

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

_____)	
In the Matter of:)	
)	
The Brookland Cafe, LLC)	Order Number: 2010-370
t/a Brookland Café)	Case Number: 09-081P
)	License Number: 083121
Application for a New)	
Retailer's Class CR License)	
)	
at premises)	
3740 12 th Street, N.E.)	
Washington, D.C. 20017)	
_____)	

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

ALSO PRESENT: The Brookland Cafe, LLC, t/a Brookland Cafe, Applicant

Candace Fitch, Esq., on behalf of the Applicant

Andrew Kline, Esq., on behalf of the Applicant

Don Padou, on behalf of the Protestants

Martha Jenkins, General Counsel
Alcoholic Beverage Regulation Administration

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

The Brookland Cafe, LLC, t/a Brookland Cafe (Applicant), filed an Application for a New Retailer's Class CR License at premises 3740 12th Street, N.E., Washington, D.C.

The Application initially came before the Alcoholic Beverage Regulation Administration (ABRA) for a Roll Call Hearing on December 7, 2009, and a Protest Status Hearing on January 27, 2010.

Protests against the Application were timely filed by a Group of Five or More Individuals, represented by Don Padou and Sunday Abraham. The Roman Catholic Archdiocese for Military Services, represented by General Counsel John Schlageter, also filed a timely protest by letter dated November 19, 2009. The Roman Catholic Archdiocese for Military Services withdrew its protest and entered into a voluntary agreement with the Applicant, which was approved by the Board and incorporated by Board Order No. 2010-371. ANC 5A did not file a protest against this Application.

Pursuant to D.C. Official Code § 25-313, the filed protest issues are whether the Application for a new Retailer's Class CR License would adversely affect the peace, order, and quiet, as well as the residential parking, vehicular and pedestrian safety in the neighborhood and cause a significant decrease in residential property values.

The protest was not settled and the matter was scheduled for a Protest Hearing on March 3, 2010, at which time testimony was taken by the Board and the matter was continued on May 5, 2010, at which time further testimony was taken and the parties rested.

The Applicant and Protestants also submitted Proposed Findings of Fact and Conclusions of Law that are part of the record.

At the conclusion of the Protest Hearing, the Board took the matter under advisement. The Board, having considered the evidence, the testimony of the witnesses, the arguments of the parties, the parties' Proposed Findings of Facts and Conclusions of Law, and the documents comprising the Board's official file, makes the following:

FINDINGS OF FACT

1. The Applicant is requesting a new Retailer's Class CR License with an entertainment endorsement to provide live entertainment and a cover charge. *ABRA Licensing File No. 83121; ABRA Protest Report, Case Report No. 10-CMP-00048, 2.*
2. The Applicant's establishment is located at 3740 12th Street, N.E. *ABRA Licensing File No. 083121.* It is located within a C1 zone in an area of the District of Columbia known as Brookland. *ABRA Protest Report, Case Report No. 10-CMP-00048, 3.* There is one school, Elsie Whitelaw Stokes Community Freedom Public Charter School, one day care center, I-Care Child Development Center, and one college, Augustinian College, within 400 feet of the establishment. *ABRA Protest Report, Case Report No. 10-CMP-00048, 3.* There are four licensed ABC establishments to the north of the building within a six block radius: Yes Organic Market, Whelan's Liquor, San Antonio Bar 7 Grill, and Michigan Liquors. *ABRA Protest Report, Case Report No. 10-CMP-00048, 3.* There are three licensed ABC establishments to the south of the building within a six block radius:

Café Suriea, The Library Saloon, Bobby Q's, and Smitty's. *ABRA Protest Report, Case Report No. 10-CMP-00048*, 4. There are two licensed ABC establishments to the west of the building within a six block radius: Delta Elite and The Cardinals West. *ABRA Protest Report, Case Report No. 10-CMP-00048*, 4. Finally, there are no licensed ABC establishments to the east of the building within a six block radius. *ABRA Protest Report, Case Report No. 10-CMP-00048*, 4.

3. By petition, a Group of Five or More Individuals protested the Applicant's Application for a new Retailer's Class CR License. *See ABRA Protest File 09/081P*. The Protestants claimed that granting the Application would be detrimental to peace, order, and quiet in the neighborhood, make it harder to find parking, and effect real property values. *See ABRA Protest File 09/081P*. Don Padou represented the Protestants while Attorneys Candace Fitch and Andrew Kline represented the Applicant.

4. As an initial matter, the Board dispensed with a number of preliminary matters that needed to be resolved before the parties' opening statements. *Transcript (Tr.)*, March 3, 2010 (hereinafter 3/3/10) at 5. The first preliminary matter was the Protestants' second Motion to Dismiss. *Tr.*, 3/3/10 at 5. On January 29, 2010, Don Padou, on behalf of the Protestants, filed a Motion to Dismiss the Application asserting that provisions of District of Columbia regulations do not permit the Board to grant a license to Brookland Café, in this situation a CR License. Specifically, the Protestants alleged that the Applicant is within 400 feet of a public charter school, but is not located entirely inside of a hotel, apartment, house, or office building. On July 29, 2009, the Board issued Board Order 2009-197 and concluded that the Applicant is within 400 feet of a public, private, or parochial, primary, elementary, or high school, which precludes issuance of a license pursuant to D.C. Official Code 25-314(b)(1). However, there was no finding in the Order that precludes the Applicant from applying for a restaurant license at the desired location because restaurant licenses are exempt from D.C. Code 25-314. Therefore, on February 17, 2010, the Board denied the Protestants' Motion to Dismiss the Application by Board Order 2010-033. On February 26, 2010, Protestants filed a Motion to Reconsider Board Order 2010-033 on the grounds that the Board erred in denying the Protestants' Motion to Dismiss the application because the Board did not respond to the substance of Protestant's Motion, which is that 23 DCMR 302.8 does not permit the Board to grant a restaurant license. Instead of applying 23 DCMR 302.8, the Protestants asserted that the Board erred in applying D.C. Code 25-314(b)(2). The Board concluded that it did not err by applying 302.8, because D.C. Code 25-314 (b)(2) trumps 23 DCMR 302. Therefore, the Board denied the Protestants' Motion for Reconsideration and proceeded with the Protest Hearing.

5. The Board called ABRA Investigator Felecia Dantzler, who prepared the Protest Investigation Report in this matter, as its witness. *Tr.*, 3/3/10 at 21. The establishment is located in a three-story building on the first floor, or the street level. *Tr.*, 3/3/10 at 24. It has approximately 30 seats. *Tr.*, 3/3/10 at 24. There is an outdoor parking lot adjacent to the building that holds about 11 to 15 vehicles. *Tr.*, 3/3/10 at 24. Investigator Dantzler also spoke with Rob Ramson, the proprietor at the Brookland Inn that directly next to the establishment and Mr. Lumukanda, the owner of the establishment, about the parking

agreement for the property at 3800 12th Street, N.E. *Tr.*, 3/3/10 at 24. The parking agreement will permit patrons of the establishment to park vehicles there nightly, starting at 7:00 p.m., and that lot holds up to approximately six additional vehicles. *Tr.*, 3/3/10 at 24.

6. Investigator Dantzler stated that ABRA monitored the establishment nine times from February 3, 2010 through February 23, 2010. *Tr.*, 3/3/10 at 25; *ABRA Protest Report, Case Report No. 10-CMP-00048, 6*. During these visits, the establishment was only open once and had two patrons inside. *Tr.*, 3/3/10 at 25. The neighborhood was quiet and the establishment did not appear to be operating as a nightclub. *Tr.*, 3/3/10 at 25, 26. There was some off-street parking. *Tr.*, 3/3/10 at 25. But there was really no parking available during most of her visits. *Tr.*, 3/3/10 at 25. However, she found that there were a variety of reasons that could have contributed to the lack of parking, including the snow storm. *Tr.*, 3/3/10 at 25. Investigator Dantzler also spoke with the proprietor of the day care facility, who advised her that she believes that parking has been reduced because employees of the school are occupying the spaces during the day. *Tr.*, 3/3/10 at 25, 26. No loitering was observed during these visits. *Tr.*, 3/3/10 at 26.

7. Investigator Dantzler also spoke with the Director of the Turkey Thicket Recreational Center, who informed her that a lot of the clients, the children, are neighborhood children. *Tr.*, 3/3/10 at 26, 27. The Director stated that she didn't believe that there was much concern for her to have the children in the neighborhood utilizing the facilities during the same operating hours as the establishment. *Tr.*, 3/3/10 at 27.

8. Investigator Dantzler stated that the proprietor of the I-Care Child Development Center expressed concerned about the establishment coming to the neighborhood because she wanted to know how it would affect the neighborhood. *Tr.*, 3/3/10 at 27. As a result, she and her husband visited the area late one night and found the area to be quiet with no impact on parking or anything else. *Tr.*, 3/3/10 at 27.

9. Investigator Dantzler concluded her testimony by indicating that neither ABRA nor MPD had received any calls for service to the location for the last year. *Tr.*, 3/3/10 at 27. However, while operating under a temporary license, a sale to minor violation occurred and the establishment was issued a letter of warning. *Tr.*, 3/3/10 at 28.

10. The Applicant called Mr. D'Maz Lumukanda to testify, the owner of the limited liability company. *Tr.*, 3/3/10 at 57, 58. Mr. Lumukanda stated that he went to school for business management, accounting, and finance. *Tr.*, 3/3/10 at 58. With respect to his business experience, he has been consulting for some years, brokered transactions throughout the city, opened some small businesses, and attempted to open several restaurants and several other businesses in the city over the past ten years. *Tr.*, 3/3/10 at 58. Mr. Lumukanda explained that he chose the current location for the establishment because his consulting operation is the facility next to the establishment. *Tr.*, 3/3/10 at 60, 61. Because the facility was empty for some time, he decided to open up the Brookland Café. *Tr.*, 3/3/10 at 61.

11. Mr. Lumukanda indicated that he is involved with the daily operations of the establishment. *Tr.*, 3/3/10 at 61. He also described the concept of the café as being modeled after some of the cafes one finds in Manhattan or Brooklyn that are neighborhoods where an individual can walk up and get a drink or a good meal. *Tr.*, 3/3/10 at 61. It is also a place where people in the neighborhood can sit down and meet each other and meet new people, or just an alternative from being at home. *Tr.*, 3/3/10 at 62. The concept is a place that caters to the immediate neighborhood and has a wide selection of food items. *Tr.*, 3/3/10 at 62. The menu includes vegan items, lunch specials, all-out platters, appetizers, soups, salads, sandwiches, and wraps. *Tr.*, 3/3/10 at 62, 63. The current menu is different from the one that was originally submitted with the application. *Tr.*, 3/3/10 at 63. The original menu was more limited, because he had not fully toyed with a lot of the concepts, but after getting an idea of what the neighborhood likes, the menu now reflects what works and what people like. *Tr.*, 3/3/10 at 63. In fact, a couple of the items were featured in the Washington Post. *Tr.*, 3/3/10 at 63.

12. Mr. Lumukanda also described his plans for the Entertainment Endorsement. *Tr.*, 3/3/10 at 64. Currently, the entertainment consists of music that is played on a laptop, satellite music from the internet, music on an iPhone, and other recorded music. *Tr.*, 3/3/10 at 64. In the future, he would like to have a xylophone player, another instrument like a harp or flute, or a one-piece band. *Tr.*, 3/3/10 at 64, 65. He also explained that the establishment is too small for live bands or DJ. *Tr.*, 3/3/10 at 65.

13. Mr. Lumukanda testified that the establishment has been open since about May 2009. *Tr.*, 3/3/10 at 66. And alcohol was served from May 2009 until December 2009 under a stipulated license. *Tr.*, 3/3/10 at 66. The type of alcohol beverages included wine, vodka, beer, cocktails, whiskey, mixed drinks, and frozen drinks. *Tr.*, 3/3/10 at 66.

14. Mr. Lumukanda stated that neither MPD nor ABRA had been called regarding complaints about the establishment. *Tr.*, 3/3/10 at 67, 68. However, Mr. Lumukanda admitted that a sale to minor occurred in the establishment while operating under the stipulated license. *Tr.*, 3/3/10 at 68, 69. Mr. Lumukanda immediately offered training to his staff following this incident. *Tr.*, 3/3/10 at 69.

15. Mr. Lumukanda also testified that he tried to address the concerns of the neighbors. *Tr.*, 3/3/10 at 70. Initially, he attended every Single Member District ANC meeting. He listened to the concerns of the community and met with the Protestants on a number of occasions and listened to their concerns. *Tr.*, 3/3/10 at 70, 71. First, Mr. Lumukanda explained that there is parking available for employees directly to the right of the establishment, and there is auxiliary parking down the street. *Tr.*, 3/3/10 at 71. Then, he discussed pedestrian safety. Although he is not sure what he can do with regard to directing traffic, he explained his efforts with respect to the parking lot. *Tr.*, 3/3/10 at 71. For example, he placed a barrier in front of the parking lot so it would be a little safer for people to get in and out. *Tr.*, 3/3/10 at 71. And the lot was paved to make it easier for driving. *Tr.*, 3/3/10 at 71. Mr. Lumukanda also added a retaining wall to maintain the integrity of the parking lot to give it an aesthetic appeal and make it safer. *Tr.*, 3/3/10 at 72.

16. Next, Mr. Lumukanda described his efforts to maintain peace, order, and quiet in the neighborhood. *Tr.*, 3/3/10 at 72. Specifically, he has worked to manage the place on a daily basis where the clients are peaceful. *Tr.*, 3/3/10 at 73. He indicated that there are no issues with people being disorderly because he tries to manage them professionally and runs a tight ship to make sure that everything runs smoothly. *Tr.*, 3/3/10 at 73. Further, he does not believe that the establishment has the physical ability to create a large amount of noise because the speakers are not large enough and hotel guests would be disturbed. *Tr.*, 3/3/10 at 73, 74.

17. Finally, Mr. Lumukanda addressed the effect of the establishment on real property values. *Tr.*, 3/3/10 at 74. He stated that he made a significant investment in improving the building, including aesthetic improvements to the building so that it would be beautiful and a place where people would feel safe. *Tr.*, 3/3/10 at 74. With regard to real estate values, Mr. Lumukanda opined that the Brookland neighborhood has actually been stable with some increases in property values. *Tr.*, 3/3/10 at 75, 78. And he found that the establishment was listed as an amenity during his internet search. *Tr.*, 3/3/10 at 76, 83, 84.

18. During cross examination, Mr. Lumukanda also indicated that the general operation of the establishment will remain the same throughout the duration into perpetuity, but the menu may have some adjustments and he may add new items. *Tr.*, 3/3/10 at 100.

19. Mr. Lumukanda also admitted that he was a former ABRA employee. *Tr.*, 3/3/10 at 103. And one of the establishments that he tried to open in the past included Splash Restaurant or Splash Restaurant & Bar, and he was one of the owners. *Tr.*, 3/3/10 at 103, 104.

20. The cross examination continued with questions regarding renovations to the establishment. *Tr.*, 3/3/10 at 148. Mr. Lumukanda testified that he painted and put in a bar; everything else was already there. *Tr.*, 3/3/10 at 149. Mr. Lumukanda paid a friend to complete these interior renovations. *Tr.*, 3/3/10 at 151. He also testified that the exterior renovations were done by the property owner of the Brookland Inn, Rob Ramson. *Tr.*, 3/3/10 at 149, 150.

21. Mr. Lumukanda admitted that he told Mr. Padou that he would not sign a voluntary agreement at that particular time. *Tr.*, 3/3/10 at 151, 152. But he met with other Protestants, including Ms. Abraham, Ms. Winkelbauer, and Mr. Feeley in December in an effort to negotiate a voluntary agreement. *Tr.*, 3/3/10 at 152, 153.

22. Again, Mr. Lumukanda agreed that he applied for an entertainment endorsement. *Tr.*, 3/3/10 at 153. During the term of the stipulated license, Mr. Lumukanda did not have live entertainment. *Tr.*, 3/3/10 at 152. Instead, he used the laptop and conferred with his attorney (during the protest proceeding) that he did not need an entertainment endorsement to play music from a jukebox, laptop, or iPhone. *Tr.*, 3/3/10 at 153. So, he reiterated that his plans for live entertainment potentially included someone playing the xylophone, harp, or flute. *Tr.*, 3/3/10 at 154. Further, he indicated that guitars might be a little too noisy. *Tr.*, 3/3/10 at 155.

23. Mr. Lumukanda also indicated that he agrees to abide by the voluntary agreement with the Archdiocese for Military Service. *Tr.*, 3/3/10 at 156,157.

24. Mr. Lumukanda stated that he leases a portion of the building that houses the establishment from Mr. Ramson on a monthly basis under the terms of a lease agreement. *Tr.*, 3/3/10 at 161. He testified that the monthly payment is about \$2,000, and the lease is renewable at the end of each year. *Tr.*, 3/3/10 at 162. Mr. Lumukanda met Mr. Ramson about seven or eight years ago. *Tr.*, 3/3/10 at 165. Mr. Lumukanda admitted that he has had other business relationships with Mr. Ramson, including using him as a consultant in his attempts to open other businesses. *Tr.*, 3/3/10 at 163. Mr. Ramson also assisted him with the renovations of his home and signing the contract. Generally, Mr. Ramson is like family and he has served as a mentor. *Tr.*, 3/3/10 at 163, 164. Mr. Lumukanda also admitted that Mr. Ramson is indirectly involved with the plans for the establishment, because they treat the Brookland Inn and Brookland Café as a brand that marries the two businesses together. *Tr.*, 3/3/10 at 165. However, Mr. Lumukanda does not have any plans for increasing Mr. Ramson's level of involvement in the establishment, including sharing profits, selling him an investment in the establishment, or involving him in the day-to-day operations. *Tr.*, 3/3/10 at 166, 167.

25. The Applicant called Charles Murn as its next witness. *Tr.*, 3/3/10 at 172. Mr. Murn resides at 4407 14th Street, N.E. *Tr.*, 3/3/10 at 173. He lives about six or seven blocks from the establishment. *Tr.*, 3/3/10 at 173. In addition, he is the president of the Michigan Park Citizens Association. *Tr.*, 3/3/10 at 185. Mr. Murn stated that as an elected officer of the neighborhood association, he is always concerned about businesses and their effect on the community. *Tr.*, 3/3/10 at 173. Many of the concerns about the establishment were brought to his attention by the neighborhood newsletter and the Protestants, which made him wonder if the business would be good for the community. *Tr.*, 3/3/10 at 174. Mr. Munn described the noise level at the establishment as low ambient. *Tr.*, 3/3/10 at 175. During his dining experience at the establishment, he was able to have an extended conversation with no problem. *Tr.*, 3/3/10 at 175, 176. Mr. Munn also testified that during an experiment with the music at the establishment, even with it turned up at a maximum volume, it was not audible outside and across the street. *Tr.*, 3/3/10 at 176, 177. Mr. Murn also admitted that Mr. Ramson asked him to testify. *Tr.*, 3/3/10 at 180. He explained that he believes that Mr. Ramson has expressed enough concern about his tenant succeeding that he has participated in some of the public hearings and meetings on the application and protest. *Tr.*, 3/3/10 at 184. Mr. Murn also stated that Mr. Lumukanda had presented at one of the civic association meetings, and Mr. Ramson intervened midway through the presentation. *Tr.*, 3/3/10 at 185.

26. The Applicant called Rodney Adams as its witness. *Tr.*, 3/3/10 at 192. Mr. Adams resides at 1035 Purdy Street, N.E., Apartment 302. *Tr.*, 3/3/10 at 193. He lives directly next to the establishment. *Tr.*, 3/3/10 at 193, 194. Mr. Adams works during the day, and has no trouble finding parking in the evenings when he arrives home. *Tr.*, 3/3/10 at 194, 195. For the most part, he parks on the street in front of his window. *Tr.*, 3/3/10 at 194. Also, he has visited the establishment about three times, and has no relationship with the Applicant. *Tr.*, 3/3/10 at 196.

27. The Applicant called Andi Fleming as its witness. *Tr.*, 3/3/10 at 197. Ms. Fleming is a real estate agent and lives and works in the neighborhood. *Tr.*, 3/3/10 at 198. She has lived in Brookland for a little over eight years. *Tr.*, 3/3/10 at 205. She described the real estate market in D.C. as slightly declining over the past two years, but Brookland has actually gone down less when one looks at the overall picture of D.C. *Tr.*, 3/3/10 at 199. She testified that Brookland has experienced less decrease in real estate values than as seen elsewhere in the city. *Tr.*, 3/3/10 at 199. She stated that she does not know if the establishment has directly affected the Brookland area, but she does advertise it as an amenity of the neighborhood. *Tr.*, 3/3/10 at 199, 200. Ms. Fleming also explained that before Brookland Inn and Brookland Café moved in, the building was an old apartment building in very bad condition. *Tr.*, 3/3/10 at 200, 201. Previously, there were businesses on the bottom, but the entire building was vacant for quite a long time. *Tr.*, 3/3/10 at 201.

28. The Applicant called John Quincy Adams as its witness. *Tr.*, 3/3/10 at 209. Mr. Adams is a lieutenant with the D.C. Fire Department and co-owner of the day care that is directly across the street from the establishment. *Tr.*, 3/3/10 at 210. He stated that initial concerns about the establishment included what was going to be sold, operating hours, and whether the establishment would conflict with the operations of the day care, and parking. *Tr.*, 3/3/10 at 210, 211. Mr. Adams admitted that the parking has been the same since the day care opened 13 years ago, long before the arrival of the establishment. *Tr.*, 3/3/10 at 211. He also indicated that his concerns were alleviated after talking with Mr. Ramson, visiting the establishment, and observing the crowd at night, which was very quiet. *Tr.*, 3/3/10 at 211, 212. Mr. Adams agreed that when parents pick up or drop off kids at the day care they often have to double park for a couple of minutes, but they have been doing that for years. *Tr.*, 3/3/10 at 213. He also admitted that Mr. Ramson asked him to testify. *Tr.*, 3/3/10 at 213. However, Mr. Ramson never identified himself as the owner of the establishment and directed him to talk to Mr. Lumukanda. *Tr.*, 3/3/10 at 215, 216.

29. The Applicant called John Schlageter as its final witness. *Tr.*, 3/3/10 at 219. Mr. Schlageter is the General Counsel for the Archdiocese for the Military Services, but not a resident of the Brookland community. *Tr.*, 3/3/10 at 219. His statements were restricted only to those of the Archdiocese, and did not include personal opinions. *Tr.*, 3/3/10 at 219. The Archdiocese became aware of the establishment through Mr. Padou. *Tr.*, 3/3/10 at 221. The Archdiocese became concerned because it has an office building and houses 25 people. *Tr.*, 3/3/10 at 221. There is also a residence for five priests and the Archbishop for the Military Services. *Tr.*, 3/3/10 at 221. The fourth floor constitutes the whole residence of the Archdiocese. *Tr.*, 3/3/10 at 221, 222. The windows of two of the residents look directly onto the parking lot of the establishment. *Tr.*, 3/3/10 at 222. The concern of the Archdiocese was noise from people leaving at different hours of the night and the noise from operating the facility with live entertainment. *Tr.*, 3/3/10 at 222. Mr. Schlageter also indicated that they signed a voluntary agreement with the Applicant solely on the basis of noise, and they believe that the agreement will be upheld. *Tr.*, 3/3/10 at 223. He also admitted that he negotiated the voluntary agreement with Mr. Ramsom. *Tr.*, 3/3/10 at 224. The Archdiocese has not had any problems with establishment, even while operating under the stipulated license. *Tr.*, 3/3/10 at 223.

30. The Protestants called John Feeley as their first witness. *Tr.*, 3/3/10 at 241. Mr. Feeley resides at 1009 Sigsbee Place, which is about three blocks or 1,900 feet from the establishment. *Tr.*, 3/3/10 at 254. Mr. Feeley is an ANC Commissioner for 5A06. *Tr.*, 3/3/10 at 242. He did not testify on behalf of the ANC; instead, he testified as a private citizen and Protestant of the Application. *Tr.*, 3/3/10 at 242, 243. He is a Protestant because of the objections of his constituents, their concerns about the granting of the stipulated license, and supporting the residents of the Oak Terrace Condominiums. *Tr.*, 3/3/10 at 252. Mr. Feeley stated that Mr. Ramson and Mr. Lumukanda have presented at his ANC meetings. *Tr.*, 3/3/10 at 243. Although Mr. Feeley never heard Mr. Ramson assert that he was the owner of the Brookland Café, he presented himself as a representative very concerned about the establishment and involved with it. *Tr.*, 3/3/10 at 243. Mr. Feeley also explained that Mr. Ramson was the first person who approached him concerning the establishment. *Tr.*, 3/3/10 at 244. In addition, he testified that there were two unsuccessful meetings with Mr. Lumukanda, Mr. Ramson, and people from the community concerning a voluntary agreement. *Tr.*, 3/3/10 at 246. Mr. Feeley admitted that he does not have any parking issues with the establishment. *Tr.*, 3/3/10 at 255. Also, when he visited the establishment on a Saturday morning it was quiet. *Tr.*, 3/3/10 at 256. However, he did receive a phone call complaining about a party at the establishment in March 2009. *Tr.*, 3/3/10 at 257.

31. The Protestants called Abigail Padou as their next witness. *Tr.*, 3/3/10 at 258. Ms. Padou resides at 1335 Lawrence Street, N.E., which is about six blocks from the establishment. *Tr.*, 3/3/10 at 286, 287. First, Ms. Padou identified an article that she copied from DC North about the establishment that was admitted into the record. *Tr.*, 3/3/10 at 269. The article gives some background about the establishment and describes who is involved. *Tr.*, 3/3/10 at 280. Specifically, the article states that Mike Simpson is co-owner of the establishment, but Ms. Padou admitted that she has no reason to believe Mr. Simpson is a co-owner and she has never met him. *Tr.*, 3/3/10 at 283. Then, Ms. Padou characterized a photograph of the parking lot adjacent to the Brookland Inn as an accurate representation of the parking lot. *Tr.*, 3/3/10 at 270. Next, Ms. Padou commented on photographs of the satellite parking lot at 3800 12th Street, N.E. that was previously determined as having an agreement with the establishment to use their parking spaces. *Tr.*, 3/3/10 at 272. She counted four parking spots, including three marked parking spots for the cars and one handicapped parking spot and a marked off yellow-stripped spot next to the handicapped parking spot intended for loading and unloading. *Tr.*, 3/3/10 at 273. The next document introduced were certified copies of breach of contract judgments against Mr. Lumukanda from D.C. Superior Court. *Tr.*, 3/3/10 at 274. The documents included a series of judgments against Mr. Lumukanda and Mr. Ramson for significant sums of money. *Tr.*, 3/3/10 at 275. Ms. Padou also admitted that she had not personally witnessed, observed, or experienced any issues related to the operation of the establishment, including noise, parking, trash, litter, or loitering. *Tr.*, 3/3/10 at 288. But she stated that people don't consider it easy to park on 12th Street, and she agreed. *Tr.*, 3/3/10 at 293.

32. The Protestants called Sunday Abraham as their final witness. *Tr.*, 3/3/10 at 294. Ms. Abraham resides at 3719 12th Street, Unit 102, which is about 50-60 feet from the

establishment. *Tr.*, 3/3/10 at 295. She is the designated representative for over 20 Protestants in this matter. *Tr.*, 3/3/10 at 295, 296. Ms. Abraham became involved because Mr. Holland was the president of the Oak Terrace Citizens Association, and he asked her daughter, as one of the officers, to represent him at a meeting, and Ms. Abraham went to the meeting. *Tr.*, 3/3/10 at 296. Since Ms. Abraham's daughter works, she has spent hundreds of hours looking into the situation, trying to understand it, and trying to negotiate with the Applicant. *Tr.*, 3/3/10 at 296. Ms. Abraham also testified that Mr. Ramson threatened to sue Mr. Feeley, her daughter, and her for interrupting with his opportunity to operate a business. *Tr.*, 3/3/10 at 299. She also stated that the parking lot next to the establishment does not include parking spaces painted on the parking lot; there is not a guardrail or handrail on the steep driveway up to the parking lot, and there is no provision for disabled people, especially those individuals in a wheelchair. *Tr.*, 3/3/10 at 299, 300. In addition, she estimated that the parking lot holds about nine cars. *Tr.*, 3/3/10 at 301,302. Further, she noted that the satellite parking lot includes parking for three regular cars and one handicapped car. *Tr.*, 3/3/10 at 302. She also talked to people about the parking problem and observed that the Applicant parks on the street all day, despite the two-hour limit. *Tr.*, 3/3/10 at 303. A Range Rover, which is believed to be owned by Mr. Ramson, sits in the parking lot all day long. *Tr.*, 3/3/10 at 303. Another person also parks on the street all day, but he resides in Ward 5 so it is legal. *Tr.*, 3/3/10 at 303. And the employees whose cars are registered in Maryland utilize street parking all day. *Tr.*, 3/3/10 at 303, 304. Ms. Abraham emphasized that the establishment is not doing anything for the neighborhood; instead, they are a negative value to the neighborhood. *Tr.*, 3/3/10 at 304. Finally, the neighbors park on Perry and Otis because they cannot park in front of their own homes. *Tr.*, 3/3/10 at 307.

33. The Protest Hearing was continued on May 5, 2010, because the Board had some additional questions based on testimony and evidence that was presented during the March 3, 2010 Protest Hearing. *Transcript (Tr.)*, May 5, 2010 (hereinafter 5/5/10) at 3, 4. Specifically, the Board had concerns about the relationship between Mr. Lumukanda and Mr. Ransom. *Tr.*, 5/5/10 at 7. Mr. Andrew Kline entered his appearance as additional counsel to the Applicant. *Tr.*, 5/5/10 at 3. Mr. D' Maz Lumukanda was also present, on behalf of Brookland Café. *Tr.*, 5/5/10 at 4. On behalf of the Protestants, Mr. Don Padou, Mrs. Abigail Padou, and Ms. Sunday Abraham were present. *Tr.*, 5/5/10 at 4.

34. Mr. Lumukanda admitted that Mr. Ransom completed the renovations to the building itself and the exterior, while he was responsible for the inner build-out, which included installing several televisions, painting, and putting in a small bar. *Tr.*, 5/5/10 at 8. Mr. Lumukanda also stated that he bought tables, chairs, dishes, basic bar equipment, and a simple kitchen rack system. *Tr.*, 5/5/10 at 8. The oven and refrigerator was there from the previous use, and he does not own these items. *Tr.*, 5/5/10 at 8, 9, 23. Mr. Lumukanda explained that a contractor completed some of the work, but he doesn't have a written contract with him. *Tr.*, 5/5/10 at 9. He also indicated that he only has receipts for some of his purchases since he often paid cash. *Tr.*, 5/5/10 at 10, 11, 24. The interior renovations were completed on an as needed basis, but the painting started around the summer of 2008 and continued until about April of 2009. *Tr.*, 5/5/10 at 52.

35. Mr. Lumukanda testified that he does not have any other financial arrangements with Mr. Ramson, other than a landlord-tenant relationship. *Tr.*, 5/5/10 at 12. Mr. Lumukanda clarified that he does not have any formal type of employer-employee relationship with Mr. Ramson. *Tr.*, 5/5/10 at 45. The last thing that they were involved in was the Splash Restaurant, a former entity. *Tr.*, 5/5/10 at 13. He also testified that Mr. Ramson has not made any investments into Brookland Café, except with the shell of the establishment. *Tr.*, 5/5/10 at 14. Mr. Lumukanda reiterated that the branding of the Brookland Inn and the Brookland Café was designed for marketing purposes. *Tr.*, 5/5/10 at 14, 15. He further stated that his initial investment into the establishment was about \$1,000, which increased to about \$5,000. *Tr.*, 5/5/10 at 20, 21, 23.

36. Mr. Lumukanda stated that he initially paid \$3,000 per month, but the lease was amended and the rent reduced to \$2,000 per month after the stipulated license was pulled. *Tr.*, 5/5/10 at 26. The lease is a one-year term, renewable every year. *Tr.*, 5/5/10 at 26. He testified that the lease was signed in the spring of 2009. *Tr.*, 5/5/10 at 53.

37. Ms. Abraham testified that the establishment held a birthday party while operating under the stipulated license. *Tr.*, 5/5/10 at 31, 32. She explained that the party was loud, there was no parking at that time, and people ended up in the street. *Tr.*, 5/5/10 at 32.

38. The Applicant provided the IRS SS4 form, which is the application for the federal identification number for the establishment. *Tr.*, 5/5/10 at 34. The form indicated that Mr. Lumukanda is the person who applied for the tax number. *Tr.*, 5/5/10 at 34. Mr. Lumukanda testified that the limited liability company was formed on July 18, 2008. *Tr.*, 5/5/10 at 53.

39. Mr. Lumukanda also stated that he has several liquor distributors, including Republic National, DC Cash and Carry, and Washington Wholesalers. *Tr.*, 5/5/10 at 60. He also noted that the monthly utilities range between about \$300 and \$600, because there is not much going on. *Tr.*, 5/5/10 at 62. In addition, Mr. Lumukanda explained that Mr. Ramson negotiated the agreement for the satellite parking. *Tr.*, 5/5/10 at 62, 63.

40. Mr. Lumukanda admitted that Mr. Ramson was involved with the development of the establishment, but he is not an owner. *Tr.*, 5/5/10 at 73. He explained that Mr. Ramson is so involved because Mr. Ramson wants to make sure that Mr. Lumukanda can make the least payment, they are friends, and Mr. Ramson lives in the community. *Tr.*, 5/5/10 at 73, 74. Mr. Lumukanda expressed that he will be involved with the day-to-day operation of the business, along with the manager, Michael Simpson. *Tr.*, 5/5/10 at 76. In addition, he stated that if Mr. Ramson were to be involved in the future, he would file an ownership change with the Board. *Tr.*, 5/5/10 at 76.

CONCLUSIONS OF LAW

41. Pursuant to D.C. Official Code § 25-313(a), an Applicant must demonstrate to the Board's satisfaction that the establishment for which an ABC license is sought is appropriate for the neighborhood in which it will be located. Under D.C. Official Code § 25-313, to qualify for the issuance, renewal, transfer of a license to a new location, or approval of a substantial change in operation as determined by the Board, an applicant shall demonstrate that the establishment is appropriate for the area where it will be located. In making its determination, the Board shall consider all relevant evidence, including the effect of the establishment on real property values, peace, order, and quiet, noise, and parking and pedestrian safety. Having considered the evidence upon which this determination must be made and the findings of fact adduced at the Protest Hearing, the Board concludes that the Applicant has demonstrated that the issuance of a new Retailer's Class "CR" License would be appropriate for the area in which the establishment is located.

42. The Board recognizes that pursuant to D.C. Official Code § 1-309.10(d) (2010) and D.C. Official Code § 25-609 (2001), an ANC's 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. Here, ANC 5A did not file a protest. Instead, ANC 5A submitted a letter supporting the Application and requesting that their "great weight" be granted. In addition, ANC 5A unanimously supported the stipulated license. The Board found ANC 5A's support to merit consideration and to be entitled to great weight in this case.

43. The Board's finding that the granting of the Application will not affect peace, order, and quiet of the neighborhood is underscored by several patrons and neighboring residents offering testimony and letters supporting the Application. Frankly, there was ample testimony concerning the fact that the establishment operated under a stipulated license for nine months with no adverse impact on peace, order, and quiet. Nevertheless, the Board is disappointed that a sale to minor violation occurred during this time. Yet, the Board applauds Mr. Lumukanda for taking steps to immediately remedy the issue and providing his staff with appropriate training.

44. With regard to the issue of residential parking, the Board must determine whether granting the Applicant a CR License will have an adverse effect on residential parking needs pursuant to D.C. Official Code § 25-313(b)(3). The Board is not convinced that by the Protestants' arguments that approving the Application will lead to parking problems. Although Investigator Dantzler indicated that there was limited parking during most of her visits, she noted that there were other circumstances that contributed to the lack of parking, including the snow storm and employees of the school. In addition, while Ms. Abraham expressed great concern with the parking situation, most of the witnesses either did not view parking as an issue or could not attribute it to the establishment. Mr. Rodney Adams, who lives directly next to the establishment, has no trouble finding parking in front of his window. And Mr. John Quincy Adams admitted that the parking has been the same for

over 13 years before the arrival of the establishment. Even Mr. Feeley testified that he does not have any parking issues with the establishment. Additionally, there is a parking lot adjacent to the building and another parking lot that allows for additional parking. As a result, the Board finds that granting the Application will not have an adverse effect on residential parking.

45. The Board is not persuaded by the Protestants' contention that approving the Applicant's Application for a CR License and an Entertainment Endorsement will lead to noise problems. During Investigator Dantzler's visits, the neighborhood was quiet and the establishment did not appear to be operating as a nightclub. Also, the owners of I-Care Child Development visited the area late one night and found the area to be quiet. And Mr. Lumukanda testified that the entertainment primarily consists of music being played on a laptop with possible future plans to have xylophone, harp, or flute players. He also explained that the establishment cannot play music too loud because the speakers are not large enough and he cannot disturb the hotel guests. Notably, Mr. Munn described the noise level as the establishment as low ambient. During Mr. Munn's dining experience at the establishment, he was able to have an extended conversation with no problem. More importantly, Mr. Munn testified that during an experiment with the music at the establishment, even with it turned up at a maximum volume, it was not audible outside across the street. Mr. John Quincy Adams also observed a quiet crowd at night. Further, the establishment has a voluntary agreement with the Archdiocese for Military Services solely to address noise.

46. Regarding issues of real property values, the Board finds that the establishment will not affect the real property values in the area. The Board credits the testimony of Ms. Fleming, who stated that she does not believe that the establishment will negatively affect real property values. In fact, she indicated that she advertises the establishment as an amenity to the neighborhood. Ms. Fleming also testified that Brookland has experienced less decreases in real estate value as compared to other areas in the District.

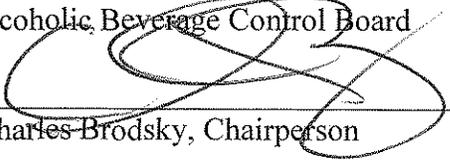
47. Finally, the Board does not take lightly the Protestant's numerous allegations that Mr. Lumukanda is not the sole owner of the establishment. This was the sole basis for the continuation of the Protest Hearing. Despite the substantial amount of circumstantial evidence presented by the Protestants, the allegations were irrelevant to the effect on peace, order, and quiet and were insufficient to deny the Application. Further, the Board is satisfied that Mr. Lumukanda repeatedly testified that he is the sole owner, and he understands that if Mr. Ramson is going to have an ownership interest in the establishment, he must file an ownership change with the Board for approval.

48. Accordingly, the Board finds that the Applicant has demonstrated that the Application for a Retailer's Class CR License is appropriate for the location and does not adversely impact the peace, order, and quiet of the neighborhood, residential parking, or real estate values.

ORDER

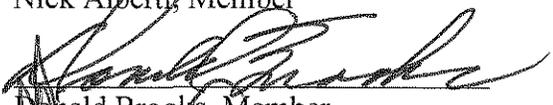
Therefore, it is hereby ORDERED on this 23rd day of June 2010, that the Application for a new Retailer's Class CR License filed by The Brookland Cafe, LLC, t/a Brookland Cafe, at premises 3740 12th Street, N.E., Washington, D.C., is hereby **GRANTED**;

District of Columbia
Alcoholic Beverage Control Board

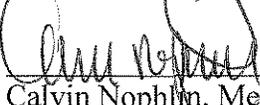

Charles Brodsky, Chairperson

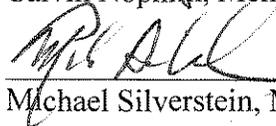
Mital Gandhi, Member


Nick Alberti, Member


Donald Brooks, Member


Herman Jones, Member


Calvin Nophlin, Member


Michael Silverstein, 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.

Also, 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 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).