

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

In the Matter of:)	
)	
Big Bear Café, LLC)	License Number: 84379
t/a Big Bear Café)	Case Number: 10-PRO-00096
)	Order No.: 2010-548
Application for a New)	
Retailer's Class CR License)	
)	
at premises)	
1700 I Street, N.W.)	
Washington, D.C. 20001)	

BEFORE: Nick Alberti, Acting Chairperson
 Mital Gandhi, Member
 Donald Brooks, Member
 Herman Jones, Member
 Calvin Nophlin, Member
 Mike Silverstein, Member

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

 Andrew Kline, on behalf of the Applicant

 Karla M. Lewis, on behalf of A Group of Five or More Individuals

 Martha Jenkins, General Counsel
 Alcoholic Beverage Regulation Administration

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

Big Bear Café, LLC, t/a Big Bear Café (Applicant), at premises 1700 I Street, N.W., Washington, D.C., filed an Application for a New Retailer's Class CR License (Application). The Applicant initially came before the Alcoholic Beverage Control Board for a Roll Call Hearing on July 26, 2010, and a Status Hearing on September 8, 2010.

Protests against the Application were timely filed by A Group of Five or More Individuals (Protestants), represented by Karla M. Lewis, by letter dated July 6, 2010. *See ABRA Protest File No. 10-PRO-00082*. The Protestants were granted standing as A Group of Five or More Individuals under D.C. Code § 25-601 (2007).

No Voluntary Agreement was reached between the Applicant and the Protestants before the Protest Hearing. Advisory Neighborhood Commission (ANC) 5C passed a resolution opposing the Application on July 20, 2010. The Protest Hearing was held on October 6, 2010.

Pursuant to D.C. Official Code § 25-602(a) (2009), the protest issues are whether the Application would adversely impact the peace, order, and quiet and residential parking and vehicular and pedestrian safety in the neighborhood.

FINDINGS OF FACT

1. The Applicant is requesting a new Retailer's Class CR License. *ABRA Licensing File No. 84379*. The Applicant's establishment is located at 1700 I Street, N.W. *ABRA Licensing File No. 843799*. The establishment is located in a R-4 zone. *ABRA Protest File 10-PRO-00096, Protest Report 2*. There are 10 ABC licensed establishments located within 1200 feet of the Applicant, none of which are on-premise establishments. *ABRA Protest File 10-PRO-00096, Protest Report 3; Tr., 10/6/10 at 35*. There are no schools within 400 feet of the Applicant. *ABRA Protest File 10-PRO-00096, Protest Report 7*.
2. The Applicant proposes to operate from 6:00 a.m. to 12:00 a.m., Sunday through Wednesday; 6:00 a.m. to 1:00 a.m. on Thursday; and 6:00 a.m. to 2:00 a.m. on Friday and Saturday. *ABRA Protest File 10-PRO-00096, Protest Report 6*. The Applicant proposes to sell and serve alcohol from 10:00 a.m. to 11:30 p.m. on Sunday; 8:00 a.m. to 11:30 p.m., Monday through Wednesday; 8:00 a.m. to 1:00 a.m. on Thursday; and 8:00 a.m. to 2:00 a.m. on Friday and Saturday. *ABRA Protest File 10-PRO-00096, Protest Report 6*. Finally, the Applicant proposes to allow live entertainment at the establishment from 8:00 a.m. to 10:00 p.m. on Sunday; 8:00 a.m. to 11:00 p.m., Monday through Wednesday; 8:00 a.m. to 12:00 a.m. on Thursday; and 8:00 a.m. to 1:00 a.m. on Friday and Saturday. *ABRA Protest File 10-PRO-00096, Protest Report 6*.
3. The Applicant also proposes to open a sidewalk café. *ABRA Protest File 10-PRO-00096, Protest Report 6*. The Applicant proposes operating the sidewalk café from 7:00 a.m. to 9:00 p.m. on Sunday; 7:00 a.m. to 10:00 p.m. on Monday and Tuesday; 7:00 a.m. to 11:00 p.m. on Wednesday; 7:00 a.m. to 12:00 a.m. on Thursday; and 7:00 a.m. to 1:00 a.m. on Friday and Saturday. *ABRA Protest File 10-PRO-00096, Protest Report 6*. The Applicant proposes to sell and serve alcohol in the sidewalk café from 10:00 a.m. to 9:00 p.m. on Sunday; 9:00 a.m. to 10:00 p.m. on Monday and Tuesday; 9:00 a.m. to 11:00 p.m. on Wednesday; 9:00 a.m. to 12:00 a.m. on Thursday; and 9:00 a.m. to 1:00 a.m. on Friday and Saturday. *ABRA Protest File 10-PRO-00096, Protest Report 6*. Finally, the Applicant proposes allowing live entertainment in the sidewalk café to run from 8:00 a.m. to 9:00 p.m., Sunday through Wednesday; 8:00 a.m. to 10:00

p.m. on Thursday; and 8:00 a.m. to 11:00 p.m. on Friday and Saturday. *ABRA Protest File 10-PRO-00096, Protest Report 6.*

4. Available Monday through Friday from 7:00 a.m. to 8:30 p.m., with Zone 5 permit holders exempted, are several two-hour parking spaces on the unit block and 100 block of R Street, N.W., the unit block and 100 block of Randolph Place, N.W., and the 1700 block of 1st Street, N.W.. *ABRA Protest File 10-PRO-00096, Protest Report 3-4.* There are also a few parking spaces available on the 1600 block of 1st Street, N.W. *ABRA Protest File 10-PRO-00096, Protest Report 4.* A bus stop is located on the north side of the unit block of Florida Avenue, N.W., and on the south side of the 100 block of Florida Avenue, N.W. *ABRA Protest File 10-PRO-00096, Protest Report 7.*

5. The Board called ABRA Investigator Ileana Corrales to testify. *Transcript (Tr.), October 6, 2010* at 11. Investigator Corrales was assigned to investigate the Applicant after the Protestants initiated a protest against the Application. *Tr., 10/6/10* at 12. ABRA investigators visited the establishment from September 16, 2010, to September 27, 2010, and visited the establishment at various times during the day on nine separate occasions. *ABRA Protest File 10-PRO-00096, Protest Report 7.* She described the Applicant as a small coffee shop. *Tr., 10/6/10* at 14. *Tr., 10/6/10* at 16. She testified that the Applicant neighbors a rowhouse and there are other rowhouses in the area. *Tr., 10/6/10* at 14. The Investigator also noted that there is a residence located in the same building as the Applicant, directly above the establishment. *Tr., 10/6/10* at 14.

6. Investigator Corrales stated that the Applicant currently operates a service bar where patrons can order “coffees, lattes, sodas, teas, pastries, and sandwiches.” *Tr., 10/6/10* at 16. Currently, the establishment only offers over-the-counter service. *Tr., 10/6/10* at 16.

7. Investigator Corrales testified that ABRA Investigators did not observe trash or litter outside of the Applicant’s establishment. *Tr., 10/6/10* at 20.

8. Investigator Corrales testified that the Metropolitan Police Department made 11 calls for service at 1700 I Street, N.W. *Tr., 10/6/10* at 20.

9. Investigator Corrales testified that she observed high volumes of traffic on two occasions. She stated that on September 23, 2010, and September 27, 2010, she observed the light on 1st Street, N.W., and Florida Avenue, N.W., backup traffic. *Tr., 10/6/10* at 21. She described Florida Avenue, N.W., as having a lot of traffic. *Tr., 10/6/10* at 33. She stated that parking in the area is limited and believed that parking availability was an issue. *Tr., 10/6/10* at 24. However, the Investigator noted that many patrons of the Applicant walk or ride their bikes to the establishment. *Tr., 10/6/10* at 25. She also noted that the establishment had two bike racks near the Applicant’s entrance. *Tr., 10/6/10* at 25, 37. Investigator Corrales noted that the traffic on Florida Avenue, N.W., was not related to the establishment and only saw two patrons drive to the establishment. *Tr., 10/6/10* at 25, 36.

10. Investigator Corrales testified that the Applicant currently operates from 7:00 a.m. to 6:00 p.m., Monday through Friday; 7:30 a.m. to 6:00 p.m. on Saturday; and 8:00 a.m. to 6:00 p.m. on Sunday. *Tr.*, 10/6/10 at 23.

11. Investigator Corrales testified that a triangular park is located directly across the street from the front of the establishment between R Street, N.W., and Florida Avenue, N.W. *Tr.*, 10/6/10 at 32. She noted that across the street, on the Florida Avenue, N.W. side, there is a playground attached to an apartment complex. *Tr.*, 10/6/10 at 33.

12. Investigator Corrales noted that there is a farmer's market that operates between the Applicant and the triangular park. *Tr.*, 10/6/10 at 34. The farmer's market operates from 10:00 a.m. to 2:00 p.m. every Sunday. *Tr.*, 10/6/10 at 34.

13. The Applicant called Gareth Croke to testify. *Tr.*, 10/6/10 at 52. Mr. Croke stated that he lives at and owns 1704 I Street, N.W., which is approximately two doors away from the Applicant's establishment. *Tr.*, 10/6/10 at 52, 70. He testified that the rat problem, loitering, and drug activity at the address has disappeared since the Applicant opened for business. *Tr.*, 10/6/10 at 56. He stated that 90 percent of the Applicant's patrons are from the neighborhood. *Tr.*, 10/6/10 at 58. Mr. Croke stated that he does not oppose the hours of operation requested by the Applicant. *Tr.*, 10/6/10 at 67, 69. Mr. Croke stated that the establishment does not generate noise. *Tr.*, 10/6/10 at 68.

14. Mr. Croke testified that he is familiar with the establishment's entertainment options. *Tr.*, 10/6/10 at 74. He stated that the establishment has people playing instruments on Sundays. *Tr.*, 10/6/10 at 74. He noted that the establishment also has a one or two piece band play outside, which he can hear from his home if his windows are open. *Tr.*, 10/6/10 at 74. He stated that the establishment has also held poetry nights. *Tr.*, 10/6/10 at 74. He stated that he has never heard disco music coming from the establishment. *Tr.*, 10/6/10 at 77.

15. Mr. Croke stated that he has had friends complain about the lack of parking in the neighborhood. *Tr.*, 10/6/10 at 76.

16. The Applicant then called Mr. Nathaniel Emodi to testify. *Tr.*, 10/6/10 at 78. He testified that he has lived at 105 R Street, N.W., which is directly above the establishment, since February 2009. *Tr.*, 10/6/10 at 79. He stated that he is the tenant of Stuart Davenport, who owns the Applicant. *Tr.*, 10/6/10 at 79.

17. Mr. Emodi testified that live entertainment at the establishment does not disturb him when he is at home. *Tr.*, 10/6/10 at 79. He stated that there is barely any sound in his apartment when the establishment has acoustic music playing. *Tr.*, 10/6/10 at 80, 88. According to Mr. Emodi, he has only had one incident where the music in the establishment was too loud and the Applicant corrected the problem within 10 minutes of Mr. Emodi's complaint. *Tr.*, 10/6/10 at 81.

18. Mr. Emodi testified that he has been able to find parking near his home when he drives. *Tr.*, 10/6/10 at 82. However, Mr. Emodi testified that he does not own a car and usually walks or utilizes public transportation. *Tr.*, 10/6/10 at 81.

19. Mr. Emodi testified that the establishment serves the local community. *Tr.*, 10/6/10 at 82. He stated that the Applicant's customers appear to be students and professionals and patrons often appear to be working. *Tr.*, 10/6/10 at 83.

20. The Applicant called Ted McGinn to testify. *Tr.*, 10/6/10 at 89. Mr. McGinn testified that he lives at 49 R Street, N.E., which is two blocks from the Applicant. *Tr.*, 10/6/10 at 90. Mr. McGinn stated that he is the Senior Market Manager for the Bloomingdale Farmer's Market and works in the Applicant's kitchen. *Tr.*, 10/6/10 at 91, 98. He testified that the market attracts between 500 to 600 visitors. *Tr.*, 10/6/10 at 92.

21. Mr. McGinn testified that the establishment is a small café. *Tr.*, 10/6/10 at 98. He stated that the service area runs along the wall and has bar-style seating and counter for serving food. *Tr.*, 10/6/10 at 99. He then described the interior as having small tables, one large table, a couch, and two comfortable chairs. *Tr.*, 10/6/10 at 99. He testified that the establishment has a small storeroom, a unisex bathroom, and a kitchen located on the ground floor. *Tr.*, 10/6/10 at 99. Mr. McGinn testified that the establishment currently serves breakfast food and baked goods. *Tr.*, 10/6/10 at 119. He stated that many of the establishment's patrons work at the coffee shop. *Tr.*, 10/6/10 at 100.

22. Mr. McGinn stated that the market is a "traditional English market." *Tr.*, 10/6/10 at 101. Thus, as is tradition, when the market opens at 10:00 a.m. he rings a bell and cries out "Good morning, Bloomingdale. I announce the market's open. I invite everybody to share the bounty of the good earth." *Tr.*, 10/6/10 at 101 (quotation marks removed). He stated that he also makes an announcement at 2:00 p.m. that the market is closed and rings a bell. *Tr.*, 10/6/10 at 101.

23. Mr. McGinn stated that he has worked with Councilmember Thomas and the District of Columbia Department of Transportation (DDOT) in order to obtain alternative parking for residents of the community. *Tr.*, 10/6/10 at 102. He stated that alternative permit parking is available on Saturday and Sunday along the park across from the establishment. *Tr.*, 10/6/10 at 102. The alternative parking became available at the end of May and early June of 2010. *Tr.*, 10/6/10 at 103. He stated that the majority of the customers of the farmer's market walk or bike to the market. *Tr.*, 10/6/10 at 106.

24. Mr. McGinn stated that he owns a car and does not have issues with parking in the neighborhood. *Tr.*, 10/6/10 at 112. He stated that the parking situation is "tight" on Monday and Tuesday because there is alternative street cleaning along R Street, N.W. *Tr.*, 10/6/10 at 113. Mr. McGinn stated that there are generally between one to ten parking spaces available around the Applicant. *Tr.*, 10/6/10 at 116. He testified that the majority of the Applicant's patrons walk or bike to the establishment. *Tr.*, 10/6/10 at 117.

25. Mr. McGinn stated that the establishment holds about 49 people. *Tr.*, 10/6/10 at 116. He testified that the establishment has the heaviest traffic around lunchtime, Saturday afternoon, and when the market is open on Sundays. *Tr.*, 10/6/10 at 116-17. He then stated that in the morning people tend to only enter the establishment to buy coffee and leave. *Tr.*, 10/6/10 at 117.

26. Mr. McGinn testified that the farmer's market has music on Sundays, not the Applicant. *Tr.*, 10/6/10 at 122.

27. The Applicant then called Stuart Davenport to testify. *Tr.*, 10/6/10 at 133. He stated that he lives at 1770 1st Street, N.W., five doors away from the establishment, and owns the Applicant. *Tr.*, 10/6/10 at 133, 135-36. He stated that he opened his establishment in the summer of 2006 in order to bring people together in the community. *Tr.*, 10/6/10 at 136-37. Mr. Davenport stated that he has spent a year working at Woodberry Kitchen one day per week in order to learn the best practices in the industry. *Tr.*, 10/6/10 at 139. Mr. Davenport stated that if he obtains his license he wants to offer "small meals." *Tr.*, 10/6/10 at 144.

28. Mr. Davenport stated that his establishment offers free wireless internet. *Tr.*, 10/6/10 at 140. He also stated that he has been working with the Office of Chief Technology Officer (OCTO) as part of a wireless city project. *Tr.*, 10/6/10 at 140.

29. Mr. Davenport said his goal is to expand the revenue of his establishment by offering alcohol. *Tr.*, 10/6/10 at 141. He stated that his establishment does a lot of publicly oriented activities that do not generate revenue. *Tr.*, 10/6/10 at 141. However, by offering alcohol, he will be able to extend his hours, get into food development, and attract older clientele. *Tr.*, 10/6/10 at 141-42. Further, he wants to turn his operation into a European café where "people can walk up and have a place to go" in the evenings. *Tr.*, 10/6/10 at 143. Mr. Davenport asserted that he could meet the minimum food sales requirements required by a Retailer's Class CR License. *Tr.*, 10/6/10 at 176. He stated that he has developed his kitchen by installing a four foot grill with a hood and induction burners, a commercial toaster, and hot plates. *Tr.*, 10/6/10 at 391.

30. Mr. Davenport stated that his establishment won the Mayor's Environmental Excellence Award in 2009 and won Business of the Year in Bloomingdale in 2008. *Tr.*, 10/6/10 at 143. Furthermore, he noted that his establishment has been praised for having the best coffee in Washington, D.C., by both the Washington City Paper and the Washington Post. *Tr.*, 10/6/10 at 143.

31. Mr. Davenport testified that he is seeking an entertainment endorsement. *Tr.*, 10/6/10 at 145. He stated that he wants to have one or two people play unamplified music so patrons can have conversations. *Tr.*, 10/6/10 at 147. He also is considering having jazz groups or standup bass players play outside on occasion. *Tr.*, 10/6/10 at 147. *Tr.*, 10/6/10 at 148. According to Mr. Davenport, music played in the establishment may use an amplification device depending on the occasion. *Tr.*, 10/6/10 at 180. Mr. Davenport testified that his establishment currently has

entertainment about once per week. *Tr.*, 10/6/10 at 209. He stated that the entertainment is usually provided after 6:00 p.m. after the coffee shop closes. *Tr.*, 10/6/10 at 209.

32. Mr. Davenport stated that a group called “Cheryl’s Gone” held poetry readings once per month. *Tr.*, 10/6/10 at 210. He stated that the group is from McLean, Virginia. *Tr.*, 10/6/10 at 210. He noted that over half the members of that group, about 40 people, drove to the establishment. *Tr.*, 10/6/10 at 211. Mr. Davenport then stated that a reading group of about 15 people from the Northwest part of District of Columbia drive to the establishment. *Tr.*, 10/6/10 at 212.

33. Mr. Davenport stated that his café supports biking. *Tr.*, 10/6/10 at 154. He testified that pro-biking groups advocated for the installation of a Capital Bikeshare station near the Applicant because they meet at the establishment. *Tr.*, 10/6/10 at 155. He also noted that he allows people to sell used bikes at the coffee shop once per year and friends of his put on free biking clinics during the farmer’s market. *Tr.*, 10/6/10 at 155.

34. Mr. Davenport thought that more people drove to the establishment than Mr. Croke, Mr. Emodi, and Mr. McGinn indicated. *Tr.*, 10/6/10 at 156. Mr. Davenport stated that he owns a car and lives in the neighborhood. *Tr.*, 10/6/10 at 156. He noted that there are parking spaces available during the week and the weekend, even though there is more traffic on the weekends. *Tr.*, 10/6/10 at 156.

35. Mr. Davenport stated that his establishment has assisted the police fight crime in the neighborhood. *Tr.*, 10/6/10 at 158. Mr. Davenport stated that he allowed undercover agents to his establishment to observe the park across the street. *Tr.*, 10/6/10 at 158. Furthermore, he stated that his establishment gave free coffee to police officers. *Tr.*, 10/6/10 at 158. He stated that he has communicated with the police regarding muggings and car break-ins. *Tr.*, 10/6/10 at 159. He also stated that his establishment is encouraging safety walks after 6:00 p.m. *Tr.*, 10/6/10 at 161.

36. The Applicant submitted a letter from Susan Des Marais, the President of the Washington D.C. Real Estate Association. *ABRA Protest File 10-PRO-00096, Applicant’s Exhibit No. 8.* She stated that Big Bear Café is an asset to the neighborhood and she personally uses it in her work to market homes in the neighborhood. *ABRA Protest File 10-PRO-00096, Applicant’s Exhibit No. 8.*

37. Mr. Davenport admitted that he previously received a noise complaint from Mr. Emodi. *Tr.*, 10/6/10 at 167. He stated that one of the bands that did Sunday shows was particularly loud and played until 10:30 p.m. when they should have stopped at 10:00 p.m. *Tr.*, 10/6/10 at 167. Upon receiving a complaint from Mr. Emodi, Mr. Davenport spoke to the band and they stopped the noise. *Tr.*, 10/6/10 at 168. According to Mr. Davenport, based on conversations with neighbors and his view that the bands were getting out of hand, he “back[ed] off.” *Tr.*, 10/6/10 at 168.

38. Mr. Davenport stated that the establishment is insulated for sound. *Tr.*, 10/6/10 at 169. He stated that through his construction job he built a sound studio in the past and understood sound insulation. *Tr.*, 10/6/10 at 169. He stated that the establishment was built with the knowledge that a residential tenant would be upstairs. *Tr.*, 10/6/10 at 169. As such, the establishment's ceiling is separate from the apartment's floor and a rubber barrier in between so vibrations cannot pass from one surface to the other. *Tr.*, 10/6/10 at 169. He stated that the walls are at least two to three courses of brick; although, he admitted that the windows do not provide good sound insulation if the establishment has a loud band playing. *Tr.*, 10/6/10 at 170, 179-80.

39. Mr. Davenport stated that he has been told on two occasions by the police that he would have to stop making noise if the police received a complaint. *Tr.*, 10/6/10 at 171. He stated that he has never received a noise complaint. *Tr.*, 10/6/10 at 177.

40. Mr. Davenport stated that the nearest residence to his establishment is approximately 30 to 40 feet away. *Tr.*, 10/6/10 at 232. Mr. Davenport admitted that if residents near his establishment had their windows open they would be able to hear music played outside of the establishment. *Tr.*, 10/6/10 at 233-34.

41. Mr. Davenport stated that he wanted to have jazz music outside his establishment and the ability to host outdoor movies. *Tr.*, 10/6/10 at 394-95.

42. Mr. Davenport stated that he knew that ANC 5C did not support his Application because the ANC claimed he was not operating in accordance with the law. *Tr.*, 10/6/10 at 171. In reply, the Applicant submitted a certificate of occupancy showing that the establishment is authorized to be a restaurant with 49 seats. *ABRA Protest File 10-PRO-00096, Applicant's Exhibit No. 10*. Mr. Davenport stated that he did not apply for a sidewalk café permit because he was told by Juan Amaya, a DDOT employee, that he did not have to. *Tr.*, 10/6/10 at 172. Mr. Davenport stated that Mr. Amaya told him that a permit for the use of the sidewalk was not required so long as he did not serve alcohol, did not have table service outside, and the seating was temporary. *Tr.*, 10/6/10 at 173. Mr. Davenport then stated that when he applied for a liquor license, Katrina Felder told him that they could not use the outdoor seating until the Applicant obtained its ABC license. *Tr.*, 10/6/10 at 173-74. He stated he was granted an outdoor seating permit a few days after talking with Ms. Felder. *Tr.*, 10/6/10 at 174. Mr. Davenport obtained insurance for using the outside area months before obtaining the license. *Tr.*, 10/6/10 at 174.

43. Mr. Davenport stated that he was also aware that ANC 5C did not support his Application because the ANC believed he held events at the café where alcohol was sold and served in violation of the law. *Tr.*, 10/6/10 at 174. In reply, Mr. Davenport stated that he had an event in April where alcohol was sold and served. *Tr.*, 10/6/10 at 175. However, he testified that a properly licensed caterer covered the event. *Tr.*, 10/6/10 at 175. According to Mr. Davenport, ABRA advised him that an unlicensed establishment could have a licensed caterer serve alcohol on their premises. *Tr.*, 10/6/10 at 175.

44. Mr. Davenport stated that he chose the hours for his establishment in order to provide flexibility to his business operations. *Tr.*, 10/6/10 at 190-91. Mr. Davenport admitted that all of the people who signed petitions in support of his Application may not have been aware that the establishment desired a 2:00 a.m. closing time on weekends for the establishment and a 1:00 a.m. closing time for the sidewalk café. *Tr.*, 10/6/10 at 191. He stated that he chose the times because he did not want to rush patrons out of the establishment. *Tr.*, 10/6/10 at 195. Mr. Davenport believed that his future patrons would likely leave at 12:00 a.m. during the week. *Tr.*, 10/6/10 at 200.

45. Mr. Davenport stated that the majority of the staff have taken Techniques of Alcohol Management (TAM) classes in order to understand the liquor laws and the effects of alcohol. *Tr.*, 10/6/10 at 222. Mr. Davenport stated he may hire servers trained in alcohol service for the evenings. *Tr.*, 10/6/10 at 223. He also stated that he was considering hiring a manager to run the establishment's operations during the evening. *Tr.*, 10/6/10 at 223.

46. The Applicant then called Robert Vinson Brannum to testify. *Tr.*, 10/6/10 at 242. Mr. Brannum stated that he is the President of the Bloomingdale Citizen Association. *Tr.*, 10/6/10 at 242. He stated that his organization voted to support the Application in March 2010. *Tr.*, 10/6/10 at 242-43, 246. Mr. Brannum stated that the vote was based on the presentation made by the Applicant, not the documents submitted to ABRA when the Applicant applied for a Retailer's Class CR License. *Tr.*, 10/6/10 at 247.

47. The Protestants called Commissioner Albrette "Gigi" Ransom to testify. *Tr.*, 10/6/10 at 248. She stated that she serves as an ANC Commissioner for ANC 5C12. *Tr.*, 10/6/10 at 248. She stated that the ANC did not support the Application. *Tr.*, 10/6/10 at 260. She stated that the ANC was concerned about the Applicant operating a sidewalk without a permit, zoning, parking, and occupancy of the establishment. *Tr.*, 10/6/10 at 261. She stated that the ANC did not file as a protestant because she was assured that the ANC would receive great weight by ABRA staff. *Tr.*, 10/6/10 at 267-68. Commissioner Ransom stated that she was not testifying on behalf of the ANC itself. *Tr.*, 10/6/10 at 274.

48. Commissioner Ransom noted that Mr. Davenport is currently serving as a ANC Commissioner. *Tr.*, 10/6/10 at 268.

49. Commissioner Ransom stated that the ANC opposes the hours of operation requested by the Applicant. *Tr.*, 10/6/10 at 271. She believes that the Applicant should be open no later than 9:00 p.m. on Sundays. *Tr.*, 10/6/10 at 272. She stated that having the establishment close at 11:00 p.m. or 12:00 p.m. would be more appropriate. *Tr.*, 10/6/10 at 273.

50. Commissioner Ransom stated that there is insufficient parking in the neighborhood. *Tr.*, 10/6/10 at 275. She suggested that ABRA ask DDOT to investigate improving parking in the neighborhood. *Tr.*, 10/6/10 at 279, 281

51. The Protestants then called Shahla Blackman to the testify. *Tr.*, 10/6/10 at 282-83. Ms. Blackman stated that Mr. Davenport “has helped the neighborhood” and “brought our community together. . . .” *Tr.*, 10/6/10 at 283. She stated that she owns three properties, one of which is catty-corner to the Applicant. *Tr.*, 10/6/10 at 284. Ms. Blackman lives in Maryland. *Tr.*, 10/6/10 at 296.

52. According to Ms. Blackman, she is concerned that the Applicant’s establishment will be too noisy for a residential neighborhood. *Tr.*, 10/6/10 at 284-85.

53. Ms. Blackman further added that the restaurant will attract people from outside the neighborhood. *Tr.*, 10/6/10 at 288. She stated that this will strain the parking resources of the community. *Tr.*, 10/6/10 at 288-89. She noted that there is not enough parking for people visiting residents. *Tr.*, 10/6/10 at 291.

54. Ms. Blackman also noted that there was still crime in the neighborhood. *Tr.*, 10/6/10 at 289. She noted that one of her tenants was robbed at gun point and decided to leave the neighborhood. *Tr.*, 10/6/10 at 289. She also noted that two years ago a pregnant woman was killed outside the Applicant’s establishment, near the bus stop. *Tr.*, 10/6/10 at 289. She stated that there were two shootings in the neighborhood the year before. *Tr.*, 10/6/10 at 290. Finally, she noted that there were frequent muggings. *Tr.*, 10/6/10 at 290. Under cross-examination, Ms. Blackman conceded that people sitting in a sidewalk café would make the neighborhood safer. *Tr.*, 10/6/10 at 295.

55. Ms. Blackman also complained about trash behind the Applicant’s establishment. *Tr.*, 10/6/10 at 291. She also noted that she had to pay \$600 to deal with a rat infestation that occurred after the Applicant opened for business. *Tr.*, 10/6/10 at 292. She also noted that she finds sugar packets, napkins, and coffee cups in her yard. *Tr.*, 10/6/10 at 292. She fears that if the Applicant receives a liquor license there will be broken glass in the streets. *Tr.*, 10/6/10 at 292-93.

56. Ms. Blackman stated that she believes that the Applicant’s entertainment and operations should cease at 9:00 p.m. during the week and at 12:00 a.m. during the weekend. *Tr.*, 10/6/10 at 297-98. She also opposes allowing the Applicant to play music outside. *Tr.*, 10/6/10 at 298.

57. Ms. Blackman complained that she has heard music emanating from the establishment a couple of times in the past. *Tr.*, 10/6/10 at 300. She stated that she heard music from the Applicant’s establishment at 11:00 p.m. *Tr.*, 10/6/10 at 301.

58. The Protestants then called Harold Pelham to testify. *Tr.*, 10/6/10 at 303. Mr. Pelham testified that he lives four doors away from the Applicant. . *Tr.*, 10/6/10 at 303. Mr. Pelham stated that he does not support the Application because it is not appropriate for a residentially zoned neighborhood. *Tr.*, 10/6/10 at 303-04.

59. Mr. Pelham stated that parking in the neighborhood is inconvenient. . *Tr.*, 10/6/10 at 305. He stated that he is frustrated that he has to move his car every Saturday night because of the farmer's market. *Tr.*, 10/6/10 at 305. He stated that parking is easier now that it is available on Florida Avenue, N.W., on Saturday. *Tr.*, 10/6/10 at 305.

60. Mr. Pelham further testified that noise emanating from the establishment has not been "crazy." *Tr.*, 10/6/10 at 307. He stated that when the Applicant plays music at his establishment he does not hear it unless he leaves his residence. *Tr.*, 10/6/10 at 308.

61. Mr. Pelham agreed that the Applicant is a better business than the previous business that occupied the Applicant's current space. *Tr.*, 10/6/10 at 312. Mr. Pelham supported ensuring that the Applicant's business remains viable. *Tr.*, 10/6/10 at 312. Mr. Pelham stated that he does not oppose the Applicant staying open until 10:00 p.m. *Tr.*, 10/6/10 at 315.

62. The Protestants called Joyce Johnson to testify. *Tr.*, 10/6/10 at 318. She lives at 79 R Street, N.W. *Tr.*, 10/6/10 at 318. Ms. Johnson complained that on a couple of occasions the noise emanating from the café is "really loud." *Tr.*, 10/6/10 at 319. She also stated that parking during the farmer's market is "atrocious." *Tr.*, 10/6/10 at 319.

63. The Protestants then called Lisa Brown to testify. *Tr.*, 10/6/10 at 321. She stated that she lives at 1635 1st Street, N.W., which is "directly diagonal" to the Applicant. *Tr.*, 10/6/10 at 321. Ms. Brown testified that parking in the neighborhood was terrible and stated that she felt it was safer to park illegally rather than park farther away. *Tr.*, 10/6/10 at 321. Ms. Brown stated that parking was an issue regardless of whether the Applicant received a liquor license or not. *Tr.*, 10/6/10 at 324. Nevertheless, she stated that expanding the Applicant's hours beyond 6:00 p.m. would negatively impact the parking situation in the neighborhood. *Tr.*, 10/6/10 at 325.

64. Ms. Brown testified that noise emanating from inside the establishment has prevented her from sleeping on numerous occasions. *Tr.*, 10/6/10 at 322, 326, 328.

65. The Protestants then called Karla Lewis to testify. *Tr.*, 10/6/10 at 330. She stated that she lives at 86 R Street, N.W. *Tr.*, 10/6/10 at 330. She stated that she opposes the Applicant obtaining a liquor license and extending its hours. *Tr.*, 10/6/10 at 330. Ms. Lewis testified that she hears music in her home until 2:00 a.m. or 3:00 a.m. *Tr.*, 10/6/10 at 330. She also testified that she hears noise from the market on Sundays. *Tr.*, 10/6/10 at 330.

66. Ms. Lewis testified that the Applicant has adequately addressed litter issues in the past few months. *Tr.*, 10/6/10 at 331.

67. The "Bloomingdale/Eckington Investment Plan" produced by the Neighborhood Investment Fund advocated developing commercial corridors in Ward 5. *See ABRA Protest File 10-PRO-00096, Protestants' Exhibit No. 19.* The Board notes that the report only discusses how the Neighborhood Investment Fund will invest its resources. *ABRA Protest File 10-PRO-00096, Protestants' Exhibit No. 19, Introduction.*

68. Ms. Lewis stated that Protestants Exhibit No. 29 reflected how she wants the establishment to operate. *Tr.*, 10/6/10 at 355. Ms. Lewis stated that if the Applicant obtains a liquor license she would like to see the Applicant close at 10:00 p.m., Sunday through Thursday; close at 11:00 p.m. on Friday and Saturday; and at 1:00 a.m. if a special event occurs. *ABRA Protest File 10-PRO-00096, Protestants' Exhibit No. 29, para. 3, para. 4.* She requests that the establishment close its kitchen by 12:00 a.m. *ABRA Protest File 10-PRO-00096, Protestants' Exhibit No. 29, para 3.* She does not want the Applicant to participate in pub crawls or act as a nightclub. *ABRA Protest File 10-PRO-00096, Protestants' Exhibit No. 29, para. 1.* Ms. Lewis also wants the Applicant to notify neighbors seven days in advance of any special event. *ABRA Protest File 10-PRO-00096, Protestants' Exhibit No. 29, para. 4.* She would limit the Applicant to soft background music in the sidewalk café without amplification and only allow live music once per month. *ABRA Protest File 10-PRO-00096, Protestants' Exhibit No. 29, para. 5.* Finally, Ms. Lewis wants the Applicant to petition DDOT to restrict parking to residents at the 100 block of R Street, N.W., and the 1600 and 1700 block of First Street, N.W. *ABRA Protest File 10-PRO-00096, Protestants' Exhibit No. 29, para. 7.*

69. The Protestants called Angela Otts to testify. *Tr.*, 10/6/10 at 370. Ms. Otts stated that she can hear noise from the establishment in her house even if the windows are closed. *Tr.*, 10/6/10 at 371. Ms. Otts stated that she does not hear noise from the establishment during the day. *Tr.*, 10/6/10 at 377. Ms. Otts stated that she has heard music from the establishment in her home between 5:30 p.m. and 8:00 p.m. *Tr.*, 10/6/10 at 378. She testified that she has a 7 year old and a 15 year old at home. *Tr.*, at 10/6/10 at 378. She also complained that the farmer's market forces her to move her car frequently. *Tr.*, 10/6/10 at 373. Ms. Otts stated that she opposes alcohol in general. *Tr.*, 10/6/10 at 375.

70. The Applicant called Mr. Davenport as a rebuttal witness to testify. *Tr.*, 10/6/10 at 381. In response to the Protestants' testimony, Mr. Davenport stated that he does not plan to market the establishment outside the District of Columbia. *Tr.*, 10/6/10 at 381-82. He stated that he only advertises on local listservs and will continue this practice if he obtains a Retailer's Class CR License. *Tr.*, 10/6/10 at 382. Mr. Davenport stated that he may serve liquor in a bottle but wants to focus on making taps available. *Tr.*, 10/6/10 at 382-83. He stated that he plans to serve wine by the glass. *Tr.*, 10/6/10 at 384. Finally, Mr. Davenport testified that his establishment does not utilize sugar packets because it minimizes trash. *Tr.*, 10/6/10 at 383.

71. Although ANC 5C did not file as a protestant, the ANC submitted recommendations under D.C. Code § 25-609 (2001). *ABRA Protest File 10-PRO-00096, Resolution.* In a 9-0 vote, ANC 5C opposed the Application in a resolution adopted on July 20, 2010. *ABRA Protest File 10-PRO-00096, Resolution.* The ANC is concerned that the Applicant is operating in violation of the zoning laws and has not taken steps to resolve the matter. *ABRA Protest File 10-PRO-00096, Resolution.* The ANC is also concerned that the Applicant has not obtained the proper public space permits from DDOT in order to use the area outside the establishment. *ABRA Protest File 10-PRO-00096, Resolution.* The ANC also complained that the Applicant has only reached out to neighbors in the past two months. *ABRA Protest File 10-PRO-00096, Resolution.*

In addition, the ANC stated that the Applicant had events where alcohol was sold and distributed to guests in violation of the liquor laws. *ABRA Protest File 10-PRO-00096, Resolution*. Finally, the ANC is concerned that the Applicant did not notify neighbors when it had events and did not resolve problems regarding parking, litter, and noise. *ABRA Protest File 10-PRO-00096, Resolution*.

72. The Applicant has obtained a Certificate of Occupancy for 1700 1st Street, N.W, which describes the Applicant as a “Restaurant/Prepared Food Shop. . .” *ABRA Protest File 10-PRO-00096, Protestants’ Exhibit No. 22*.

CONCLUSIONS OF LAW

73. Pursuant to D.C. Official Code § 25-313(a) (2009) and 23 DCMR § 400.1(a) (2008), an Applicant must demonstrate to the Board’s satisfaction that the establishment for an Application for new Retailer’s Class CR License is appropriate for the neighborhood in which it is located. The Board concludes that the Applicant has demonstrated that the Application is appropriate, subject to the limitations described below.

74. The Board recognizes that pursuant to D.C. Official Code § 1-309.10(d) and D.C. Official Code § 25-609, an Advisory Neighborhood Commission’s (ANC) properly adopted written recommendations are entitled to great weight from the Board. *See Foggy Bottom Ass’n v. District of Columbia ABC Bd.*, 445 A.2d 643 (D.C. 1982). Accordingly, the Board “must elaborate, with precision, its response to the ANC issues and concerns.” *Foggy Bottom Ass’n*, 445 A.2d at 646. ANC 5C is concerned that the Applicant is operating in violation of the zoning laws and does not have a public space permit. The ANC is also concerned that the Applicant has not sufficiently reached out to neighbors and has not resolved problems regarding parking, litter, and noise. The Board will address each of these concerns, along with the Protestant’s arguments below.

75. ANC 5C’s complaints regarding zoning issues are insufficient to prevent the Board from issuing a liquor license to the establishment. The Board does not have jurisdiction over zoning issues. Under § 25-336(d)(1), the Board will issue a Retailer’s Class CR License in a residential zone as long as the proper Certificate of Occupancy is provided. D.C. § 25-336(d)(1) (2001). Here, the Applicant has submitted the proper Certificate of Occupancy, which satisfies the ABC laws. Any remaining zoning issues are appropriately addressed to the District of Columbia Office of Zoning and are not the purview of the Board.

76. ANC 5C further complained that the Applicant did not obtain a proper public space permit from DDOT. Nevertheless, Mr. Davenport testified that he obtained the proper permit. Furthermore, ABRA’s records show that the Applicant has properly applied for a sidewalk café endorsement. Finally, the Board notes that it does not have jurisdiction over DDOT’s rules and regulations. As such, the Board finds that any error on the part of the Applicant has been corrected and does not merit denying the Applicant a Retailer’s Class CR License.

77. ANC 5C also contends that the Applicant has not sufficiently reached out to its neighbors. Simply put, there is no requirement that the Applicant reach out to its neighbors. As such, this perceived failure on the part of the Applicant is insufficient to prevent Mr. Davenport from obtaining a liquor license.

78. The Board is also not persuaded that granting the Application will worsen the parking situation in the neighborhood, as contended by ANC 5C and the Protestants. The Board gives credence to the Protestants' evidence that there is a parking problem but is not convinced the Applicant will contribute to the problem. As Investigator Corrales noted, many of the Applicant's patrons walk or bike to the establishment and will continue doing so, given the presence of a Capital Bikeshare station nearby and the Applicant's bike racks. Furthermore, the Board does not find that the farmer's market causes sufficient disturbance to merit denying the Application. The Board notes that the market only occurs for a limited time in the middle of the day on Sundays. Further, DDOT has provided alternative parking arrangements on Florida Avenue, N.W., which sufficiently alleviates any parking issues caused by the farmer's market. Consequently, based on the evidence submitted, the Board finds that granting the Application will have a negligible impact on parking in the neighborhood.

79. ANC 5C and the Protestants are also concerned about litter. The evidence presented does not demonstrate that litter in the neighborhood is coming from the Applicant's establishment, as demonstrated by Mr. Davenport's testimony that his establishment does not give out sugar packets. The Board also notes that Investigator Corrales did not notice any litter during her investigation and the Protestants have stated that the Applicant has resolved issues regarding litter in the past few months. Finally, as a Class CR License, patrons will not be allowed to take open containers with them when they leave the establishment, which will prevent bottles from being discarded in the neighborhood. *See* D.C. Code § 25-1001 (2001). As such, the Board finds that the Applicant's efforts to prevent litter are adequate and do not prevent the Applicant from obtaining a liquor license.

80. ANC 5C and the Protestants also have complained that the establishment is generating too much noise. Testimony produced by the Protestants indicates that noise generated from the establishment is currently disturbing the neighbors. Under § 25-725, the Applicant is prevented from generating noise that can be heard in a residence located in a residential zone. D.C. Code § 25-725(a). As such, the Board finds that limiting the Applicant's hours and the protections offered by § 25-725 will give more protection to the Applicant's neighbors from noise than they currently have now. As a result, the Board does not find noise a sufficient reason to deny the Application.

81. Finally, ANC 5C and the Protestants' complaint that the Applicant violated the ABC laws by serving alcohol at its establishment has no merit. As indicated by Mr. Davenport, his establishment utilized an outside caterer, which is allowed under the ABC laws.

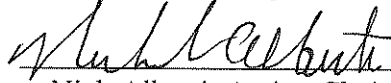
82. Pursuant to D.C. Official Code § 25-313(b)(2) and 23 DCMR § 400.1(a), the Board must determine whether the Application for a new Retailer's Class CR License will have an adverse effect on the peace, order, and quiet and residential parking and vehicular and pedestrian safety. The Board finds, based on the testimony and evidence received by the Board, that the Applicant's proposed plans will not adversely affect the peace, order, and quiet of the neighborhood or be a detriment to residential parking and vehicular and pedestrian safety. Indeed, as the Applicant demonstrated, the establishment is appropriate for the neighborhood because the Applicant has taken steps to train its staff, sound proof the physical establishment, prepare the kitchen to meet the Class CR food sales requirements, and make bike racks available to its clientele. As such, the Board approves the Application.

ORDER

Therefore, this 3rd day of November 2010, it is hereby **ORDERED** that the Application for a new Retailer's Class CR License requested by Big Bear Café, LLC, t/a Big Bear Café (Applicant), at premises 1700 I Street, N.W., Washington, D.C., is hereby **GRANTED** with the following stipulations:

- (1) The Applicant's hours of operation inside the establishment shall run no later than 11:00 p.m. during the week and 12:00 p.m. during the weekend;
- (2) The Applicant shall submit a noise abatement plan to ensure that it complies with D.C. Code § 25-725 (2001) and comply with the terms of the plan submitted;
- (3) The Applicant's hours of operation for the establishment's sidewalk café shall run no later than 9:00 p.m. during the week and 10:00 p.m. during the weekend;
- (4) The Applicant shall be permitted to have entertainment inside its establishment but such entertainment shall run no later than 10:00 p.m. on Sunday and 11:00 p.m. on all other days;
- (5) Entertainment on the sidewalk café shall cease at 9:00 p.m.; and
- (6) Copies of this order shall be sent to the Applicant and Ms. Karla Lewis, on behalf of the Protestants.

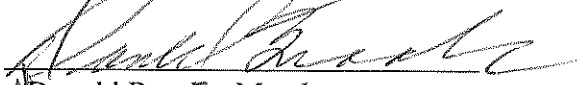
District of Columbia
Alcoholic Beverage Control Board



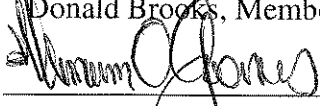
Nick Alberti, Acting Chairperson



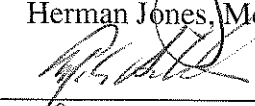
Mital M. Gandhi, Member



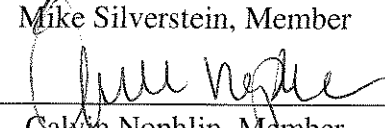
Donald Brooks, Member



Herman Jones, Member



Mike Silverstein, Member



Calvin Nophlin, Member

Pursuant to Section 11 of the District of Columbia Administrative Procedure Act, Pub. L. 90-614, 82 Stat. 1209, D.C. Official 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 the service of this Order, with the District of Columbia Court of Appeals, 500 Indiana Avenue, N.W., Washington D.C. 20001. However, the timely filing of a Motion for Reconsideration pursuant to 23 DCMR § 1719.1 (April 2004) 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).