

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

In the Matter of:)		
)		
IMA Pizza Store 14, LLC)	Case No.	16-PRO-00017
t/a & pizza)	License No.	101679
)	Order No.	2016-296
Application for a New)		
Retailer's Class CR License)		
)		
at premises)		
1375 Kenyon Street, N.W.)		
Washington, D.C. 20010)		
)		

BEFORE: Donovan Anderson, Chairperson
Nick Alberti, Member
Mike Silverstein, Member
Ruthanne Miller, Member
James Short, Member

PARTIES: IMA Pizza Store 14, LLC, t/a Capitol Market, Applicant

Paul Pascal, Counsel, on behalf of the Applicant

Richard DuBeshter, Commissioner, on behalf of Advisory
Neighborhood Commission (ANC) 1A, Protestant

David Levy, on behalf of a Group of Five or More Residents and
Property Owners

Martha Jenkins, General Counsel
Alcoholic Beverage Regulation Administration

ORDER GRANTING MOTION TO EXCLUDE EVIDENCE

The Applicant moves to exclude evidence and testimony at the Protest Hearing related to the validity of the Certificate of Occupancy (COO) issued to it by the District of Columbia Department of Regulatory and Consumer Affairs (DCRA). *Mot.* at 1. The motion is opposed by the Protestants.

The Board grants the motion because it is well settled that the Board may not overrule DCRA's decision to issue a Certificate of Occupancy. As noted by the District of Columbia Court of Appeals, the Board cannot go "behind the certificate of occupancy to ascertain whether or not it was properly issued"; otherwise the Board would be unlawfully

“acting . . . as a court of appeals over other coordinate administrative departments.” *Kopff v. D.C. Alcoholic Beverage Control Bd.*, 413 A.2d 152, 154 (D.C. 1980); *Craig v. D.C. Alcoholic Beverage Control Bd.*, 721 A.2d 584, 588 (D.C. 1998) (saying Board may not “determine whether the Zoning Board erred in issuing the certificate of occupancy.”)

ORDER

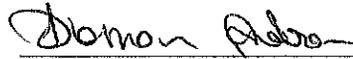
Therefore, the Board, on this 18th day of May 2016, **GRANTS** the motion filed by the Applicant.

IT IS FURTHER ORDERED that testimony or other evidence related to the validity of the Applicant’s Certificate of Occupancy (COO) and the legality of DCRA’s actions related to the issuance of the COO shall be excluded from consideration by the Board.

The parties are **ADVISED** that this order does not exclude evidence and testimony related to the physical features of the sidewalk café, the future operations and use of the sidewalk café, or the character of the neighborhood near the sidewalk café, as these factors likely relate to the appropriateness of the Application in accordance with D.C. Official Code § 25-313.

ABRA shall provide a copy of this Order to the parties.

District of Columbia
Alcoholic Beverage Control Board



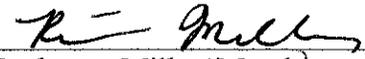
Donovan Anderson, Chairperson



Nick Alberti, Member



Mike Silverstein, Member



Ruthanne Miller, Member



James Short, 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, 2000 14th Street, N.W., Suite 400S, Washington, DC 20009.

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, 430 E Street, N.W., Washington, D.C. 20001; (202/879-1010). However, the timely filing of a Motion for Reconsideration pursuant to 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).