THE DISTRICT OF COLUMBIA
ALCOHOLIC BEVERAGE CONTROL BOARD

In the Matter of:	)	
	)	
Watergate Hotel Lessee, LLC	)	Case Number: 13-PRO-00005
t/a Watergate Hotel	)	License Number: 091162
	)	Order Number: 2013-293
Application for a New	)	
Retailer's Class CH License	)	
	)	
at premises	)	
2650 Virginia Avenue, N.W.	)	
Washington, D.C. 20037	)	
	)	

BEFORE: Ruthanne Miller, Chairperson
Nick Alberti, Member
Donald Brooks, Member
Herman Jones, Member
Mike Silverstein, Member

ALSO PRESENT: Watergate Hotel Lessee, LLC, t/a Watergate Hotel, Applicant

Stephen O'Brien, of the firm Mallios and O'Brien, on behalf of the Applicant

Erica Mueller, of The Marcus Firm, PLLC, on behalf of the 2700 Virginia Avenue Group and the Newman Petitioners, consisting of Robert Burney, Herbert Goda, Maria Hughes, Judge Pauline Newman, Gerald Waldman, and Cynthia Walker

Martha Jenkins, General Counsel
Alcoholic Beverage Regulation Administration

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

INTRODUCTION

The Watergate Hotel has filed an application with the Alcoholic Beverage Control Board (Board) requesting a Retailer's Class CH alcohol license that will include five summer gardens and an entertainment endorsement, which will permit the hotel to receive cover charges and host dancing. In response to this request, Advisory Neighborhood Commission (ANC) 2A and two groups of five or more residents or property owners filed

protests against the application. During the Roll Call Hearing in this matter, our Agent denied standing to a number of individuals who signed protest petitions seeking standing as a group, because they failed to appear at the hearing in person or through a designated representative. Therefore, our Agent granted standing to the groups without the individuals that failed to appear.

Following the Roll Call Hearing, the application proceeded through the protest process. During this period, the Watergate Hotel entered into a settlement agreement with some of the surrounding residential complexes. Following the submission of the settlement agreement, the Board received a number of withdrawals from the protest by residents, as well as ANC 2A.

Normally, the protest process ends when parties enter into a settlement agreement and withdraw their protests. Yet, some individual members of the two groups, who we designate the "Newman Petitioners," did not withdraw their claims against the Watergate Hotel's application and wish to continue the protest. Nevertheless, based on the withdrawals and our Agent's decision to exclude those signatories that failed to appear, it appeared that none of the remaining groups had the required number of members to retain standing.

Consequently, before the start of the Protest Hearing, the Board heard arguments on the threshold question of whether any of the Newman Petitioners had standing to continue their protest as a group of five or more individual residents or property owners under District of Columbia (D.C.) Official Code § 25-601(2). Based on our review of the record and the law, we determine that our Agent acted in accordance with Title 25 of the D.C. Official Code (Title 25) and Title 23 of the D.C. Municipal Regulations (Title 23) in dismissing those signatories that failed to appear. We further determine that none of the groups of five or more residents or property owners have standing to continue the protest under § 25-601(2), because none of the groups have five or more members. Therefore, the Board must dismiss the protest, because there are no groups left that have standing to protest the application filed by the Watergate Hotel.

BACKGROUND

We recount this matter's procedural history, which provides the factual basis of our decision.

1. The Watergate Hotel Lessee, LLC, t/a Watergate Hotel, (Applicant) submitted an Application for a New Retailer's Class CH License (Application) at 2650 Virginia Avenue, N.W. See *Protest File No. 13-PRO-00005*, Notice of Public Hearing

2. The Alcoholic Beverage Regulation Administration (ABRA) posted a Notice of Public Hearing on the Applicant's premises on December 28, 2012, and published notice of the Application in the District of Columbia (D.C.) Register in accordance with D.C. Official Code §§ 25-421 and 25-423. Notice of Public Hearing; D.C. Register, Vol. 59, No. 52, ID No. 4120092 (Dec. 28, 2012). According to the Notice of Public Hearing, the last day to submit a petition in protest of the Application was February 11, 2013. Notice of Public Hearing. The notice announced that ABRA would hold the administrative review hearing on February 25, 2013. Id. The notice further stated that any "objectors are entitled

to be heard before the granting of [the license] on the hearing date at 10:00 a.m., 4th Floor, 2000 14th Street, N.W., Washington, D.C. 20009. Petitions and/or requests to appear before the Board must be filed on or before the petition date." Id.

3. In response to the Notice of Public Hearing, the Board received various protest letters. First, ANC 2A voted to protest the license on January 16, 2013, and submitted their protest letter to ABRA on January 30, 2013. *ABRA Protest File No.* 13-PRO-00005, Letter from Chairperson Florence Harmon, ANC 2A, to Ruthanne Miller, Chairperson, Alcoholic Beverage Control Board (Jan. 30, 2013). On February 24, 2013, ANC 2A appointed Commissioners Rebecca Coder, Florence Harmon, and Armando Irizarry to act as ANC 2A's designated representatives. Letter from Florence E. Harmon, Chair, ANC 2A, to Ruthanne Miller, Chairperson, Alcoholic Beverage Control Board, 1 (Feb. 24, 2013).

4. On February 11, 2013, ABRA received a petition with twenty-two signatures from the residents of 2700 Virginia Avenue, N.W. (2700 Virginia Avenue Petition) protesting the Application. *ABRA Protest File No.* 13-PRO-00005, 2700 Virginia Avenue Petition, 1-3 (Feb. 11, 2013). The 2700 Virginia Avenue Petition contained the names, addresses, and signatures of Eugene L. Bialek; Carla Botting; Robert L. Chetema; Debra Decker; Daniel W. Deming; Madeleine H. Deming; Herbert Goda; Peter Louis Jennings; Victoria Jennings; E.W. Kelly; Sherry Kelley; Patricia Kellogg; Michelle Michaels; Judge Pauline Newman; Arnold Sagalyn; Louise Sagalyn; William Schneider; Anne Smith; Dr. William Smith; Kari Thyne; June Walsh; and Michael Walsh.[1] Id. at 2-3. In total, the 2700 Virginia Avenue Petition contained seventeen unique signatures when we exclude the duplicate signatures. Id. The petition did not authorize anyone to act as the designated representative for the entire group.

5. In a separate letter, some of the signatories to the 2700 Virginia Avenue Petition notified the Board in writing that they had appointed designated representatives. First, Michelle Michaels and Kari Thyne designated Anne Smith to act as their designated representative. Letter from Michelle Michaels to the Alcoholic Beverage Control Board (Feb. 24, 2013); Letter from Kari Thyne to the Alcoholic Beverage Control Board (Feb. 24, 2013). Second, Madeleine Deming designated Daniel Deming to act as her designated representative. Letter from Madeleine Deming to the Alcoholic Beverage Control Board (Feb. 24, 2013).

6. The residents of the Watergate West, also located at 2700 Virginia Avenue, N.W., submitted a separate protest petition (Watergate West Petition). *ABRA Protest File No.* 13-PRO-00005, Watergate West Petition, 1. The Watergate West Petition contained the names, addresses, and signatures of Howard Dugoff; Karen Kaub; Jonda McFarlane; Robert M. Phillips; Ivan Selin; Mary Kay Shaw; Johan Van Der Beke; and Tracy Van Riper. Id. at 3. In total, the Watergate West Petition contained eight signatures. Id. Furthermore, Jonda McFarlane designated Robert Phillips and Karen Kaub as her designated representatives. Letter from Jonda McFarlane to the ABRA (Feb. 18, 2013).

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[1] We note that some of the handwritten signatures on the protest petitions we received are difficult to discern. Therefore, we apologize in advance if we have misspelled any individual's name.

7. In a letter, dated February 7, 2013, Gerald Waldman, President of Watergate West Inc., submitted a third protest petition on behalf of the corporation and residents of the Watergate West (Waldman Petition). *ABRA Protest File No.* 13-PRO-00005, Letter from Gerald Waldman, President, Watergate West Inc., to Ruthanne Miller, Chairperson, Alcoholic Beverage Control Board, 1 (Feb. 7, 2013). The Waldman Petition contained the names, signatures, and addresses of Daniel Deming; Christine E. Evans; Lewey O. Gilstrap; Hal C. Lawrence; Tran Huong Mai; Judge Pauline Newman; Jennifer Smith; and Gerald Waldman. Id. at 2. Therefore, the petition contained eight signatures. In addition, the Waldman petitioners designated Julianne E. Dymowski as their attorney. Letter from Julianne E. Dymowski, Counsel, to Ruthanne Miller, Chairperson, Alcoholic Beverage Control Board (Feb. 6, 2013).

8. On February 11, 2013, Cynthia Walker submitted a letter in her "personal capacity" to protest the Application. *ABRA Protest File No.* 13-PRO-00005, Letter from Cynthia Walker, to Ruthanne Miller, Chairperson, Alcoholic Beverage Control Board, 1 (Feb. 11, 2013). The letter did not indicate that any other individuals had joined Ms. Walker's protest. Id. On February 23, 2013, Ms. Walker designated Joyce Rice and Kristin Abkemeier as her designated representatives, and she asked to join the protests of the residents of 2700 Virginia Avenue, N.W. Email from Cynthia Walker to LaVerne Fletcher, Mediation Specialist, ABRA (Feb. 23, 2013) (Subject: Second Letter of Designation); Email from Cynthia Walker to LaVerne Fletcher, Mediation Specialist, ABRA (Feb. 22, 2013) (Subject: Letter of Designation).

9. Once the forty-five day protest period for the Application expired, ABRA's Community Resource Advisor sent individual letters notifying the protest petitioners of a Roll Call Hearing on February 25, 2013, at 10:00 a.m. D.C. Code § 25-101(41) (West Supp. 2013); see e.g., Letter from Sarah Fashbaugh, Community Resource Advisor, to Julianne Dymowski, Whiteford, Taylor & Preston LLP (Feb. 13, 2012). According to the letter, the Board's Agent would conduct a hearing "to identify the parties with standing to file a protest." Id. In addition, the letter instructed the petitioners that they "must appear for the Roll Call Hearing in person or provide a written statement designating a representative who must appear for the hearing on [their] behalf." Id. The letter then stated, "Failure to do so will result in the dismissal of the protest without further notice." Id. ABRA's Protest File indicates that this letter was sent to Eugene Bailek; Carla Botting; Robert Cheteman; Debra Decker; Daniel Deming; Madeleine Deming; Howard Dugoff; Julianne Dymowski; Christine Evans; Lewey Gilstrap; Herbert Goda; Peter Jennings; Victoria Jennings; Karen Kaub; E.W. Kelly; Sherry Kelley; Patricia Kellogg; Hal Lawrence; Tran Huong Mai; Jonda McFarlane; Michelle Michaels; Judge Pauline Newman; Robert Phillips; Tracy Van Ripper; Arnold Sagalyn; Louise Sagalyn; William Schneider; Ivan Selin; Mary Shaw; Anne Smith; Jennifer Smith; Dr. William Smith; Kari Thyne; Johan Van Der Beke; Gerald Waldman; Cynthia Walker; June Walsh; and Michael Walsh. See *ABRA Protest File No.* 13-PRO-00005.

10. The Roll Call Hearing for the Application occurred on February 25, 2013. *Transcript* (*Tr.*), Feb. 25, 2013, at 1. Mark Luria, the Applicant's Senior Vice President of Development, appeared at the hearing with attorney Stephen O'Brien on behalf of the Applicant. Id. at 2.

11. In addition, various protest petitioners appeared at the hearing. First, Gerald Waldman appeared with attorney Julie Dymowski. Id. at 3. Second, Armando Irizarry appeared on behalf of ANC 2A. Id. at 4. Third, Daniel Deming, Lewey Gilstrap, Karen Kaub, E.W. Kelley, Sherry Kelly, Judge Pauline Newman, Robert Phillips, Anne Smith, Dr. William Smith, and Michael Walsh appeared at the hearing. Id. at 4-8. Finally, Joyce Rice appeared at the hearing as the designated representative of Cynthia Walker. Id. at 8.

12. The Board's Agent, who conducted the Roll Call Hearing, determined the standing of all of the protest petitioners. In that vein, the Board's Agent immediately granted ANC 2A standing to protest the Application under D.C. Official Code § 25-601(4). Id. at 17.

13. The Board's Agent then addressed the standing of the three potential parties that had submitted protest petitions as groups of five or more residents or property owners. First, she addressed the standing of the petitioners, represented by Ms. Dymowski, who signed the Waldman Petition (Waldman Group). Id. at 17-18. The Board's Agent noted that the Waldman Group only had four individual members present; specifically, only Daniel Deming, Lewey Gilstrap, Judge Pauline Newman, and Gerald Waldman appeared at the hearing. Id. at 22-23. She then instructed the Waldman Group that she would only grant their group conditional standing. Id. at 23. As such, if the group did not resolve their dispute with the Applicant at mediation, then the Waldman Group would lose its standing unless an additional member appeared at the Protest Status Hearing. Id. None of the parties at the hearing objected to this determination.

14. Second, she addressed the standing of the petitioners who signed the 2700 Virginia Avenue Petition (2700 Virginia Avenue Group). Id. at 24. While the petition had twenty-two signatures, the Board's Agent did not grant standing to all of the signatories. Id. at 22-28. The Board's Agent granted standing to the members of the 2700 Virginia Avenue Group who were present: Daniel Deming, E.W. Kelly, Sherry Kelley, Judge Pauline Newman, Anne Smith, Dr. William Smith, and Michael Walsh. Id. at 25. Additionally, the Board's Agent added Madeleine Deming, Michelle Michaels, and Kari Thyne to the 2700 Virginia Avenue Group, because their designated representatives appeared at the hearing. Id. at 28. Therefore, the Board's Agent ruled that the 2700 Virginia Avenue Group had standing as a group of ten. Id. at 30.

15. The Board's Agent then requested that the members of the 2700 Virginia Avenue Group present at the hearing appoint a designated representative. Id. Subsequently, Dr. William Smith volunteered to serve as the group's designated representative. Id. at 30, 45-46. Without objection, the Board's Agent stated, "William Smith is the designated representative for the group of [ten]."[2] Id. at 30. We also note that Dr. Smith told the Board's Agent that he did not want to combine the 2700 Virginia Avenue Group's protest with the other group, because he did not know their views on the Application. Id. at 14-15. Dr. Smith then filled out the contact form provided by the Board's Agent. Id. at 30.

16. Third, the Board's Agent also dismissed the signatories to the Watergate West Petition, because they only had three members appear at the hearing in person or through a

[2] The Board's Agent stated nine on the record, but the record shows that she actually granted standing to ten members of the 2700 Virginia Avenue Group at this point in the hearing. *Tr.*, 2/25/13 at 30.

designated representative. Id. at 35-36, 41. Nevertheless, the Board's Agent permitted the petitioners from the Watergate West Petition who appeared at the hearing to join the 2700 Virginia Avenue Group. Id. at 36. Those individuals were Karen Kaub and Robert Phillips, as well as Jonda McFarlane who appeared through a designated representative. Id. at 32-33, 35, 39-41. The Board's Agent also added Cynthia Walker to the 2700 Virginia Avenue Group based on the written instructions Ms. Walker gave to the Board's Agent before the hearing. Id. at 31. As a result, the Board's Agent identified the 2700 Virginia Avenue Group as a group of fourteen with standing to protest the Application. Id. at 45.[3] No one at the hearing objected to this determination by the Board's Agent.

17. Therefore, by the end of the hearing on February 25, 2013, the following parties had standing to protest the application: ANC 2A and the fourteen member 2700 Virginia Avenue Group. Supra, at ¶¶ 12, 14-16. In addition, the Board's Agent granted conditional standing to the Waldman Group so long as they had at least one additional member appear at the Protest Status Hearing. Supra, at ¶ 13.

18. The parties attended two mediation sessions held by ABRA; one on March 14, 2013, and the other on March 21, 2013. See *ABRA Protest File No. 13-PRO-00005.* After the mediation sessions, the parties attended the Protest Status Hearing on March 27, 2013. *Tr.,* March 27, 2013 at 1.

19. At the Protest Status Hearing on March 27, 2013 the Applicant and the three protestants—ANC 2A, the 2700 Virginia Avenue Group, and the Waldman Group—appeared at the hearing. *Tr.,* 3/27/13 at 4-5. Tran Huong Mai appeared at the hearing, which demonstrated that the Waldman Group had at least five members. Id. at 5. The parties also expressed a continued desire to negotiate a settlement agreement to resolve the protest. Id. at 6. The Board scheduled the Protest Hearing for May 8, 2013. Id. We note that none of the parties at the Protest Status Hearing raised objections with the Board regarding the standing determinations made by the Board's Agent at the Roll Call Hearing.[4]

20. In the period between the Protest Status Hearing and the Protest Hearing, the Board received a Settlement Agreement, dated May 1, 2013, between the Applicant, Watergate West, Inc., Watergate East, Inc., and Watergate South, Inc. *ABRA Protest File No. 13-PRO-00005*, Settlement Agreement (May 1, 2013). We formally approve this Settlement Agreement in this Order.

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[3] The Board's Agent mistakenly said that the 2700 Virginia Avenue Group was composed of thirteen members on the record at the hearing; however, the transcript shows that the Board's Agent gave standing or conditional standing to fourteen members of the 2700 Virginia Avenue Group based on the petitioners who appeared in person or through their designated representative. Id. at 45.

[4] Indeed, Mr. Smith, the designated representative of the 2700 Virginia Avenue Group stated himself that the protestants were "the building, the board of directors, the 'Gang of 13' (referred to in this Order as the 2700 Virginia Avenue Group), and the ANC. *Tr.*, 3/27/13 at 5-6. Thus, at least as of the Protest Status Hearing, the 2700 Virginia Avenue Group had no objection to our Agent's determination that some of the signatories were not entitled to join the group.

21. The Board then received letters from various group members indicating that they wished to withdraw their protest. First, the Board received a petition with signatures from eleven residents indicating their intent to withdraw from the protest, because they were satisfied with the Settlement Agreement submitted to the Board. *ABRA Protest File No. 13-PRO*-00005, Letter from Anne Smith, *et al.*, to the ABRA (undated). According to this petition, Daniel Deming; Madeleine Deming; Karen Kaub; E.W. Kelley; Sherry Kelley; Jonda McFarlane; Michelle Michaels; Robert Phillips; Anne Smith; Dr. William Smith; and Kari Thyne withdrew from the protest. Id. Second, the Board received a signed letter from Tran Huong Mai indicating that she was withdrawing her protest, because she was satisfied with the Settlement Agreement.[5] Letter from Tran Huong Mai and Daniel W. Deming to the ABRA (May 6, 2013). Third, the Board received a letter from Jennifer Smith indicating that she wished to withdraw her protest. Letter from Jennifer Smith to the ABRA (May 7, 2013). Fourth, the Board received a letter from Lewey O. Gilstrap indicating that he withdrew his protest as well. Letter from Lewey O. Gilstrap to the ABRA (May 7, 2013). Fifth, ANC 2A moved to withdraw its protest against the license upon our acceptance of the Settlement Agreement proffered to the Board by the Applicant, which does not include the ANC as a party. Letter from Florence Harmon, Chair, ANC 2A, to Ruthanne Miller, Chair, Alcoholic Beverage Control Board (May 2, 2013). Consequently, fourteen members from the various protest groups have asked to withdrew from the protest, as well as ANC 2A. Furthermore, we note that all of these withdrawals are effective, because we approve the Settlement Agreement.

22. Based on the various withdrawals, the 2700 Virginia Avenue Group lost eleven members. The withdrawing members are Daniel Deming; Madeleine Deming; Karen Kaub; E.W. Kelley; Sherry Kelley; Jonda McFarlane; Michelle Michaels; Robert Phillips; Anne Smith; Dr. William Smith; and Kari Thyne. Supra, at ¶ 21. As a result, as of the date of the Protest Hearing, only Judge Pauline Newman, Michael Walsh, and Cynthia Walker remained as members of the 2700 Virginia Avenue Group.

23. Furthermore, due to the withdrawals, the Waldman Group lost four members. The withdrawing members of the Waldman Group are Daniel Deming, Lewey Gilstrap, Tran Mai Huong, and Jennifer Smith. Supra, at ¶ 21. As a result, as of the date of the Protest Hearing, only Christine Evans, Hal Lawrence, Judge Pauline Newman, and Gerald Waldman remained as members of the Waldman Group.

24. On May 8, 2013, before the Protest Hearing, the Board held a hearing to determine whether any of the parties retained standing. *Tr.*, May 8, 2013 at 3-4. Robert Burney, Herbert Goda, Maria Hughes, Judge Pauline Newman, Gerald Waldman, Cynthia Walker, June Walsh, and Michael Walsh (collectively the "Newman Petitioners") appeared at the hearing to assert that they retained standing. The Newman Petitioners appeared with their counsel who stated that she represented the thirty-two residents that signed the 2700 Virginia Avenue Petition. Id. at 8.

[5] Daniel W. Deming also signed the letter.

THE MAY 8, 2013 HEARING

At the hearing on May 8, 2013, the parties presented their arguments regarding the standing of the Newman Petitioners and the 2700 Virginia Avenue Group.

The Newman Petitioners argue that the 2700 Virginia Avenue Group should retain standing as a group of thirty-two individuals, because all of the members appeared at the Roll Call Hearing through their designated representative, Dr. William Smith. Id. at 6, 14, 21, 23, 26, 49. The Newman Petitioners contend that nothing in Title 25 or Title 23 requires that they and the other petitioners appoint a designated representative in writing; therefore, Dr. Smith represented the entire group, even though nothing in writing was submitted to the Board to that effect. Id. at 17, 29. They further contend that the Board does not have the power to determine whether individual members of a group have standing to protest an application and that the Board lacks the power to dismiss individual signatories from the protest. Id. at 6-7, 14. Therefore, they assert that the Board's Agent erred by conferring standing on only fourteen members of the 2700 Virginia Avenue Group at the hearing, and the Board should find that the Newman Petitioners have standing to continue the protest as a group of twenty-four petitioners, once the withdrawals are taken into account. Id. at 25.

In opposition, the Applicant argues that Mr. Burney, Mr. Goda, Ms. Hughes, Judge Newman, Ms. Walker, Ms. Walsh, and Mr. Walsh lack standing to continue the protest as a group of five or more residents or property owners. According to the Applicant, D.C. Official Code § 25-601(2) grants standing to groups of five or more residents or property owners sharing common grounds. Id. at 9. Under § 25-602(2), a group must notify the Board during the forty-five day protest period of their intention to object to the petition and their grounds for doing so, which, in this case, expired on February 11, 2013. Id. The Applicant notes that during the Roll Call Hearing, the Board's Agent identified two groups that wished to protest the Application and that the groups rejected creating a single group. Id. at 10. According to the Applicant, the eight-member Waldman Group no longer has standing to the protest the Application, because the group only has four members left after four of their members withdrew. Id. at 10-11. As for the 2700 Virginia Avenue Group, Dr. Smith only represented those individuals that appeared in person or through a written designation. Id. at 11. Consequently, based on the withdrawals received by the Board, the 2700 Virginia Avenue Group does not have sufficient members to constitute a group; therefore, the 2700 Virginia Avenue Group lacks standing to continue the protest. Id. at 12. The Applicant also disputes the Newman Petitioners' contention that the 2700 Virginia Avenue Petition contains more than twenty-two signatures. Id. at 27-28.

At the conclusion of the hearing, the Board ruled from the bench that the Newman Petitioners lacked standing to continue the protest. Id. at 90-91. We found that under § 1601.9 of Title 23, our Agent has the authority to identify the parties with standing, as well as the issues under dispute. Id. at 88. We further stated that the mere fact that a petitioner submits a protest letter does not entitle him or her to standing, and that the purpose of the Roll Call Hearing is to determine the individuals who make up a group of at least five residents or property owners sharing common ground for their protest under D.C. Official Code § 25-601(2). Id. In addition, the Board further held that under § 1707.1 of Title 23, a designated representatives must submit a signed statement outlining the "nature of the representation" before they may begin representing others. Id. at 89. We concluded that

the individuals who did not appear or designate a representative do not have standing to protest the Application and forfeited their right to protest the Application; therefore, we affirmed our Agent's decision to recognize only the fourteen individuals of the 2700 Virginia Avenue Group that appeared in person or through Dr. Smith. Id. at 89-90. Therefore, we concluded, and affirm in this Order, that none of the groups of five or more residents or property owners, as well as the Newman Petitioners, retained standing to protest the Application.

DISCUSSION

In addition to our reasoning provided at the May 8, 2013 hearing, we provide the following written Order based on our review of the law and the record in this matter in accordance with D.C. Official Code § 2-509(e).

In Section I, we conclude that D.C. Official Code § 25-444(b) and § 1601.9 of Title 23 provide the Board with the authority to determine whether individual signatories may participate in a protest as part of a group of five or more residents or property owners sharing common grounds. Furthermore, in Section II, we conclude that the Board, and our Agent, have the authority to bar protest petition signatories from joining a protest group if those signatories fail to appear at a Roll Call Hearing or Protest Status Hearing under §§ 1601.5, 1601.6, and 1603.3 of Title 23 . In addition, our Agent is entitled to conclude that absent signatories cannot be identified and cannot satisfy the standing requirements of § 25-601(2).

Consequently, as we discuss in Section III, our Agent correctly dismissed those signatories who failed to appear in person or through a designated representative at the Roll Call Hearing on February 25, 2013. The Newman Petitioners' argument that the absent signatories were represented by Dr. Smith is not supported by § 1707.1 of Title 23 or the record. We also conclude that the 2700 Virginia Avenue Petition only contained twenty-two signatures, not thirty-two signatures, because the petition filed timely with the Board only contained twenty-two signatures. Therefore, the only valid members of the 2700 Virginia Avenue Group are Judge Newman and Mr. Walsh. Mr. Burney, Ms. Hughes, and Mr. Waldman may not join the 2700 Virginia Avenue Group, because they did not sign the original petition submitted to the Board; therefore, they may not join the group under § 1801.2 of Title 23. Furthermore, their addition to the protest would be untimely under § 25-602. We also conclude that the Board's Agent was not authorized to permit Cynthia Walker to join the 2700 Virginia Avenue Group, because adding her to the group violates § 25-602 and § 1801.2 of Title 23. Therefore, because we conclude that the 2700 Virginia Avenue Group only contains two members, we dismiss this group's protest under § 25-601(2).

For similar reasons, we affirm our Agent's decision to dismiss those signatories to the Watergate West Petition that failed to appear. We also dismiss the signatories to the Watergate West Petition and the Waldman Group for having insufficient members to maintain standing under § 25-601(2). Consequently, because no protestants remain, the Board and ABRA shall treat the Application as if it is unopposed, and process it accordingly.

Finally, as we discuss in Section IV, we determine that the protest issues in this matter are limited to those matters raised in the protestants' initial protest letters under D.C. Official Code § 25-602(a).

I. THE BOARD HAS THE POWER TO IDENTIFY THOSE RESIDENTS OR PROPERTY OWNERS THAT CONSTITUTE A GROUP UNDER § 25-444(b) AND § 1601.9.

Under § 25-444(b) and § 1601.9, the Board, and our Agent, has the power to determine whether an individual resident or property owner belongs in a group of five residents or property owners under Title 25 and Title 23.

Under § 25-601, "A group of no fewer than 5 residents or property owners of the District sharing common grounds for their protest" has the right to protest the issuance of a liquor license. D.C. Code § 25-601(2). Under § 25-444(b), "The parties to the protest hearing shall be the applicant and the protestants *as identified at the administrative review*." D.C. Code § 25-444(b) (West Supp. 2013) (emphasis added). Our regulations further state in § 1601.9 that "At the administrative review, the Board's agent shall have the authority to: . . . identify the parties with standing and the filed protest issues, if undisputed." 23 DCMR § 1601.9(d) (West Supp. 2013). The dictionary definition of the word "identify" is "to establish the identity of" or "To find out the origin, nature, or definitive elements of." Webster's II New College Dictionary (2001) (identify).

As a matter of law, a group cannot exist unless it contains at least five residents of the District of Columbia or property owners. § 25-601(2). Under § 25-444(b), a group does not become a party until it is identified at the administrative review hearing. Nevertheless, it is impossible to identify a group unless we can establish the "definitive elements" of the group; namely, the specific residents or property owners who make up the group. Therefore, if the Board has the power to determine whether an individual belongs in a group, it follows logically that the Board has the power to determine that an individual does not belong in a group.

II. THE BOARD HAS THE POWER TO EXCLUDE ANY INDIVIDUAL FROM A GROUP THAT FAILS TO APPEAR EITHER IN PERSON OR THROUGH A DESIGNATED REPRESENTATIVE UNDER §§ 1601.5, 1601.6, AND 1603.3.

The Board, and our Agent, has the authority to bar protest petition signatories from joining a protest group if those signatories fail to appear at a Roll Call Hearing or Protest Status Hearing. In addition, our Agent is entitled to conclude that absent signatories have defaulted on their claims and cannot satisfy the standing requirements of § 25-601(2).

Under § 1601.5, ". . . each person submitting a protest shall attend the administrative review hearing in person or appear through a designated representative." 23 DCMR § 1601.5 (West Supp. 2013). We interpret "person" in § 1601.5 to mean each individual signatory, because Title 25 defines a "person" as an "individual," among other definitions. D.C. Code § 25-101(37) (West Supp. 2013).[6] Sections 1601.6 and 1603.3

[6] While we recognize that "persons" are identified in § 25-601 for the purpose of standing, that provision must be read in conjunction with § 25-101(37). The definition of person set forth in § 25-101(37) is intended

then warn that the "Failure to appear at the administrative review hearing [or Status Hearing] either in person or through a designated representative may result in . . . dismissal of a protest unless good cause is shown for the failure to appear. 23 DCMR §§ 1601.6, 1603.3 (West Supp. 2013).

Based on our interpretation of § 1601.5, we consider the protest petition the joint submission of all the individual signatories; therefore, all signatories must appear at the Roll Call Hearing and Protest Status Hearing. If any of the individual signatories fail to appear, either in person or through a designated representative, then our Agent is entitled to dismiss them from the protest under §§ 1601.6 and 1603.3.

We emphasize that this appearance requirement is not onerous. If an individual member cannot attend, then he or she can merely appoint a designated representative to attend in their place. Consequently, we conclude that § 25-444(b) and §§ 1601.5, 1601.6, 1601.9 and 1603.3 provides the Board with the legal mechanism for excluding individuals who fail to appear at the Roll Call Hearing or Protest Status Hearing from joining a group under § 25-601(2).

In addition, as we discussed in Section I, our Agent has the responsibility to identify the members of an individual group. If an individual signatory fails to appear, then our Agent may determine that the absent signatories cannot demonstrate that they are residents or property owners in the District under § 25-444(b) and § 1601.9 of Title 23. Therefore, our Agent has the authority to bar absent signatories from joining a protest group.

The Newman Petitioner's interpretation is contrary to the plain meaning and legislative history of § 25-601(2), and allows groups to include unlawful members. Here, the Newman Petitioners contend that Title 25 allows the Board to identify and confer standing on the group as a whole, but does not give the Board, or our Agent, the power to determine whether specific individuals qualify as members of the group. As we noted in Section I and Section II, we find this assertion unsupported by the plain meaning of the term "identify" in § 25-444(b) and § 1601.9 and our appearance rules described in §§ 1601.5, 1601.6, 1601.9 and 1603.3.[7]

Further, the legislative history of § 25-601 shows that the Council of the District of Columbia (Council) did not want the Board to act as a rubber stamp when groups requested standing. Instead, the Council wanted the Board to determine carefully whether each group truly fulfills the standing requirement. Council of the District of Columbia, Committee on Consumer and Regulatory Affairs, Report on Bill 13-449, the "Title 25,

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to apply throughout Title 25 and Title 23 unless expressly indicated or such interpretation leads to an absurd result.

[7] The Newman Petitioners' interpretation also contradicts § 1801.6 of Title 23, which provides applicants with the right to challenge individual signatures. Under this regulation, "The Board shall permit any party to a protested case to challenge the validity of signatures on Protest Petitions submitted by the opposing party." 23 DCMR § 1801.6 (West Supp. 2013). Based on this regulation, we conclude that if applicants have the power to challenge individual signatures, then it follows that the Board can dismiss those individuals with invalid signatures from the protest, even if this action would not lead to the dismissal of the entire group.

D.C. Code Enactment and Related Amendments Act of 2000," 135 (Nov. 20, 2000).[8] Indeed, the Council explicitly recognized that the requirement would permit applicants to cross-examine the members of groups to determine whether they satisfied § 25-601(2). Id. at 135 n. 64. Therefore, when signatories fail to appear at required hearings, they deny applicants the opportunity to challenge their standing.

Indeed, if we adopted the Newman Petitioners' interpretation this would force the Board to accept groups with improper membership. For example, what if the Board's Agent initially grants standing to a group of thirty-two residents. Then, at the next hearing, the Applicant or the Board establishes that one member is actually the visiting cousin of the designated representative, and does not reside or own property in the District, in violation of § 25-601(2). Under the Newman Petitioners' interpretation, the Board lacks the power to turn the group of thirty-two into a group of thirty-one by dismissing the visiting cousin. Moreover, if this situation occurred in a group with only five members, then we would be forced to allow an unlawful group to maintain a protest that is not permitted by § 25-601(2). Therefore, we reject the Newman Petitioners' interpretation, because it defeats the purpose of permitting cross-examination and leads to unlawful results.

Therefore, we conclude that D.C. Official Code § 25-444(b) and § 1601.9 of Title 23 provide the Board with the authority and the responsibility to determine whether individual residents or property owners may participate in a protest as part of a group of five or more residents or property owners. This authority includes the power to dismiss those individuals that we cannot determine satisfy the standing requirements discussed in § 25-602(1) and the power to bar individual signatories from participating in a protest group when they fail to appear in accordance with our regulations.

III. THE 2700 VIRGINIA AVENUE GROUP LACKS STANDING AS A GROUP OF FIVE OR MORE RESIDENTS OR PROPERTY OWNERS.

Accordingly, based on our reasoning in Sections I and II, the Board's Agent correctly determined that only the ten signatories who appeared at the Roll Call Hearing could be established as part of the 2700 Virginia Avenue Group. The record does not support the Newman Petitioners argument that Dr. Smith served as the designated representative of all of the signatories to the 2700 Virginia Avenue Petition, or that the petition contains thirty-two signatures. We also overrule our Agent's decision to allow Cynthia Walker to join the 2700 Virginia Avenue Group under D.C. Official Code § 25-602(a) and § 1801.2 of Title 23. Therefore, based on the individual withdrawals submitted to the Board and the dismissal of Cynthia Walker, we find that the 2700 Virginia Avenue Group only has two members. Consequently, the 2700 Virginia Avenue Group's protest must be dismissed.

[8] In its Committee Report, the Council explicitly stated that it disfavored "lone protestants." Council of the District of Columbia, Committee on Consumer and Regulatory Affairs, Report on Bill 13-449, the "Title 25, D.C. Code Enactment and Related Amendments Act of 2000," 135 (Nov. 20, 2000).

A. Our Agent correctly determined that the ten signatories that appeared at the Roll Call Hearing could join the 2700 Virginia Avenue Group.

As we noted in Sections I and II, we have the power to identify those individuals that form a group and to dismiss those individuals that fail to appear. Additionally, although not legally required, ABRA reiterated this point to the signatories through the letters sent by ABRA's Community Resource Advisor. Supra, at ¶ 9. These letters specifically instructed each signatory that they must appear at the Roll Call Hearing in person or through a designated representative, or risk the dismissal of their protest. Supra, at ¶ 9. Despite this warning, many of the signatories to the 2700 Virginia Avenue Petition failed to appear at the Roll Call Hearing either in person or through a designated representative.

The record shows that only ten members appeared at the hearing in person or through a designated representative: Daniel Deming, Madeleine Deming, E.W. Kelly, Sherry Kelley, Judge Pauline Newman, Michelle Michaels, Anne Smith, Dr. William Smith, Kari Thyne, and Michael Walsh. Supra, at ¶ 14. Consequently, we find that the Board's Agent properly granted standing to those ten signatories to the 2700 Virginia Avenue Petition that appeared in person or through a designated representative.

B. Dr. Smith only served as the designated representative of the signatories that appeared at the Roll Call Hearing.

The Newman Petitioners argue that Dr. Smith served as the designated representative for the absent signatories to the 2700 Virginia Avenue Petition, even though the record contains nothing in writing, or by the actions of Dr. Smith, that proves this assertion. *Tr.* 5/8/13 at 37.

Section § 1707.1 states, "No person may appear before the Board in a representative capacity prior to submission of a signed statement containing that person's name, address, occupation, telephone number, and the nature of representation." 23 DCMR § 1707.1 (West Supp. 2013).

Here, the Board possesses no statement from Dr. Smith indicating that he intended to represent all of the signatories to the petition. Thus, the Newman Petitioners cannot show that Dr. Smith satisfied § 1707.1 in respect to all of the signatories to the 2700 Virginia Avenue Petition.

Indeed, the factual record in this proceeding contravenes the Newman Petitioners' claim that Dr. Smith represented all of the signatories to the petition. First, the 2700 Virginia Avenue Petition contained no written statement that the signatories had designated anyone to serve as their designated representative. See 2700 Virginia Avenue Petition, 1-2. Second, during the Roll Call Hearing and Protest Status Hearing, Dr. Smith never corrected or objected to the determination that the group he represented only contained fourteen members. Supra, at ¶ 15. As a result, the record does not support the Newman Petitioners' assertion that Dr. Smith represented all of the signatories to the 2700 Virginia Avenue Petition. Therefore, we conclude that our Agent properly excluded those absent signatories because they did not appoint a designated representative, and did not comply with the Title 23's appearance requirement.

C. The record shows that the petition submitted by the 2700 Virginia Avenue Group only contained twenty-two signatures, not thirty-two signatures.

We further note that a factual dispute exists between the parties as to whether the 2700 Virginia Avenue Petition contains thirty-two or twenty-two signatures. *Tr.* 3/8/13 at 65, 71-72. Our records show that the 2700 Virginia Avenue Petition only contains twenty-two signatures. *Protest File No. 13-PRO-00005*, 2700 Virginia Avenue Petition, 2-3.

The Newman Petitioners argued that ABRA must have made a mistake, and that the signatories to the 2700 Virginia Avenue Petition timely filed a petition with thirty-two signatures, not twenty-two signatures. *Tr.* 3/8/13 at 72. We disagree.

During the Roll Call Hearing, the Board's Agent stated that the 2700 Virginia Avenue Petition only contained twenty-two signatures. *Tr.*, 2/25/13 at 27. No one from the 2700 Virginia Avenue Group corrected the Board's Agent or asserted that there were, in fact, more than twenty-two signatures on the petition. Based on these facts, we conclude that ABRA only received a petition with twenty-two signatures on it, and that the 2700 Virginia Avenue Group failed to timely file the additional page described at the hearing on May 8, 2013. *Tr.*, 3/8/13 at 72.

Therefore, we find that the 2700 Virginia Avenue Group's Petition only contained twenty-two signatures. Thus, any additional signatories to the 2700 Virginia Avenue Petition have forfeited their opportunity to protest the Application, because they failed to file a timely protest petition before the end of the protest period. D.C. Code § 25-602 (West Supp. 2013).

D. The 2700 Virginia Avenue Group only contains two members; therefore, the group does not have standing to continue the protest under § 25-601(2).

As we noted in paragraphs 21 and 22, Daniel Deming; Madeleine Deming; Karen Kaub; E.W. Kelley; Sherry Kelley; Jonda McFarlane; Michelle Michaels; Robert Phillips; Anne Smith; Dr. William Smith; and Kari Thyne have withdrawn from the 2700 Virginia Avenue Group. Supra, at ¶¶ 21, 22. As a result, as of the date of the Protest Hearing, only Judge Pauline Newman, Michael Walsh, and Cynthia Walker remain as members of the 2700 Virginia Avenue Group. Based on our determination that our Agent improperly granted standing to Cynthia Walker, the 2700 Virginia Avenue Group only has two members. Therefore, 2700 Virginia Avenue Group does not have a sufficient number members to retain standing as a group of at least five residents or property owners under § 25-601(2).

i. Judge Pauline Newman and Michael Walsh remain members of the 2700 Virginia Avenue Group.

At the hearing on May 8, 2013, the Newman Petitioners presented Robert Burney, Herbert Goda, Maria Hughes, Judge Pauline Newman, Gerald Waldman, Cynthia Walker, June Walsh, and Michael Walsh at the hearing to demonstrate that the 2700 Virginia Avenue Group retained standing to continue the protest. Supra, at ¶ 24. We agree with the Newman Petitioners that both Judge Pauline Newman and Michael Walsh appeared at the

Roll Call Hearing and retain standing as part of the 2700 Virginia Avenue Group. Supra, at ¶ 14. Nevertheless, we cannot reach the same conclusion for the other individuals who attended the most recent hearing.

ii. Robert Burney, Herbert Goda, Maria Hughes, Gerald Waldman, and June Walsh cannot join the 2700 Virginia Avenue Group.

Under § 1801.2, a protest petition must contain the name, address, and signature of each member of the group. 23 DCMR § 1801.2 (West Supp. 2013). Further, under § 25-602(a), protestants must file their protest petition before the end of the protest period. § 25-602(a).

The record shows that June Walsh and Herbert Goda did not appear at the Roll Call Hearing, and they did not appoint a designated representative. See supra, at ¶ 14. Therefore, the Board's Agent was justified in excluding them from the 2700 Virginia Avenue Group for failing to appear.

In addition, we conclude that Robert Burney, Maria Hughes, and Gerald Waldman may not join the 2700 Virginia Avenue Group, because they did not sign the original 2700 Virginia Avenue Petition filed with the Board. Supra, at ¶ 4. Furthermore, even if they had signed the petition submitted to ABRA, neither Mr. Burney nor Ms. Hughes appeared at the Roll Call Hearing in person or through a designated representative. Supra, at ¶¶ 4, 14. Therefore, they have no right to join the 2700 Virginia Avenue Group.

Finally, we conclude that Gerald Waldman may not join the 2700 Virginia Avenue Group. Mr. Waldman only signed the Waldman Petition, and did not sign the 2700 Virginia Avenue Group Petition. See supra, at ¶¶ 4, 7. Our Agent explicitly recognized that the groups in this case are separate parties, and the 2700 Virginia Avenue Group expressly declined the opportunity to create a single group.[9] Supra, at ¶ 15. Finally, we note that the protest period in this matter expired on February 11, 2013. Supra, at ¶ 2. As a result, it is too late for the 2700 Virginia Avenue Group to add signatories to the group under § 25-602(a) or for Mr. Waldman to switch groups. Supra, at ¶ 2. For these reasons, we cannot allow Mr. Burny, Mr. Goda, Ms. Hughes, Mr. Waldman, and Ms. Walsh to join the 2700 Virginia Avenue Group.

iii. The Board overturns our Agent's decision to permit Cynthia Walker to join the 2700 Virginia Avenue Group.

The Board also concludes that our Agent could not permit Cynthia Walker to join the 2700 Virginia Avenue Group. See supra, at ¶ 16. Similar to Mr. Waldman, Ms. Walker did not sign the 2700 Virginia Avenue Petition, but instead protested in her "personal capacity." Supra, at ¶ 8. Under D.C. Official Code § 25-602(a) and § 1801.2 of Title 23, she was not permitted to join the 2700 Virginia Avenue Group as she requested on February 23, 2013, once the protest period expired on February 11, 2013; therefore, we

[9] Because the parties declined to form a single group, we do not reach the issue of whether our Agent is permitted to allow separate groups to become a single group at the Roll Call Hearing once they have obtained standing.

overrule our Agent's decision to permit Cynthia Walker to join the 2700 Virginia Avenue Group.[10] Supra, at ¶¶ 2, 8, 16.

iv. The Board must dismiss the 2700 Virginia Avenue Group, because it lacks standing as a group under § 25-601(2).

We conclude that the 2700 Virginia Avenue Group only contains two members; therefore, we must dismiss the group from the protest, because a group of two cannot retain standing as a group of five or more residents or property owners under § 25-601(2).

For the same reason, based on their failure to appear in person or through a designated representative, we also agree with our Agent's determination that the signatories to the Watergate West Petition did not have a sufficient number of members to show that they have standing as a group. Supra, at ¶ 16. Finally, based on the withdrawals from the Waldman Group, we determine that this group lacks standing to continue the protest as well, because it only has four members. Supra, at ¶ 23.

v. The signatories dismissed by the Board's Agent are entitled to notice that the Board dismissed their protest.

Under § 1601.7,

> A recommendation by the Board's agent to deny a license application or dismiss a protest for failure to attend the administrative review shall be forwarded to the Board for consideration in writing. The Board's decision to adopt or not adopt the recommendation of the Board's agent to deny a license application or dismiss a protest for failure to appear shall be sent to the parties in writing. A request for reinstatement with the Board must be filed within ten (10) days after notification from the Board of the dismissal or denial.

23 DCMR § 1601.7 (West Supp. 2013).

The record does not indicate that all of the signatories dismissed by our Agent have received written notice of their dismissal. Therefore, as part of this Order, the Board shall provide the notice required by § 1601.7, which shall give the dismissed signatories an opportunity to request reinstatement in accordance with our regulations.

IV. THE PROTESTANTS IN THIS MATTER HAVE WAIVED THE OPPORTUNITY TO RAISE ISSUES OUTSIDE OF APPROPRIATENESS UNDER §§ 25-602(a), 1601.8(b), 1602.1, AND 1602.4 BY FAILING TO TIMELY RAISE THEM IN THEIR INITIAL PROTEST LETTERS.

Finally, we also note that in their May 3, 2013, letter to the Board, and at the most recent hearing, the Newman Petitioners expressed a desire to challenge the Application on non-appropriateness grounds. Letter from Erica J. Mueller to Ruthanne Miller, Chairperson, Alcoholic Beverage Control Board (May 3, 2013). Nevertheless, our review

[10] We note that the issue of whether the Board's Agent could permit Karen Kaub, Robert Phillips and Jonda McFarlane to join the 2700 Virginia Avenue Group is moot, because they withdrew their protests against the Application. Supra, at ¶ 21.

of the record indicates that all of the protestants in this matter have waived the opportunity to raise non-appropriateness issues by failing to timely raise them in their initial protest letters.[11]

Under § 25-602(a), "any person objecting, under *§ 25-601*, to the approval of an application shall notify the Board in writing . . . the grounds for the objection within the protest period." § 25-602(a). Our regulations further state, "The Board's agent shall schedule a roll call hearing for the next regularly scheduled Board meeting rather than a status hearing . . . when . . . a legal issue is raised that would preclude the Board from granting the application . . . ." 23 DCMR § 1601.8(b) (West Supp. 2013). During the hearing scheduled by the Board's Agent, § 1602.1 advises that the Board will "address unresolved legal and factual issues and disputes identified by the Board's agent at the administrative review." 23 DCMR § 1602.1 (West Supp. 2013). Under § 1602.4, after hearing from the parties, "The Board shall either announce its decision at the . . . hearing or take its decision on the unresolved legal issues under advisement and schedule the matter for a status hearing." 23 DCMR § 1602.4 (West Supp. 2013). Finally, under § 1710.2, "Before a person may be heard to object to approval of an application, the person shall have notified the Board and the applicant or licensee, [in compliance with] § 1703.4, . . . of the grounds for the objection, prior to the end of the protest period." 23 DCMR § 1710.2

Our rules are clear: under § 25-602(a), in their initial protest letter, all protestants are required to notify the Applicant and the Board of all of the grounds on which they intend to protest the license. Additionally, under sections §§ 1601.8, 1602.1, and 1602.4, all disputes regarding any legal issues beyond "appropriateness," should be taken up by the Board before the Protest Hearing.

Here, the record indicates that the Newman Petitioners first notified the Board that they wished to challenge the Application on non-appropriateness grounds in their May 3, 2013 letter. Letter from Erica J. Mueller to Ruthanne Miller, Chairperson, Alcoholic Beverage Control Board (May 3, 2013). Yet, these issues should have been raised in the Newman Petitioners' initial protest letters in accordance with § 25-602(a) and our regulations.

We also emphasize that the Newman Petitioners attempt to insert new issues into the protest process at the last minute is highly prejudicial to the Applicant and untimely. First, the Applicant did not have appropriate notice that any of the protestants in this matter intended to raise issues outside of those indicated in their protest letters.[12] Second, the parties in this case have already gone through a Roll Call Hearing, mediation, and a Protest Status Hearing. In discussing timely objections, it has been said that a party must "take his objection at the earliest possible opportunity, when, by doing so, he can enable the trial

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[11] While not necessary to our decision, the Board addresses the waiver issue to promote administrative efficiency and to address all possible outstanding issues in this matter.

[12] We note that Cynthia Walker did raise a zoning issue in her initial protest letter; however, because she should never have been permitted to join the 2700 Virginia Avenue Group, the group cannot claim that these issues were appropriately and timely raised. In addition, even if this were to be deemed sufficient notice of the zoning issue under § 25-602, the protestants in this case waived their opportunity to pursue these issues when they failed to object to going forward with the Protest Status Hearing without the Board ruling on this issue.

judge to take the most efficacious action. . . ." Timms v. U.S., 25 A.3d 29, 35 (D.C. 2011). Here, our regulations state that all legal issues, except for appropriateness issues, must be addressed at a hearing before the Protest Status Hearing. See §§ 1602.1, 1602.4. Yet, the first time the Newman Petitioners apprised the Board of these issues was in their May 3, 2013 letter, which we received a month after we held the Roll Call Hearing, mediation, and the Protest Status Hearing in this matter. See supra at ¶ 19. Consequently, we find that the non-appropriateness issues raised by the Newman Petitioners are untimely under our rules; therefore, the Newman Petitioners have waived the opportunity to raise these additional issues as part of their protest.

ORDER

Therefore, the Board, on this 24th day of July 2013, hereby **ORDERS** that the protests filed by the 2700 Virginia Avenue Group and the Waldman Group are **DISMISSED**, because neither group has the requisite number of members under § 25-602(2) to retain standing.

IT IS FURTHER ORDERED that the Settlement Agreement, dated May 1, 2013, submitted by the Applicant, Watergate West, Inc., Watergate East, Inc., and Watergate South, Inc. is approved and incorporated as a part of the Applicant's license upon issuance of the license. We note that we have attached the Settlement Agreement to this Order.

IT IS FURTHER ORDERED that the Board accepts the withdrawal of ANC 2A, as well as the individual signatories who have indicated their withdrawal from the protest. The Board notes that no protestants with standing remain; therefore, because there are no valid objections to the Application, ABRA shall process the Application in accordance with D.C. Official Code § 25-311.

IT IS FURTHER ORDERED that the Board adopts the recommendation of the Board's Agent at the Roll Call Hearing on February 25, 2013, under § 1601.7, to deny various individual signatories, as identified in this Order, standing to join a group of five or more residents or property owners. The signatories have ten (10) days to file for reinstatement upon receipt of this Order. We note that the receipt of this Order by the Newman Petitioners' counsel constitutes sufficient notice to the signatories to the 2700 Virginia Avenue Petition, and any other individuals similarly represented, that we have dismissed their protest.

IT IS FURTHER ORDERED that the protests in this matter are limited to the issues raised in the protestants' initial protest letters in accordance with D.C. Official Code § 25-602(a) and §§ 1601.8, 1602.1, 1602.4, and 1710.2 of Title 23 of the D.C. Municipal Regulations.

Copies of this Order shall be sent to the Applicant, ANC 2A, the 2700 Virginia Avenue Group, the Waldman Group, Cynthia Walker, and the signatories to the Watergate West Petition.

District of Columbia
Alcoholic Beverage Control Board

Ruthanne Miller, Chairperson

Nick Alberti, Member

Donald Brooks, Member

Herman Jones, Member

Mike Silverstein, Member

Under 23 DCMR § 1719.1 (2008), 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, under 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 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 under 23 DCMR § 1719.1 (2008) 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).

AGREEMENT

This Agreement made this 1st day of May, 2013, by and among Watergate Hotel Lessee, LLC, t/a Watergate Hotel (Applicant), and Watergate West, Inc., Watergate East, Inc., Watergate South, Inc. [redacted] (collectively "the Neighbors").

RECITALS

WHEREAS, Applicant is the applicant for an Alcoholic Beverage Control (ABC) retailer's license ABRA-091162, Class CH (hotel), for premises located at 2550 Virginia Avenue, NW;

WHEREAS, the Neighbors are supportive of the ABC application with regard to all interior operations of the hotel;

WHEREAS, Applicant has requested approval of five (5) distinct new summer garden spaces, including one (1) on its rooftop, one (1) adjoining its restaurants, and three (3) others also near ground levels with said spaces useable (possibly) year round during the hours specified in this Agreement. These summer gardens shall conform to the size, placement, and shape indicated in the drawing attached as Exhibit A;

WHEREAS, the new summer garden spaces are of concern to the Neighbors;

WHEREAS, based on the terms herein, the Neighbors will withdraw protests lodged of Applicant's request for summer garden endorsements to its license application; and,

WHEREAS, the parties have agreed to enter into this Agreement, pursuant to DC Code Section 25-446, to resolve the issues raised by the objections to the summer garden spaces, and to request that the ABC Board approve Applicant's request for summer garden endorsements conditioned on Applicant's compliance with the terms of this written Agreement.

NOW, THEREFORE, in consideration of the recitals set forth above and the mutual covenants and conditions set forth below, the parties agree as follows:

1. Recitals Incorporated. The recitals set forth above are incorporated herein by reference.

2. (a) Rooftop Summer Garden. The rooftop level summer garden space, with a maximum capacity of 350 persons, shall have hours of operation consistent with the hours permitted under the application for the ABC license, except that the roof shall be closed at 12 a.m. Sunday through Thursday and at 2 a.m. Friday , Saturday and the morning of Federal holidays. The parties agree to renegotiate this rooftop provision after an interim monitoring period should adjustments be needed. Such renegotiation shall be completed the later of the following dates: December 31, 2014

if the rooftop summer garden is in operation by June 15, 2014, or September 15, 2015, if the rooftop summer garden is not in operation by June 15, 2014 (it being the intention of the parties that such negotiation transpire only after a complete June 15 – September 15 season of operation). Absent negotiation of an amended provision regulating hours of operation and hours of music offerings, this provision will be enforced in its present form.

Rooftop Summer Garden shall have no live music after 10 p.m. Sunday through Thursday and 12 a.m. on Friday, Saturday and the eve of Federal Holidays. Cover charges will be collected at no more than 5 events per year.. Recorded music may be offered until 12 a.m. Sunday through Thursday and 2:00 a.m. on Friday – Saturday and the morning of Federal holidays. At all times, all live and recorded music will be controlled by an audio limiter restricting volume emissions to minimize excessive noise. Applicant shall regulate the audio system sound levels, including use of the audio system by contracted musicians, disc jockeys and other vendors on the rooftop summer garden so that it is consistent with the sound system specifications and noise prohibitions set forth in this Agreement. Amplifiers and other sound equipment will be directed toward the Potomac River to limit sound propagation toward the Watergate residential units. No music from the rooftop summer garden shall be audible at any time from within the interior of Watergate residents' residences. No noise generated by applicant's patrons or entertainment activities shall be audible within the interior of Watergate residents' residences after 10:00 pm on any day. At all times, noise levels generated from amplified music from the hotel or its operation shall not exceed 55 dba at Watergate residential balconies/terraces. Audible music from the rooftop summer garden heard in Watergate residential units or on Watergate residential balconies/terraces in contravention of the above standards shall constitute a material breach of this agreement. Initial levels for calibrating the audio control system (audio limiter) will be conducted by an acoustical engineer with the cooperation of the Neighbors through sound readings from two Watergate residences and balconies. Applicant shall bear the expense of the initial sound level testing and any further sound level testing that may be necessary to comply with the Agreement. . As used in this Agreement, the term "Watergate residential" shall include the residential units of Watergate West, Watergate East and Watergate South.

(b) Restaurant West Terrace Summer Garden (adjacent to Watergate West pool area). (Exhibit B) and Restaurant East Terrace Summer Garden (adjacent to Watergate East pool area). The occupancy of the restaurant West terrace summer garden shall be limited to a maximum of 99 persons or to the total seating capacity of the finished space, whichever is less. Tables and chairs necessary to accommodate this terrace's total capacity, as defined immediately above, will remain in place at all times . The restaurant West terrace summer garden shall only be accessed from inside the interior dining room , and not directly from any other location. There shall be no cover charge for admission to the restaurant West terrace summer garden and no outside bar thereupon. A "No Smoking" sign shall be displayed on the restaurant West terrace summer garden.

This restaurant West terrace summer garden shall operate from 7:00 a.m. through 10:30 p.m. Sunday through Thursday and from 7:00 a.m. to 11:30 p.m. Friday, Saturday and the eve of

Federal holidays. The restaurant West terrace summer garden shall be clear of patrons by the agreed upon closing times.

No live music shall be performed on the restaurant West terrace summer garden. Recorded ambient music, at levels inaudible at Watergate West private units or balconies/terraces may be offered until 9:00 p.m. daily. No entertainment or dancing endorsement will apply to the restaurant West terrace summer garden. Hotel management will establish operating guidelines so as to minimize noise during clean up and set up. An architectural, wood screening wall (Exhibit C) will be built by the hotel to minimize both noise transmission and views from the restaurant West terrace summer garden and the walkway/driveway at the hotel west entrance to the Watergate West pool and its ground level terraces and balconies. Landscaping will remain in its general existing location and will be enhanced through the renovation as reflected in Exhibit D. Lighting on the restaurant terrace will not shine at the Watergate West property or residences and will be strictly oriented toward the floor or to the Watergate hotel façade as shown in Exhibit E. Patio umbrellas or other type of awnings will also be used on this space.

Applicant also agrees that there will be no direct ingress to the restaurant West terrace summer garden from the adjacent alley. Applicant agrees to use best efforts to discourage its staff from congregating in this alley and disturbing adjacent neighbors. Applicant will limit the outdoor disposal of refuse and recyclables to hours between 7:00 a.m. and 9:00 p.m., so as to reduce the impact on the peace and quiet of the adjacent residents and to use best efforts to ensure that any truck or trash deliveries or pickups happen only between 7:00 a.m. and 9:00 p.m.

The restaurant East terrace summer garden shall have a maximum seating capacity of 25 persons. Provisions in this Section 2(b) relating to hours of operation, presentation and audibility of music, and prohibition of entertainment and dancing applicable to the restaurant West Summer Garden Terrace shall be applicable to the restaurant East summer garden terrace.

2(c) The Café-Patisserie terrace summer garden shall operate no later than 11:00 pm seven (7) days a week. No live music shall be offered. Recorded music may be offered until 10:00 pm Sunday through Thursday and 11:00 pm Friday – Saturday and the eve of Federal holidays. Music levels will be controlled to comply with the 55 dba standard applicable to residential balconies/terraces after 10:00 pm each evening.

2(d) The terrace located outside the Hospitality Suites shall operate not later than 10:00 pm Sunday through Thursday and 11:00 pm Friday – Saturday and the eve of Federal holidays. No live music shall be offered. Recorded music may be offered until 10:00 pm Sunday through Thursday and 11:00 pm Friday and Saturday and the eve of Federal holidays. Music levels will be controlled to comply with the 55 dba standard applicable to residential balconies/terraces after 10:00 pm each evening.

2(e) Terrace summer garden above the ballroom shall operate not later than 10:30 pm Sunday through Thursday and 11:30 pm Friday – Saturday and the eve of Federal holidays. Live music may be offered occasionally and recorded music at other times until 10:00 pm Sunday

through Thursday and 11:00 pm Friday and Saturday and the eve of Federal holidays. Music levels will be controlled to comply with the 55 dba standard applicable to residential balconies/terraces after 10:00 pm each evening.

3. The parties acknowledge that nothing in this Agreement shall prevent the enforcement of other applicable District of Columbia noise ordinances by any of the parties to this Agreement.

4. Applicant shall provide the Neighbors representatives with a written list of names, titles, telephone numbers and email addresses of its managerial employees to contact with any complaint, and to update same when staffing changes occur. The parties acknowledge that nothing in this Agreement shall prevent them from seeking enforcement of applicable regulations, including noise ordinances, by District of Columbia ABRA and law enforcement officials.

5. The Neighbors hereby agree to withdraw their protests and join with Applicant in requesting that the ABC Board accept this Agreement as a condition of approval of the pending license application. This Agreement is contingent upon withdrawal of the protest filed by Advisory Neighborhood Commission 2A and upon the text of this Agreement being incorporated in an Order of the Board granting Applicant's summer garden endorsements to the ABC license.

6. Enforcement. In the event of perceived breach of any term of this agreement, Watergate West, Inc., Watergate East, Inc and/or Watergate South, Inc. shall have exclusive standing to file complaints with the ABC Board and request relief pursuant to DC Code 25-446(e).

7. Counterparts. This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original and all, when taken together, constitute one and the same document. The signature of any party to any counterpart shall be deemed a signature and may be appended to any other counterpart.

8. Authority. Representatives executing this Agreement on behalf of the respective parties do hereby affirm that they have the authority to do so.

In witness whereof, the parties have executed this Agreement as of the day and date first above written.

Applicant: [redacted]

application. This Agreement is contingent upon withdrawal of the protest filed by Advisory Neighborhood Commission 2A and upon the text of this Agreement being incorporated in an Order of the Board granting Applicant's summer garden endorsements to the ABC license.

76. Enforcement. In the event of perceived breach of any term of this agreement, Watergate West, Inc., Watergate East, Inc and/or Watergate South, Inc. shall have exclusive standing to file complaints with the ABC Board and request relief pursuant to DC Code 25-446(e).

87. Counterparts. This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original and all, when taken together, constitute one and the same document. The signature of any party to any counterpart shall be deemed a signature and may be appended to any other counterpart.

98. Authority. Representatives executing this Agreement on behalf of the respective parties do hereby affirm that they have the authority to do so.

In witness whereof, the parties have executed this Agreement as of the day and date first above written.

Applicant: WATERGATE HOTEL LESSEE, LLC

By: _____
Jacques Cohen, President

NEIGHBORS

Watergate West, Inc.

By: _____
President HALUK ARITURK
2700 Virginia Avenue, N.W.

~~Watergate West Individual Resident Group~~

~~By: _____~~
~~William K. Smith, Designated Representative~~

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

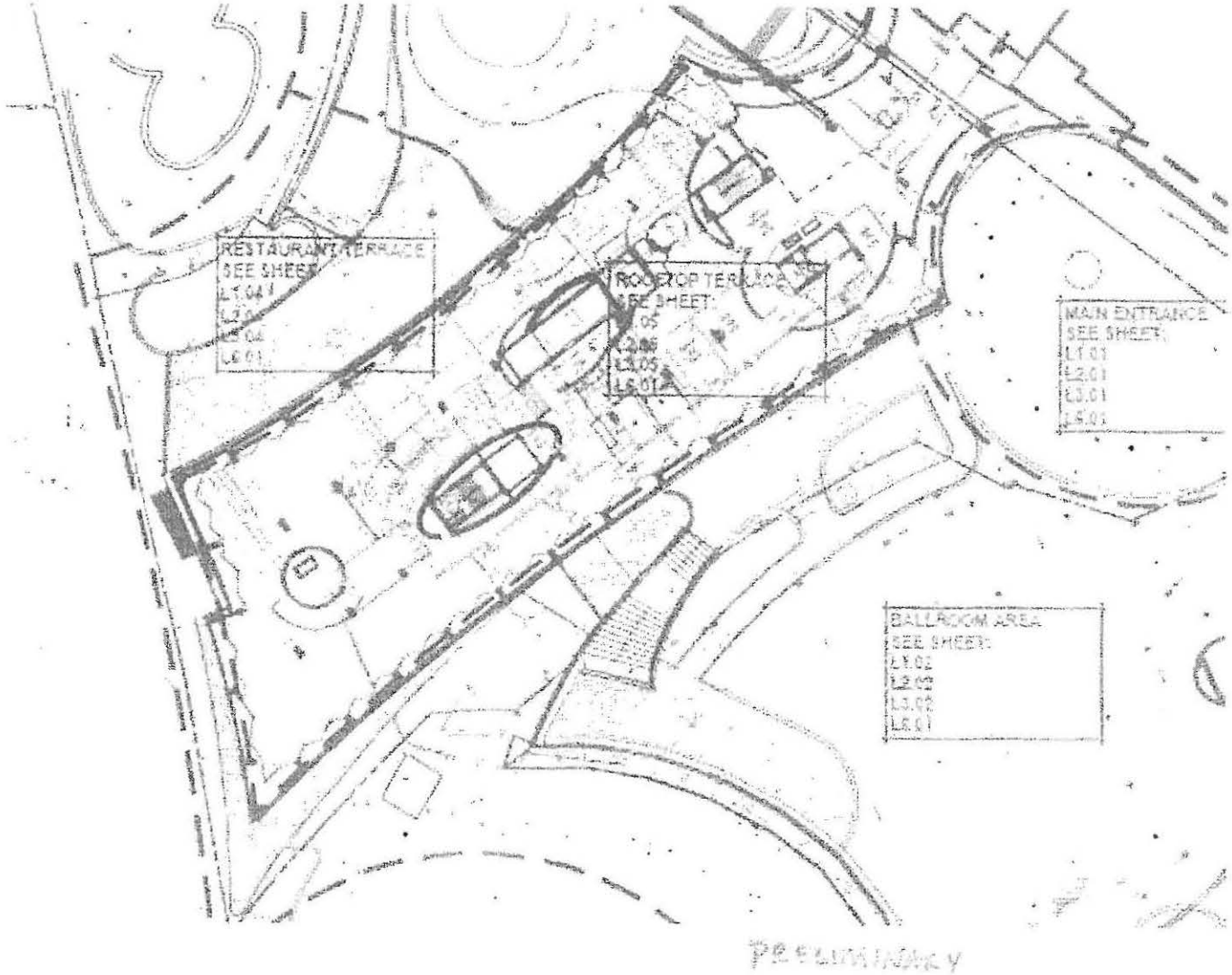
Watergate East, Inc.

By: _____
President

Watergate South, Inc.

By: _____ 4-28-13
Vice President

G:\wpdata\MISC\FONSECA\Watergate Hotel\ ABC Settlement Agreement.doc



Watergate Hotel – Summer Gardens

Exhibit A

Ex. B2

Restaurant Terrace Seating

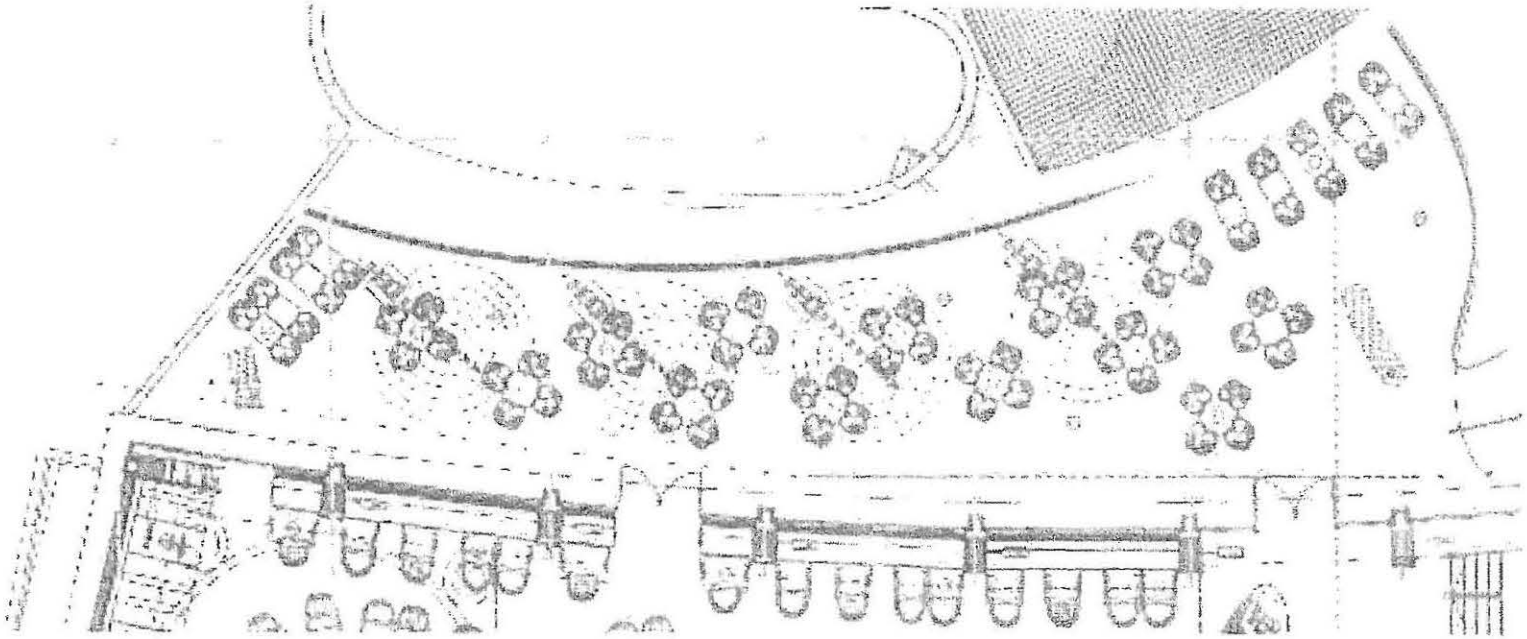
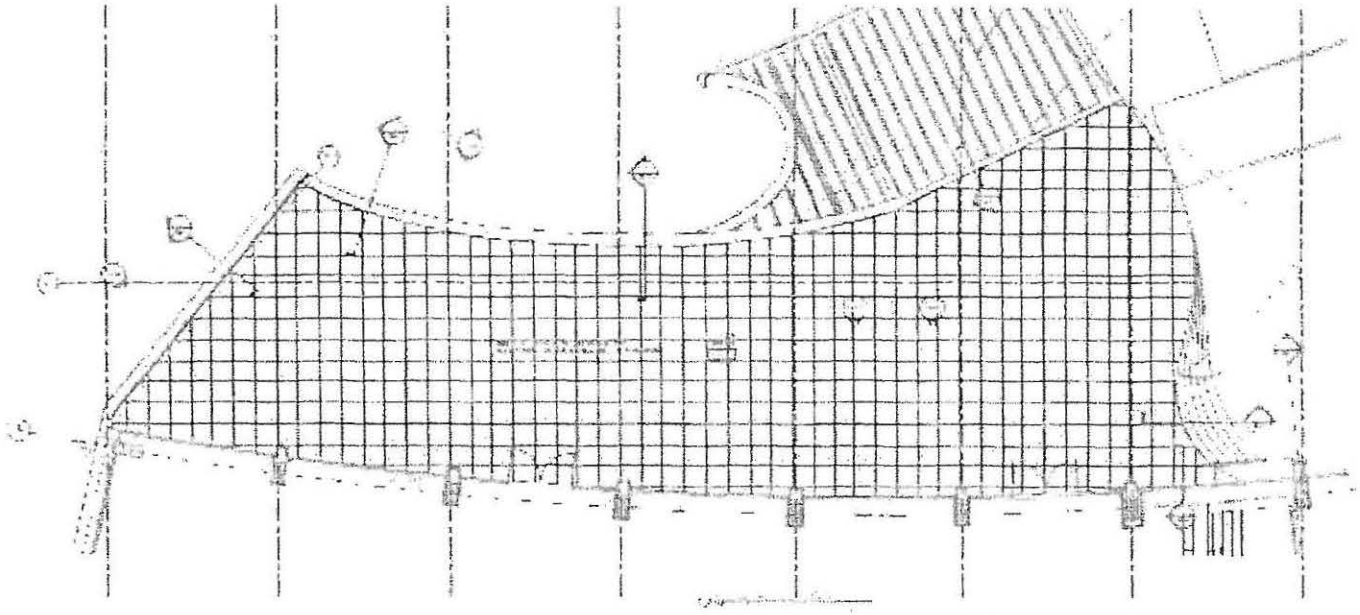


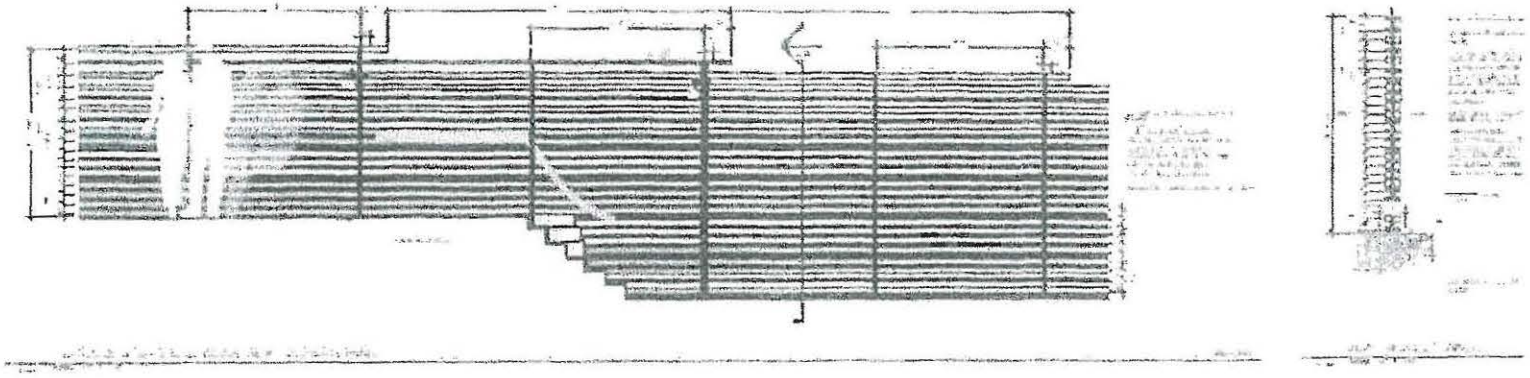
Exhibit B1 (4-23-13)



Watergate Hotel

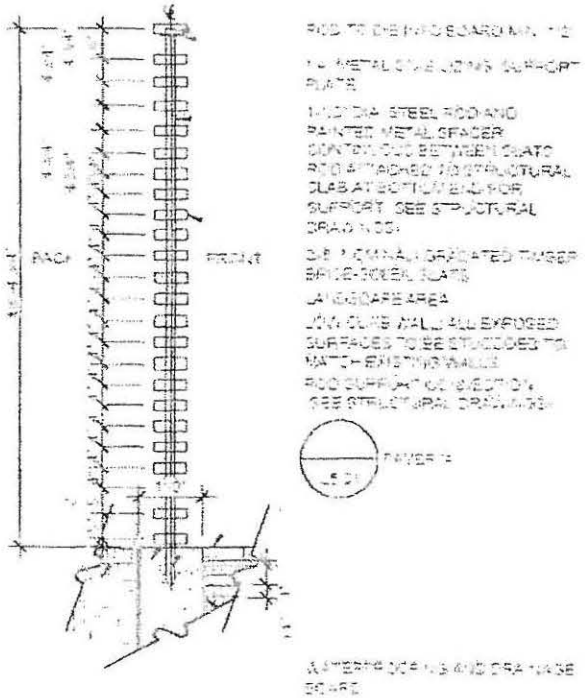
Restaurant Terrace Plan

Ex. C1



Restaurant Terrace Screen Wall Elevation and Section

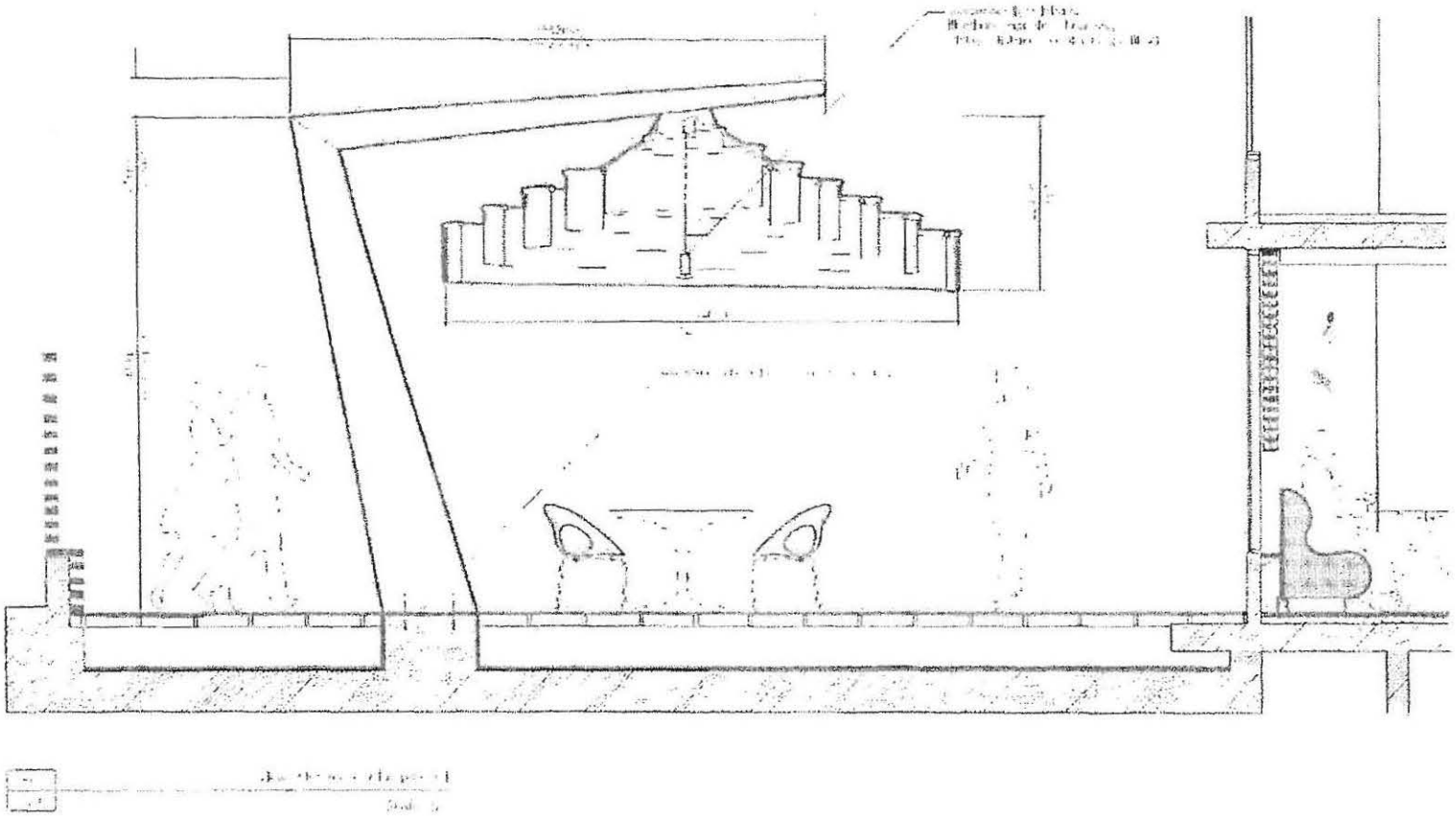
Ex. C2



2 SLAT SCREEN WALL SECTION
L4.03 Scale: 1/2" = 1'-0"

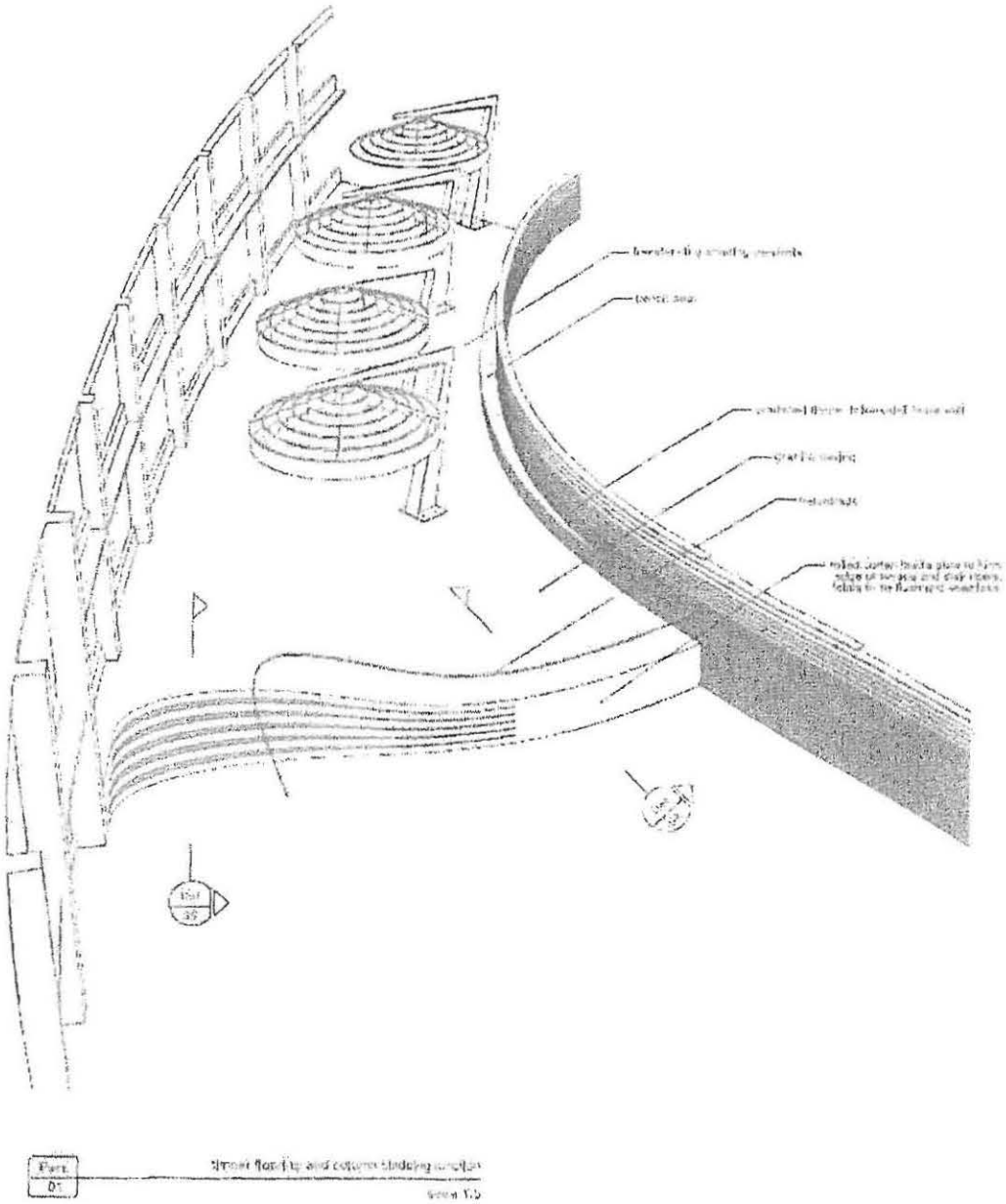
Restaurant Terrace Screen Section @ Drive

Ex.C3



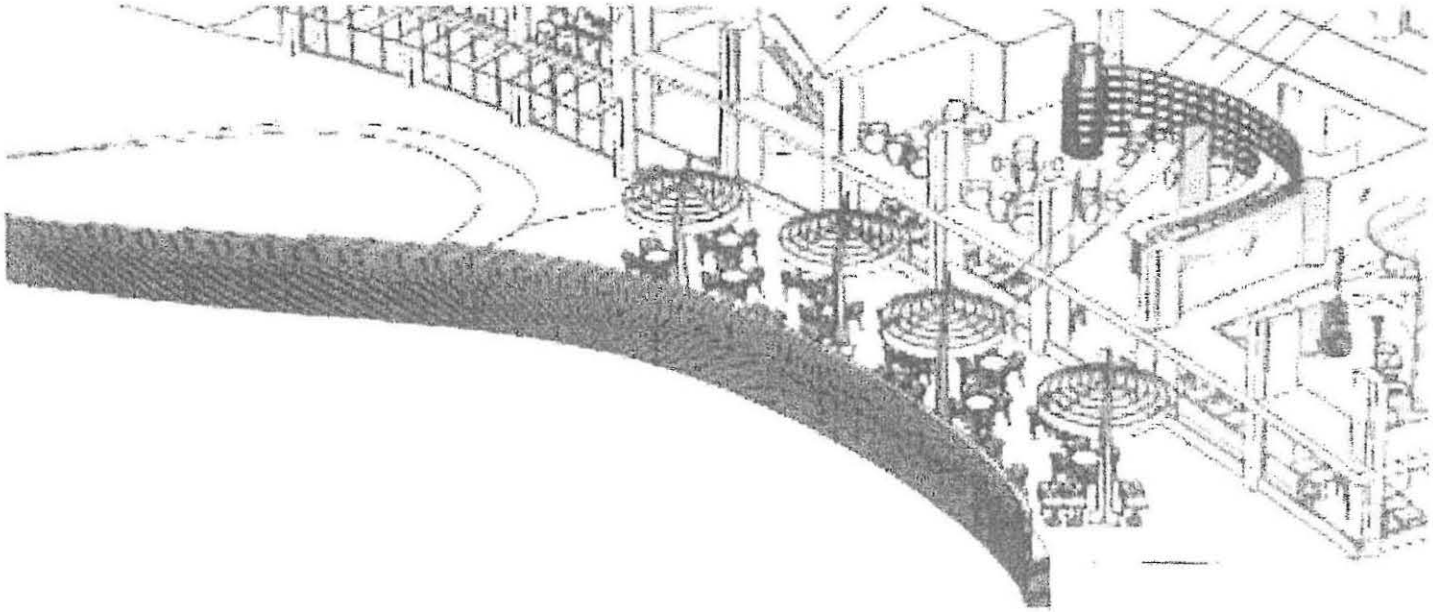
Restaurant Terrace Section

Ex. C4



Restaurant Terrace

Exhibit C5



Watergate Hotel

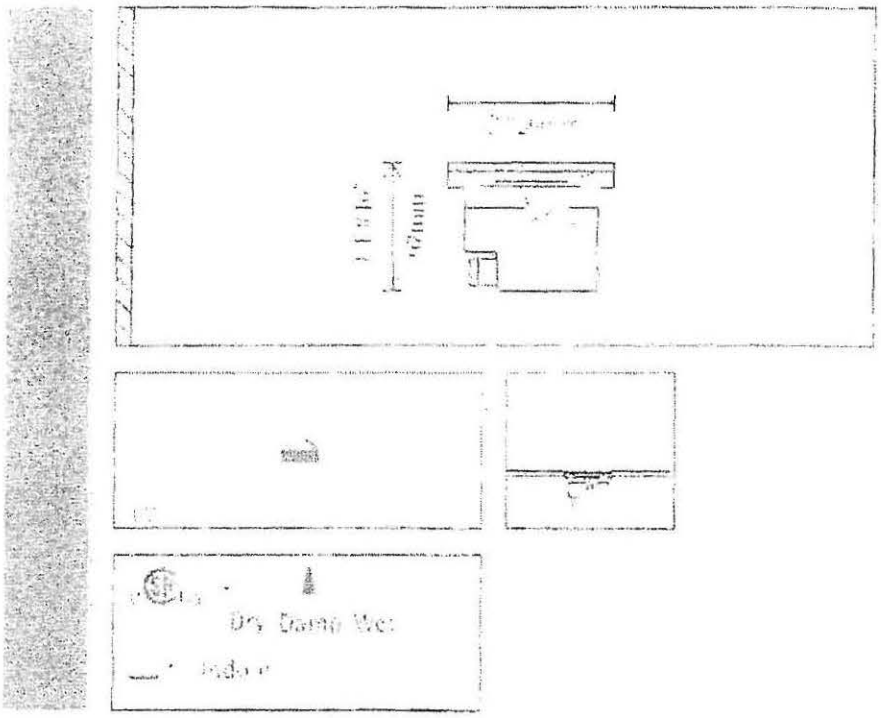
Restaurant Terrace Screen Wall

EX. E2

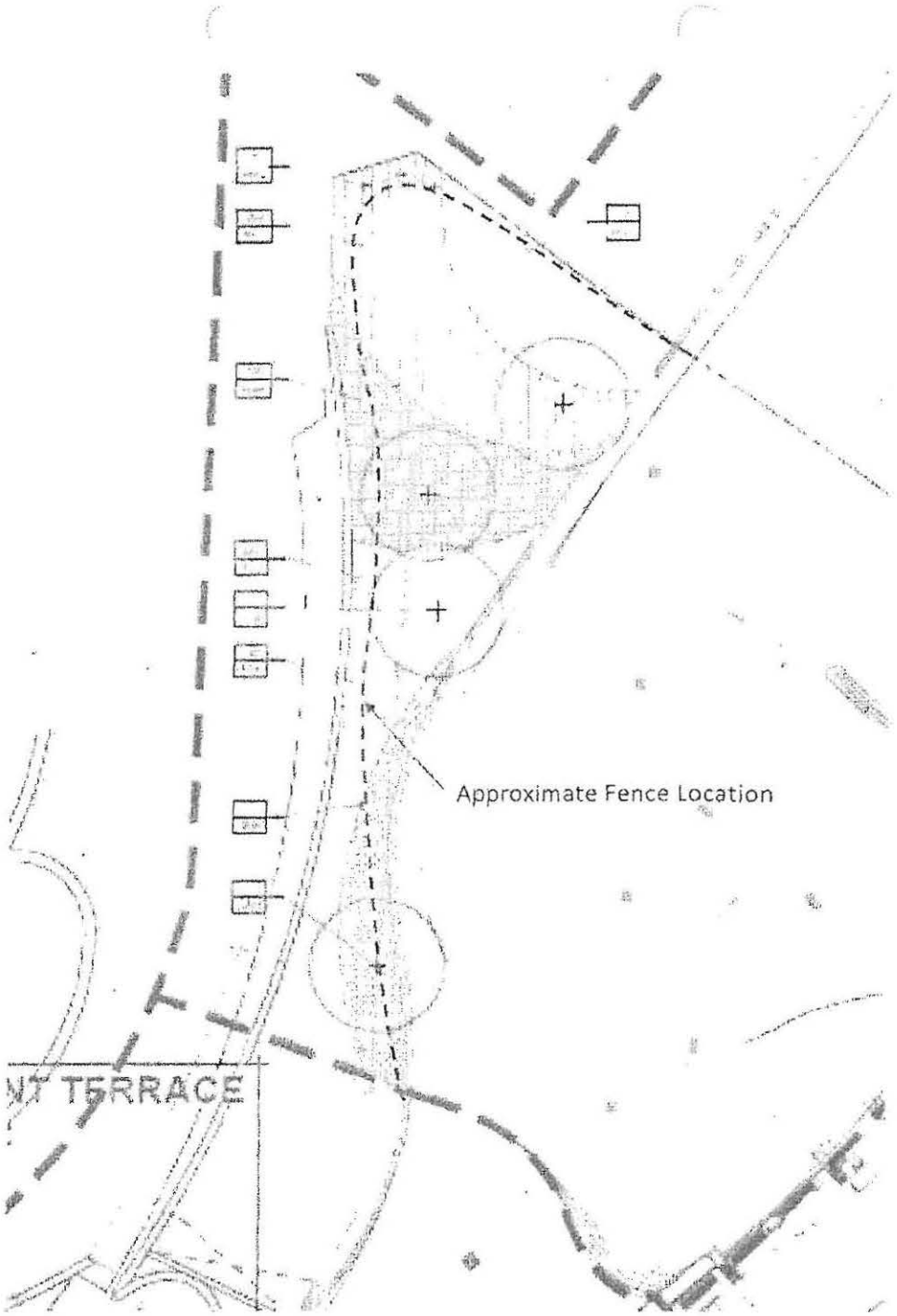
TYPE K21

:essed floor luminaire

her with LED



Ex. D1



Watergate Hotel

Preliminary Landscape Plan - Alley

EX. E3

WATERGATE HOTEL

TYPE K30

STEALTH®

SSL ALED

RECESSED LUMINAIRE

SSL ALED

DESCRIPTION

A General

Regressed LED with light temperature for glare free energy efficient path lighting and architectural lighting suitable for dry, damp, wet and interior exterior applications

B Special Features

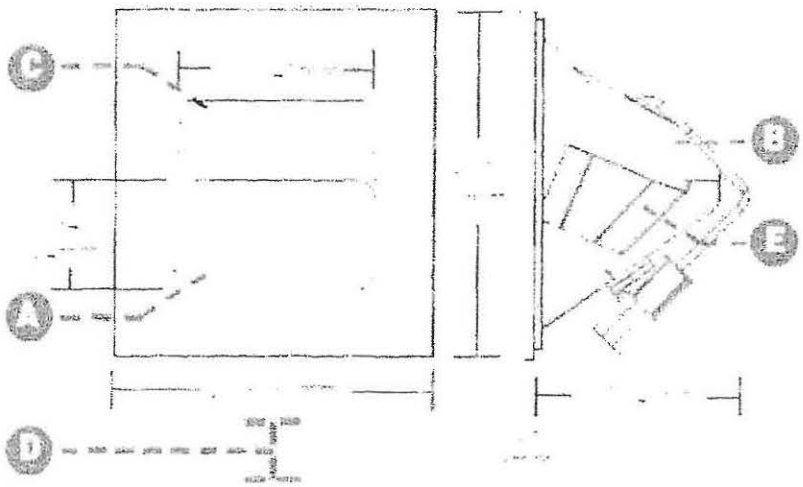
Dimmable 3W 50 LED dimmable, power supply LED heat sink module is replaceable

C Effects Devices

Provided with lens as linear spread and [illegible] to achieve illumination in temperature

D Mounting

Optimum [illegible] above [illegible] suitable for [illegible] Amp [illegible] rating

E Retention

[illegible] spring [illegible] retention back box mounting plate or [illegible] sides [illegible]