit Union, will no longer be available because the property is going to be torn down and converted into a self-storage business, which will cause a loss of approximately 50 parking spaces. *Id.* at 188-89, 193. Finally, Karma will also lose access to parking after the D.C. Department of Fire and Emergency Services moves into the next door building, which reduces the number of available parking spots by approximately 70 spaces. *Id.* at 194.

16. He further discussed the issue of nightclub patrons parking in the neighborhood. *Id.* at 185. Based on his knowledge, other valet companies operating on behalf of other establishment charge a minimum of \$50 for parking, which encourages patrons to seek free parking in the immediate neighborhood. *Id.* at 185-86. Patrons coming to the neighborhood park on Queens Chapel Road, N.E., Lafayette Avenue, N.E., Evarts Street, N.E., 21st Place, N.E., 20th Street, N.E., Bryant Street, N.E., Channing Street, N.E., and 22nd Street, N.E., which contain single family and multi-dwelling residences. *Id.* at 186. As a result, it is difficult to find parking in the neighborhood between 10:00 p.m. and 4:00 a.m. when the clubs are in operation. *Id.*

17. Mr. Mullone further discussed the availability of public transportation. *Id.* at 173. Specifically, the closest Metro station is the Rhode Island Metro Station, which is located approximately two miles from Power. *Id.* Additionally, the buses that pass the establishment do not provide a direct connection to the Rhode Island Metro. *Id.*

18. Mr. Mullone described the other nightlife establishments in the neighborhood. *Id.* at 181. Based on his knowledge, Stadium, Bliss, and Echostage each have occupancies that exceed 1,000 people. *Id.* He also is aware that Karma operates near the Echostage. *Id.* at 181-82.

V. Gilbert Smith

19. Gilbert Smith lives on Adams Street, N.E., and has lived in the neighborhood for 26 years. *Id.* at 206. His home is located north of Power, approximately 500 feet away. *Id.* at 207, 213. His home is connected to an alley that connects to Bladensburg Road, N.E. *Id.* at 215. His home also overlooks Power and he can see the roof from his property. *Id.* at 212-13.

20. Mr. Smith described his noise concerns. *Id.* at 213. Based on his experience, he regularly hears noise from people using the alley between midnight and 3:00 a.m. *Id.* at 216.

21. Mr. Smith also described his observations regarding parking in the neighborhood. *Id.* at 216. Based on his experience, he has observed people frequently park on 30th Street, N.E., and Adams Street, N.E. *Id.* He also seen evidence of broken glass in the street on many occasions where individuals broke into vehicles parked in the neighborhood. *Id.* at 217.

VI. Leslie Bournes

22. Leslie Bournes lives on Adams Street, N.E. *Id.* at 224. Ms. Bournes described the noise situation in the neighborhood. *Id.* at 226. From her home, she has heard amplified sounds from various establishments in the neighborhood. *Id.* Ms. Bournes also described the parking situation in the neighborhood related to Power. *Id.* at 227. On multiple occasions, she has observed Power’s patrons park on Channing Street, N.E., and other residential streets. *Id.* This results in club patrons walking through the neighborhood. *Id.*

CONCLUSIONS OF LAW

23. The Board may approve an Application for a Substantial Change to a Retailer's Class CT 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 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.

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). 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).

25. 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 valid concerns regarding peace, order, and quiet that may be addressed through the imposition of conditions.

26. In regards to peace, order, and quiet, the Board is satisfied that Power’s proposal will not have a negative impact so long as conditions to guard against noise and ensure the safety of patrons are imposed. “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).

27. In this case, with the exception of noise concerns, the Board does not find that Power’s proposal will encourage rowdiness, loitering, litter, or criminal activity on a regular basis. Moreover, while the investigators may have had good reason to cite Power, the observed alleged violations and the violation on Power’s record are not connected to neighborhood disturbances and do not appear to be of a continuous nature. *Supra*, at ¶¶ 4-5.

28. In contrast, it is not clear that Power has taken sufficient steps to prevent the creation of disturbing and unreasonable noise. Power indicates that it intends to play recorded music outside; yet, the property is completely open and, except for the building itself, has no significant barriers to prevent the transmission of voices or amplified sounds. *Supra*, ¶¶ 11-12.

29. The Board is also concerned that the Applicant has not indicated how the summer garden and parking lot will be lit while in operation. A summer garden and parking lot that is too dark creates crowd control issues and opportunities for criminal activity. Nevertheless, the Board is satisfied that these issues are easily remedied; therefore, the Board does not view these issues as fatal to the Application so long as these issues are resolved.

b. The Applicant’s proposed plan will have a negative impact on residential parking needs without conditions.

30. “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).

31. In this case, Power’s plan is to eliminate half of the parking lot on the southern side of the premises. *Supra*, at ¶ 10. Yet many existing parking facilities in the neighborhood are closing and the premises does not have easy and immediate access to significant public transportation resources, such as Metro. *Supra*, at ¶ 17. In addition, under current conditions, many patrons park their vehicles among the residential streets, which cause nightclub patrons to wander around the neighborhood during the early morning hours. *Supra*, at ¶¶ 20, 22. Based on these circumstances, the Board finds that approval of the summer garden should be contingent on compliance with conditions that will prevent significant erosion to the ability to find parking in the neighborhood.

II. The Board Imposes Conditions on the License to Mitigate Valid Concerns Regarding the Appropriateness of the Proposed Change and to Ensure the Safety of Patrons.

32. In light of the Board’s findings regarding appropriateness, the Board finds it necessary to impose conditions on the Applicant’s license to mitigate the valid concerns raised by the Protestants and to ensure the safety of patrons.

33. 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). While the “best interest” of the neighborhood criteria may be satisfied in a number of ways, it is inarguable that this criteria is satisfied when the conditions imposed by the Board addresses a valid concern regarding appropriateness. *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) (“In 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”). Moreover, the Board finds that conditions that protect the safety of patrons and decrease the likelihood of crime or violence are also in the best interest of the neighborhood.

34. In this case, the Board first conditions approval on Power capping the maximum number of people in summer garden to 60 people, ceasing operations of the summer garden at 11:00 p.m., and barring the playing of amplified sounds outside the premises. In light of summer garden’s lack of adequate soundproofing, these conditions will prevent the creation of noise disturbances from large crowds and amplified sounds that have the potential to disturb residents during traditional sleeping hours late at night. *In re T.L.*, 996 A.2d 805, 812-13 (D.C. 2010) (saying the government has a right to prevent noise so unreasonably loud that it “. . . unreasonably intrudes on the privacy of a captive audience or so loud and continued as to offend[] a reasonable person of common sensibilities and disrupt[] the reasonable conduct of basic nighttime activities such as sleep”).

35. The Board next conditions approval on the occupancy of the entire premises being limited to 299 persons, as offered by Power. *Supra*, at ¶ 1. In combination with the closure of

the summer garden at 11:00 p.m., these conditions will ensure that adequate parking is available on the premises between midnight and the closure of the establishment, which will discourage parking in residential streets when it is potentially most disturbing to residents and their ability to sleep. Moreover, this condition ensures that some parking will remain available during peak late night hours.

36. In this case, Power made a number of modifications to the Application during the hearing. While the plans presented at the hearing were sufficiently specific for the Board to make a judgement regarding appropriateness, the Board requires additional information in order to avoid any future issues regarding the interpretation and nature of the Board's approval. *In re Stephens, David J.W. t/a Saloon 45*, Case No. 14-PRO-00040, Board Order No. 2014-334, ¶¶ 51 (D.C.A.B.C.B. Sept. 23, 2014) (saying the failure to adequately describe the nature of the Application is grounds for denial because the Board cannot make a proper finding regarding appropriateness). As a result, the Board requires that the Applicant submit detailed plans regarding the size, shape, and location of the summer garden so that the Board and Power are clear as to the nature of the Board's approval in this case, which is limited to description of the summer garden provided by Power at the hearing. *Scahill v. District of Columbia Alcoholic Beverage Control Bd.*, 16-AA-755, 6 (D.C. 2018) (affirming the imposition of conditions to prevent misrepresentations by parties and to enforce voluntary concessions). This condition is described further in the Order section below.

37. Finally, the Board requires the Applicant to submit and comply with a security plan and install sufficient security cameras to provide adequate camera coverage for the entire facility. In addition to the power to impose conditions, the Board is also granted the authority to require the submission and compliance with a security plan on any tavern where the Board finds such a plan is necessary. D.C. Code § 25-113(c)(4). Based on the establishment's limited hours, it is clear that Power operates primarily as a nightclub and engages in minimal food sales. *See* D.C. Code § 25-402(d)(1) (requiring nightclubs to file security plans). In addition, based on Power's investigative history there is evidence that the ownership is not entirely familiar with the alcoholic beverage control laws of the District of Columbia, which, in part, are designed to ensure the safety of patrons visiting the establishment. Under these circumstances, the Board finds that a security plan and the installation of security cameras are appropriate for a business engaging in nightclub activity. Moreover, these conditions will help ensure that the establishment operates in a safe and compliant manner and help minimize potential peace, order, and quiet issues.

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

38. 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 28th day of February 2018, hereby **APPROVES** the Application for a Substantial Change to a Retailer's Class CT License at premises 2335 Bladensburg Road, N.E. filed by 2335, LLC, t/a Power Night Club, subject to the following **CONDITIONS**:

1. The summer garden approved by the Board is limited to the southern side of the building and shall take up no more than half the parking lot, as described by the license holder during the Protest Hearing. The license holder shall permanently outline the physical area where the summer garden is to be located so that the summer garden area may be clearly observed by a person on the property. This condition shall be satisfied if the license holder paints and maintains an outline of the summer garden on the ground or installs permanent stanchions;
2. The maximum occupancy of the summer garden shall be 60 people;
3. The summer garden shall cease operations at 11:00 p.m.;
4. The maximum occupancy of the entire premises shall be 299 persons;
5. The license holder shall not play amplified music or other sounds outside the establishment or inside the summer garden;
6. The establishment shall submit and comply with a security plan in accordance with D.C. Official Code §§ 25-104(e); 25-113(c)(4); and 25-402(d). As part of the security plan the license holder shall provide sufficient camera coverage to observe all public areas both inside and outside the premises that patrons have access to, except for the interior of any bathrooms.
7. The license holder shall ensure that the summer garden and parking lot are adequately lit when in use or customer vehicles are parked on the premises. The term "adequately lit" shall mean that a person with normal vision in the summer garden and parking lot shall readily and easily be able to see all persons occupying the facilities and that all persons outside such facilities shall readily and easily be able to see all persons in the summer garden and parking lot unless their sight line is obscured by a physical object.
8. Final approval of the summer garden shall be contingent on the submission and Board review of
 - a. A map identifying exterior lighting and light sources for the parking lot and summer garden;
 - b. A security plan containing a map identifying the location of all security cameras; and

- c. An architectural diagram showing the exact location, shape, and square footage of the summer garden on the property.
9. Any documents filed with the Board in compliance with section 8 of this Order shall be served on the Protestant.
10. Any increase in the size and shape of the summer garden or a change in location of the summer garden, as identified by the license holder, shall be presumed to be a substantial change in accordance with D.C. Official Code § 25-762. This section is not intended to prevent the Board from later finding that a proposed change is not substantial in accordance with § 25-762.

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.

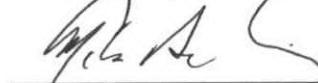
District of Columbia
Alcoholic Beverage Control Board



Donovan Anderson, Chairperson



Nick Alberti, Member



Mike Silverstein, Member



James Short, Member

Donald Isaac, Sr., 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).