

**EXHIBIT D**

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

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In the Matter of: )  
Hillview Market, LLC ) Case No.: 22-PRO-00001  
t/a Hillview Market ) License No.: ABRA-119160  
 ) Order No.: 2021-253  
Application for a Substantial Change to a )  
Retailer's Class B License )  
at premises )  
2324 N. Capitol Street, N.W. )  
Washington, D.C. 20002 )  
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**BEFORE:** Donovan Anderson, Chairperson  
James Short, Member  
Bobby Cato, Member  
Rafi Aliya Crockett, Member  
Jeni Hansen, Member  
Edward S. Grandis, Member

**ALSO PRESENT:** Hillview Market, LLC, t/a Hillview Market, Applicant  
Dinesh Tandon, Designated Representative, on behalf of the Applicant  
Kirby Vining, Designated Representative, on behalf of the Protestants  
Teri Janine, President, Bloomingdale Civic Association, Protestant  
Diane Barnes, Vice Chair, Advisory Neighborhood Commissioner (ANC)  
5E, Protestant  
India Luckett, President, Stronghold Civic Association, Protestant  
Eric Tomassi, on behalf of A Group of Residents and Property Owners,  
Protestants  
Martha Jenkins, General Counsel  
Alcoholic Beverage Regulation Administration

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

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### **INTRODUCTION**

The Alcoholic Beverage Control Board (Board) denies the Application filed by Hillview Market, LLC, t/a Hillview Market (hereinafter “Applicant” or “Hillview Market”) to convert its current license into a Retailer’s Class A License where the Protestants presented strong evidence that the greater availability of liquor sold in closed containers will exacerbate existing issues in the neighborhood regarding loitering and other anti-social behavior that is inappropriate for a residential neighborhood.

#### *Procedural Background*

The Notice of Public Hearing advertising Hillview Market’s Application was posted on October 22, 2021, and informed the public that objections to the Application could be filed on or before December 27, 2021. *ABRA Protest File No. 22-PRO-*, Notice of Public Hearing [*Notice of Public Hearing*]. The records of the Alcoholic Beverage Regulation Administration (ABRA) indicate that Bloomingdale Civic Association, Advisory Neighborhood Commissioner (ANC) 5E, and the Stronghold Civic Association have filed a protest against the Application. *ABRA Protest File No. 22-PRO-00001*.

The parties came before the Board’s Agent for a Roll Call Hearing on January 18, 2022, where all of the above-mentioned objectors were granted standing to protest the Application. On March 2, 2022, the parties came before the Board for a Protest Status Hearing. Finally, the Protest Hearing in this matter occurred on April 20, 2022.

The Board recognizes that an ANC’s properly adopted written recommendations are entitled to great weight from the Board. D.C. Code §§ 1-309.10(d), 25-609; *Foggy Bottom Ass’n v. District of Columbia Alcoholic Beverage Control Bd.*, 445 A.2d 643, 646 (D.C. 1982). Accordingly, the Board “must elaborate, with precision, its response to the ANC[’s] issues and concerns.” *Foggy Bottom Ass’n*, 445 A.2d at 646. The Board notes that it received a properly adopted written recommendation from ANC 5E, which indicated that its protest is based on concerns regarding Hillview Market’s impact on peace, order, and quiet; residential parking and vehicular and pedestrian safety; and real property values. The ANC’s issues and concerns shall be addressed by the Board in its Conclusions of Law below.

Based on the issues raised by the Protestants, the Board may only grant the Application if the request will not have an adverse impact on the peace, order, and quiet; residential parking and vehicular and pedestrian safety; and real property values of the area located within 1,200 feet of the establishment. D.C. Code § 25-313(b); 23 DCMR §§ 1607.2; 1607.7(b) (West Supp. 2022).

## **FINDINGS OF FACT**

The Board, having considered the evidence, the testimony of the witnesses, the arguments of the parties, and all documents comprising the Board's official file, makes the following findings:

### **I. Background**

1. Hillview Market has submitted an Application for a Substantial Change to a Retailer's Class B License at 2324 N. Capitol Street, N.W., Washington, D.C. *Notice of Public Hearing*. The Applicant currently seeks to convert its license into a Retailer's Class A License in order to permit the sale of liquor. *Id.*
2. ABRA Investigator Jovan Miller investigated the Application and prepared the Protest Report submitted to the Board. *ABRA Protest File No. 22-PRO-00001, Protest Report* (Apr. 2022) [*Protest Report*].
3. The proposed establishment is in a Residential Flat (RF) zone. *Protest Report*, at 3. One licensed establishment is located within 1,200 feet of the proposed location. *Id.* at 4. There are no schools, recreation centers, public libraries, or day care centers located within 400 feet of the establishment. *Id.* The establishment's proposed hours of operation will run from 9:00 a.m. to 9:00 p.m. on all days of the week, except the sale of alcohol will start at 10:00 a.m. on Sunday.
4. ABRA investigators visited the establishment on 11 separate occasions between March 8, 2022, and April 2, 2022. *Id.* at 5. Investigators did not observe any issues, but the establishment was not operating during this time. *Id.* at 5-6.
5. Investigator Miller discussed the parking situation around the proposed location. *Id.* at 59. There is limited street parking near the establishment and parking is reserved for those with residential parking designations. *Id.*
6. Investigator Miller further observed that the area around the establishment is residential. *Id.* at 60, 65. The floor above the establishment has apartments. *Id.* at 59.

### **II. Dinesh Tandon**

7. Dinesh Tandon represented his wife, Nithi Tandon, the owner of the store. *Id.* at 73. His wife intends to operate a small grocery, deli, coffee shop, and liquor store. *Id.* at 73, 80, 84. The store will be approximately 1,500 square feet. *Id.* at 92. He indicated that half the space will be reserved for non-alcohol uses, such as groceries and the coffee shop. *Id.* at 93-94, 96.
8. He believes that any crime and trash in the neighborhood has no relationship to their business. *Id.* at 75. Moreover, even though the business is not open yet, he hired a person to monitor the property and the area around the establishment for issues, including trash. *Id.* at 76.

### **III. India Luckett**

9. India Luckett is the President of the Stronghold Civic Association. *Id.* at 108. She indicated that some people in the community oppose the license because of crime and drug dealing at similar types of stores in the area. *Id.* at 112. Residents report picking up cans and wine bottles in their yard on a regular basis and that this type of litter is regularly visible in the neighborhood. *Id.* at 112-13.

### **IV. Jason Orfanon**

10. Jason Orfanon lives approximately half a block away from the proposed location. *Id.* at 139. As a resident, he notes that the area is highly residential. *Id.* He further noted that the area suffers from crime, drinking, drug use, loitering, and public urination. *Id.* at 139-40. He is afraid that allowing spirits, instead of just beer and wine, will facilitate additional public drunkenness and rowdiness. *Id.* Indeed, he has observed bottles of spirit products discarded as litter in the neighborhood. *Id.* at 140.

11. As a resident, he has experienced walking passed stores in the neighborhood and seeing large numbers of people loiter on Channing Street, N.W. *Id.* at 141, 144. He further notes that many of the people loitering appear to drive in from Maryland, bring barbecue equipment, set up chairs, and appear to be drinking alcohol. *Id.* Therefore, he is concerned that the opening of a Class A retailer will allow this group to buy liquor nearby and fuel anti-social activity in the area. *Id.* at 142, 150. He indicated that this was a concern because there have been at least three shootings and other violence in that part of the neighborhood. *Id.*

### **V. Evelyn Brown**

12. Evelyn Brown lives approximately three houses away from the proposed location and has lived there since 1959. *Id.* at 161. She opposes the Application because she already observes loitering and litter in the neighborhood. *Id.* at 160-61. As a resident, she also specifically observed loitering around the prior store that operated at the proposed location. *Id.* at 172. She believes that adding a spirits retailer to the neighborhood will make current problems worse. *Id.*

### **VI. Scott Nguyen**

13. Scott Nguyen lives directly across the street from the proposed location. *Id.* at 169. He noted that there are many traffic accidents in front of his house. *Id.* at 171, 180. He noted that the group of people cited by Mr. Orfanon as loitering, getting drunk and high, and being rowdy, regularly hang out only a block away from the proposed location. *Id.* at 172-73, 185.

### **VII. Rebecca Mills**

14. Rebecca Mills lives in the neighborhood. *Id.* at 190. She agreed with the testimony provided by the other resident witnesses. *Id.* at 191. Furthermore, she lives near where people currently loiter in the neighborhood. *Id.* In particular, she observes members of the group engaging in loitering, regularly drinking, and engaging in public urination. *Id.*

## **VIII. Teri Janine Quinn**

15. Teri Janine Quinn serves as the President of the Bloomingdale Civic Association. *Id.* at 194. Her association opposes the Application. *Id.* at 196-97.

## **IX. Commissioner Dianne Barnes**

16. ANC Commissioner Dianne Barnes serves as the Vice Chair of ANC 5E. *Id.* at 210. She has lived in the community for approximately 48 years. *Id.* The neighborhood has approximately 8,000 residents. *Id.* at 211. The majority of people she surveyed oppose the Application. *Id.* at 212.

## **CONCLUSIONS OF LAW**

17. The Board may approve the Applicant when the proposed establishment will not have an adverse impact on the neighborhood. D.C. Code §§ 25-104, 25-313(b); 23 DCMR §§ 1607.2; 1607.7(b) (West Supp. 2022). Specifically, the question in this matter is whether the Application will have a negative impact on the peace, order, and quiet; residential parking and vehicular and pedestrian safety; and real property values of the area located within 1,200 feet of the establishment. D.C. Code § 25-313(b); 23 DCMR §§ 1607.2; 1607.7(b) (West Supp. 2022).

### **I. The Establishment is Inappropriate for the Neighborhood.**

18. The Board denies the Application because it risks exacerbating loitering and other anti-social behavior in a residential neighborhood. Under the appropriateness test, “the applicant shall bear the burden of proving to the satisfaction of the Board that the establishment for which the license is sought is appropriate for the locality, section, or portion of the District where it is to be located . . . .” D.C. Code § 25-311(a). The Board shall only rely on “reliable” and “probative evidence” and base its decision on the “substantial evidence” contained in the record. 23 DCMR § 1718.3 (West Supp. 2022). The substantial evidence standard requires the Board to rely on “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” *Clark v. D.C. Dep’t of Employment Servs.*, 772 A.2d 198, 201 (D.C. 2001) *citing Children’s Defense Fund v. District of Columbia Dep’t of Employment Servs.*, 726 A.2d 1242, 1247 (D.C.1999).

19. In determining appropriateness, the Board must consider whether the applicant’s future operations will satisfy the reasonable expectations of residents to be free from disturbances and other nuisances—not just whether the Application complies with the minimum requirements of the law. D.C. Council, Bill 6-504, the “District of Columbia Alcoholic Beverage Control Act Reform Amendment Act of 1986,” Committee on Consumer and Regulatory Affairs, 38 (Nov. 12, 1986); *see Panutat, LLC v. D.C. Alcoholic Beverage Control Bd.*, 75 A.3d 269, 277 n. 12 (D.C. 2013) (“However, in mandating consideration of the effect on peace, order, and quiet, § 25-313(b)(2) does not limit the Board’s consideration to the types of noises described in § 25-725.”). As part of its analysis, the Board should evaluate each “unique” location “according to the particular circumstances involved” and attempt to determine the “prospective” effect of the

establishment on the neighborhood. *Le Jimmy, Inc. v. D.C. Alcoholic Beverage Control Bd.*, 433 A.2d 1090, 1093 (D.C. 1981). Furthermore, the analysis may also include the Applicant's efforts to mitigate or alleviate operational concerns, the "character of the neighborhood," the character of the establishment, and the license holder's future plans. *Donnelly v. District of Columbia Alcoholic Beverage Control Board*, 452 A.2d 364, 369 (D.C. 1982) (saying that the Board could rely on testimony related to the licensee's "past and future efforts" to control negative impacts of the operation); *Upper Georgia Ave. Planning Comm. v. Alcoholic Beverage Control Bd.*, 500 A.2d 987, 992 (D.C. 1985) (saying the Board may consider an applicant's efforts to "alleviate" operational concerns); *Citizens Ass'n of Georgetown, Inc. v. D.C. Alcoholic Beverage Control Bd.*, 410 A.2d 197, 200 (D.C. 1979); *Gerber v. D.C. Alcoholic Beverage Control Bd.*, 499 A.2d 1193, 1196 (D.C. 1985); *Sophia's Inc. v. Alcoholic Beverage Control Bd.*, 268 A.2d 799, 800-801 (D.C. 1970).

**a. The application will have a negative impact on peace, order, and quiet.**

20. "In determining the appropriateness of an establishment, the Board shall consider . . . [t]he effect of the establishment on peace, order, and quiet, including the noise and litter provisions set forth in §§ 25-725 and 25-726." D.C. Code § 25-313(b)(2); *see also* D.C. Code §§ 25-101(35A), 25-314(a)(4). Among other considerations, the Board is instructed to consider "noise, rowdiness, loitering, litter, and criminal activity." 23 DCMR § 400.1(a) (West Supp. 2022). The Board notes that in *Saloon 45*, the Board denied an application for a tavern where its entrance faced a residential street, rather than a commercial street, which would have brought loitering, "noise[,] and other patron-related disturbances to a residential area." *In re Stephens, David J.W., t/a Saloon 45*, Case No. 14-PRO-00040, Board Order No. 2014-334, ¶¶ 48, 50 (D.C.A.B.C.B. Sept. 23, 2014).

21. In this case, the Applicant's proposed location is located entirely in a residential zone, which, as inferred by the Board's decision in *Saloon 45*, is entitled to greater protection and consideration under the District's alcohol laws. Specifically, in a residential zone the character of the neighborhood must remain conducive to residential uses and, unlike in a commercial or mixed-use zone, there is less expectation that people will be attracted to or gather in the neighborhood. *Supra*, at ¶ 3. Indeed, residential neighborhoods are not appropriate for such activity because residential neighborhoods do not have the same public transportation infrastructure as commercial zones and may not have public bathrooms readily available. Therefore, evidence of anti-social behavior in public and regular large public gatherings in a residential zone are not conducive to the approval of an off-premises license, which can only fuel bad behavior.

22. Consequently, turning to this case, testifying residents report that the neighborhood currently suffers from large groups of people loitering near the proposed location, and that these people routinely engage in public drinking, rowdiness, and public urination. *Supra*, at ¶¶ 10-13. There is also evidence of alcohol containers littering the neighborhood. *Supra*, at ¶ 10. Therefore, where the Applicant will be selling alcohol in closed containers, the Board is persuaded that the addition of liquor nearby will exacerbate the present situation, fuel additional anti-social behavior, and otherwise make the neighborhood inhospitable for residents without a drastic change in the situation.

## ORDER

Therefore, the Board, on this 25th day of May 2022, hereby **DENIES** the Application to Convert its Retailer's Class B License into a Retailer's Class A License at premises 2324 N. Capitol Street, N.W., filed by Hillview Market, LLC, t/a Hillview Market.

**IT IS FURTHER ORDERED** that the Board's findings of fact and conclusions of law contained in this Order shall be deemed severable. If any part of this determination is deemed invalid, the Board intends that its ruling remain in effect so long as sufficient facts and authority support the decision.

**IT IS FURTHER ORDERED** that the Group of Five Residents or Property Owners, represented by Eric Tomassi, is hereby dismissed for failing to appear at the Protest Hearing.

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

District of Columbia  
Alcoholic Beverage Control Board

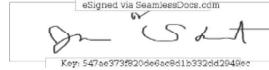
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*Donovan Anderson*

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Donovan Anderson, Chairperson



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James Short, Member



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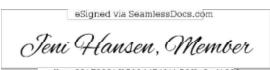
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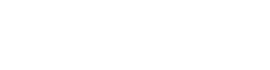
Rafi Crockett, Member



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Jeni Hansen, Member



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I dissent from the position taken by the majority of the Board. I would approve the Application on the condition that the license holder have 50 percent of its inventory focused on food and groceries and some limits on delivery.

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*Edward Grandis, Member*

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Edward S. Grandis, Member

Pursuant to D.C. Official Code § 25-433(d)(1), any party adversely affected may file a Motion for Reconsideration of this decision within ten (10) days of service of this Order with the Alcoholic Beverage Regulation Administration, Reeves Center, 2000 14th Street, NW, 400S, Washington, D.C. 20009.

Also, pursuant to section 11 of the District of Columbia Administrative Procedure Act, Pub. L. 90-614, 82 Stat. 1209, D.C. Code § 2-510 (2001), and Rule 15 of the District of Columbia Court of Appeals, any party adversely affected has the right to appeal this Order by filing a petition for review, within thirty (30) days of the date of service of this Order, with the District of Columbia Court of Appeals, 430 E Street, N.W., Washington, D.C. 20001. However, the timely filing of a Motion for Reconsideration pursuant to 23 DCMR § 1719.1 stays the time for filing a petition for review in the District of Columbia Court of Appeals until the Board rules on the motion. *See* D.C. App. Rule 15(b) (2004).