

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

In the Matter of:)	
)	
NHV Corporation, Inc.)	License Number: 024663
t/a Haydee's Restaurant)	Case Number: N/A
)	Order No.: 2011-288
Application for a Class Change from a)	
Retailer's Class CR License to a)	
Retailer's Class CT License)	
)	
at premises)	
3102 Mount Pleasant Street, N.W.)	
Washington, D.C. 20010)	

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

ORDER DENYING MOTION FOR RECONSIDERATION

On April 21, 2011, NHV Corporation, Inc., t/a Haydee's Restaurant (Applicant), requested a class change from a Retailer's Class CR License to a Retailer's Class CT License (Application) and that the Alcoholic Beverage Control Board (Board) not deem this a substantial change. The Applicant argued that the Board should approve its request because (1) the Applicant promised on the record that it will not change its operations; (2) the MPNA, on the record, has indicated that its supports the Applicant obtaining a Retailer's Class CT License; (3) the Board encouraged the Applicant to apply for a Retailer's Class CT License in Board Order No. 2010-464; and (4) the issues surrounding the Applicant's license class and appropriateness have been extensively litigated over the past 12 months making additional hearings repetitious, frivolous, and a waste of administrative resources.

Before addressing the Applicant's request, the Board satisfied the notice requirements of the Open Meetings Act. The Board provided advance public notice that Haydee's Application would be considered on its Administrative Agenda on May 11, 2011. As required by the Open Meetings Act, notice was provided as follows: (1) notice was provided in the District of

Columbia Register on May 6, 2011; (2) notice was posted on ABRA's website on May 6, 2011; and (3) notice was posted outside the Board Hearing Room.

The Board considered the Applicant's request on May 11, 2011. In addition to the reasoning supplied by the Applicant, the Board also considered the establishment's investigative history, the establishment's zoning, and reviewed similarly situated establishments in the neighborhood. *Transcript (Tr.)*, April 25, 2011 at 24. On the record, the Board approved the Applicant's request and deemed that the class change was not a substantial change under D.C. Code § 25-404 (Supp. 2011).

The Board was not required to notify Advisory Neighborhood Commission (ANC) 1D or the community of the Applicant's request under D.C. Code § 25-421 (Supp. 2011), because the request was not deemed a substantial change. See D.C. Code § 25-421; 23 DCMR § 1503.4 (2008). As such, the Board was only required to provide notice as directed by the Open Meetings Act.

Subsequently, on May 20, 2011, the MPNA, a non-party in this matter, requested that the Board reconsider its decision. The MPNA asked that the Board consider the license class change request filed by the Applicant a substantial change under the law because, in its opinion, such a result is mandated by Chapter 18 of Title 23 of the District of Columbia Municipal Regulations.

The Applicant replied to the MPNA's Motion on May 24, 2011. First, according to the Applicant, MPNA's request is contrary to the organization's bylaws and is not a valid action on the part of the MPNA. Second, the Applicant argues that the MPNA does not have a right to challenge the Board's determination that a request for a substantial change is not substantial under D.C. Code § 25-601 (Supp. 2011). The Applicant further argues that the MPNA misreads Chapter 18 of Title 23 of the District of Columbia Municipal Regulations, because the regulation governing standing is § 25-601 and Chapter 18 creates no additional rights.

We agree with the Applicant and deny the Motion for Reconsideration.

In the first instance, the Motion for Reconsideration must be denied, because the MPNA lacks standing to challenge the Board's determination that the Applicant's request is not a substantial change. The District of Columbia's alcoholic beverage control (ABC) laws do not grant third parties standing to challenge the Board's determination that a request is not a substantial change under § 25-404. See D.C. Code § 25-601 (Supp. 2011). Contrary to the MPNA's arguments, Chapter 18 only allows the submission of protest petitions when the Board determines that a request is a substantial change and has no bearing on whether a specific request is a substantial change. See 23 DCMR § 1800.2(a)(4) (2008). As such, the MPNA lacks standing as a matter of law to challenge the Board's determination that the Applicant's request is not a substantial change.

Nevertheless, even if the MPNA had standing, its arguments lack merit. In determining whether a change is substantial, the Board is instructed to consider whether such changes "are

potentially of concern to the residents or businesses surrounding the establishment.” D.C. Code § 25-404(b)(3).

Regarding the Applicant’s request, the Board finds that the changes are not a potential concern to the “residents or businesses surrounding the establishment.” Here, Advisory Neighborhood Commission (ANC) 1D, which represents the neighborhood, recently supported the Applicant’s Application for a Retailer’s Class CN License, which makes it unlikely that ANC 1D would oppose a Retailer’s Class CT License. In addition, the Board received numerous letters of support for the Application from members of the Applicant’s community.

In addition, during the Protest Hearing, the MPNA stated that it supported the liberalization of the Applicant’s operations and the issuance of a Retailer’s Class CT License. The MPNA also testified that a Retailer’s Class CT License is appropriate for the neighborhood. Indeed, Sam Broeksmit, the MPNA’s representative, argued during the Protest Hearing that the Applicant’s expressed business objectives can be accomplished through a Retailer’s Class CT License, the Applicant’s supporters are unaware that the Applicant’s desires can be satisfied by a Retailer’s Class CT License, and that the Applicant could thrive as a Retailer’s Class CT License.

Further, the Board’s decision is based on the fact that, other than adding a happy hour, the Applicant has vowed not to change its operations. The Applicant, in its request, has stated that the Applicant intends to continue as a restaurant, but only seeks a Retailer’s Class CT License to be free of food-reporting requirements found in D.C. Code § 25-101(43) (Supp. 2011), which will allow the establishment to not impose food purchase requirements on private parties.

Finally, the issues regarding the Applicant and its license class were extensively litigated over the past year, including two protest hearings regarding the Applicant’s request for a CN License and termination of its voluntary agreement. In Board Order No. 2010-464, the Board specifically encouraged the Applicant to apply for a Retailer’s Class CT License after considering the impact of the establishment on the peace, order, quiet, residential property values, residential parking, and vehicular and pedestrian safety. As such, any additional hearings would be repetitive, unnecessary, and a waste of the Board’s resources and provide the Board with no additional information of any significance.

Therefore, as indicated above, any issues of concern to the Applicant’s neighbors have already been adequately addressed and heard by the Board in the past year. As such, the Board affirms its decision to grant the Application and denies the MPNA’s Motion for Reconsideration on April 25, 2010. *Tr.*, 4/25/11 at 21-26.

ORDER

Therefore, it is hereby **ORDERED** on this 15th day of June 2011 that the Motion for Reconsideration filed by the Mount Pleasant Neighborhood Alliance is **DENIED**.

District of Columbia
Alcoholic Beverage Control Board



Nick Alberta, Interim Chairperson



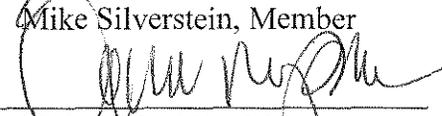
Donald Brooks, Member



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Mike Silverstein, Member



Calvin Nophlin, 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. 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).