

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

In the Matter of: _____)

Geoffrey Taylor)

) License No. N/A
) Order No. 2011-401

Request for an Advisory Opinion)
at premises)
8227 Old Courthouse Rd., Suite 200)
Vienna, VA 22182)

BEFORE:

Nick Alberti, Interim Chairperson
Donald Brooks, Member
Herman Jones, Member
Calvin Nophlin, Member
Mike Silverstein, Member

ADVISORY OPINION AND ORDER

Pursuant to 23 DCMR § 1902 (2008), Geoffrey Taylor (Petitioner) requested an Advisory Opinion from the Alcoholic Beverage Control Board (Board) regarding whether he can relocate a nude dancing establishment to 1356 Okie Street, N.E., Washington, D.C. 20002. Mr. Taylor asks the Board to answer the following questions:

- (1) Based on the map provided, may a nude dancing establishment be located at 1356 Okie Street, N.E.?
- (2) If a nude dancing establishment may not be located at 1356 Okie Street, N.E. because of nearby residential properties with certificates of occupancy for residential use would this result change if the certificates of occupancy were changed to commercial use?
- (3) Would residential properties without certificates of occupancy for residential use prevent a nude dancing establishment from being located at 1356 Okie Street, N.E.?
- (4) If a nude dancing establishment may not be located at 1356 Okie Street, N.E., because of nearby residential properties, would letters of approval from nearby residential property owners or occupants alter the Board's determination?
- (5) If a nude dancing establishment may not be located at 1356 Okie Street, N.E., because of nearby residential properties, does the Board have any suggestions for the Petitioner?

In issuing this opinion, the Board has relied in significant part upon the facts and information received from Mr. Taylor, on December 6, 2010, as written below.

The Board issues the following advisory opinion:

FINDINGS OF FACT

1. The Petitioner would like to locate a nude dancing establishment at 1356 Okie Street, N.E., Washington, D.C., 20002. The proposed address is located in a C-M-2 zone.
2. The Petitioner has provided a map created by the Alcoholic Beverage Regulation Administration (ABRA) that shows 1356 Okie Street, N.E., as its epicenter. *See Request for Advisory Opinion from Mr. Taylor, December 6, 2010, Attachment 1.* The map was created using the District of Columbia's Geographic Information System. *Request for Advisory Opinion from Mr. Taylor, December 6, 2010, Attachment 1* (text located below the map's Legend). The submitted map reflects the following:

There are no schools, recreation centers, public libraries, or day care centers located within 400 feet of 1356 Okie Street NE. Within 600 feet there are 2 ABC licensees: Influence Catering, Catering License, 1350 Okie Street NE (approx. 59 feet) and Elite Wines, Wholesaler Class A, 1832 Fenwick Street NE (approx. 335 feet). There are no nude dancing establishments located within 600 feet. Within 600 feet, there are 2 buildings with certificates of occupancy for residential use located at 1925 Gallaudet Street NE and 1909 Gallaudet Street NE. The address appears to be located in a commercial zone. *Request for Advisory Opinion from Mr. Taylor, December 6, 2010, Attachment 1* (text located above the map's Legend).

3. A review of the Board's files reflects that subsequent to Mr. Taylor's written request and the creation of the map referenced above, the catering license held by Influence Catering at 1356 Okie Street, N.E., was cancelled by the Board on December 8, 2010. Additionally, the Board's records reflect that there is currently a Class CN nightclub license (Love) that is located within 600 feet of the proposed location at 1350 Okie Street, N.E. This nightclub license was approved by the Board after December 15, 1993 and does not permit entertainment by nude dancers.

CONCLUSIONS OF LAW

4. Based upon the facts provided above, a transfer to a new location application for 1356 Okie Street, N.E., would be permitted to be filed with the Board provided that (1) the nightclub license to be transferred was approved by the Board to have nude dancing prior to December 15, 1993 and (2) the licensee's previous location is a CM-2 zone as identified in the zoning regulations of the District of Columbia.
5. D.C. Official Code § 25-371 contains a moratorium on the issuance of new nightclubs that provide entertainment by nude dancers. This provision does contain an exception that allows licensees that were approved by the Board prior to December 15, 1993 to continue to permit entertainment by nude dancers. As such, only a nightclub license that provided entertainment by nude dancers prior to December 15, 1993 would be eligible to continue to do so at a new location.

6. D.C. Official Code § 25-374(a) sets forth specific criteria that must be met for a nightclub license that permits entertainment by nude dancers to be transferred to a new location. Specifically, this provision states in relevant part that a license “may only be transferred to a location in the Central Business District or, if the licensee is currently located in a CM or M-zoned district, transferred within the same CM or M-zoned District.” This Board has previously interpreted this provision to require a licensee seeking to transfer its license to a CM-2 zone to have been previously located in an area with the same CM-2 zoning designation as identified in the zoning regulations of the District of Columbia. As such, in order to file a transfer to a new location application for 1356 Okie Street, N.E, the licensee’s previous location in the District of Columbia must have been in an area zoned CM-2.

7. D.C. Official Code § 25-374(a) also prohibits the Board from transferring a nightclub license that permits entertainment by nude dancers to a location that is within six hundred feet or less of (1) another nightclub licensee that is approved by the Board to provide entertainment by nude dancers *and* (2) a building with a certificate of occupancy for residential use or a lot or building with a permit from the Department of Consumer and Regulatory Affairs for residential construction at the premises. The Board finds that the intent of this provision is to prevent two or more nightclub licenses that permit entertainment by nude dancers from locating in close proximity to each other when there are or soon will be residents living within six hundred feet. In this case, according to the map described above, as well as a review of agency records, there are currently no nightclub licenses that have been approved by the Board that permit nude dancing located within 600 feet of 1356 Okie Street, N.E. Consequently, while the presence of residential use buildings near the proposed location are factors that the Board would consider in determining whether the granting of the license is appropriate for the neighborhood, their presence does not preclude the filing of a transfer to a new location application with the Board for 1356 Okie Street, N.E. As such, questions (2) through (5) are moot.

8. Therefore, based upon the facts set forth above, a transfer to a new location application for 1356 Okie Street, N.E., would be permitted to be filed with the Board provided that (1) the nightclub license to be transferred was approved by the Board to have nude dancing prior to December 15, 1993 and (2) the licensee’s previous location is a CM-2 zone as identified in the zoning regulations of the District of Columbia.

9. The Petitioner should be aware that this advisory opinion does not prevent other parties from filing a protest against the transfer of the license to a new location in accordance with D.C. Official Code § 25-602 (2001).

ORDER

Accordingly, it is this 21st day of September 2011, **ORDERED** that the above represents the **ADVISORY OPINION** of the Board pursuant 23 DCMR § 1902 (2008).

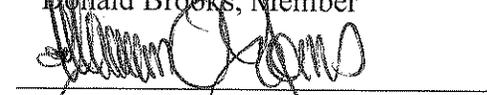
District of Columbia
Alcoholic Beverage Control Board



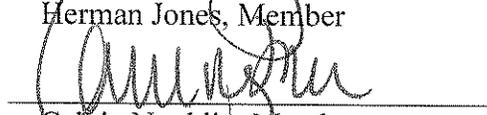
Nick Alberti, Interim Chairperson



Donald Brooks, Member



Herman Jones, Member



Calvin Nophlin, Member

Mike Silverstein, Member

Pursuant to D.C. Code § 1902.6 (2008), if the requestor disagrees with the Board's advisory opinion in any respect, he or she may, within twenty (20) calendar days after issuance of the opinion, petition the Board in writing to reconsider its opinion, setting forth in detail the reasons and legal argument which support the requestor's points of disagreement, or may request the Board to issue a declaratory order, pursuant to § 1903. Advisory opinions of the Board may not form the basis of an appeal to any court in the District of Columbia.