THE DISTRICT OF COLUMBIA
ALCOHOLIC BEVERAGE CONTROL BOARD

In the Matter of:	)	
	)	
Dos Ventures, LLC	)	License Number: 092040
t/a Riverfront at the Ball Park	)	Case Number: 13-PRO-00088
	)	Order Number: 2014-043
Application for a New	)	
Retailer's Class CT License	)	
	)	
at premises	)	
25 Potomac Avenue, S.E.	)	
Washington, D.C. 20003	)	
	)	

BEFORE: Ruthanne Miller, Chairperson
Nick Alberti, Member
Donald Brooks, Member
Herman Jones, Member
Mike Silverstein, Member

ALSO PRESENT: Dos Ventures, LLC, t/a Riverfront at the Ball Park, Applicant

Rosemarie Salguero, of the firm Doyle, Barlow, & Mazard, PLLC, of behalf the Applicant

Ron McBee, Commissioner, Advisory Neighborhood Commission (ANC) 6D, Protestant

Ed Kaminski, Commissioner for Single Member District ANC 6D02, on behalf of A Group of Five or More Individuals (Kaminski Group), Protestant

Daniel Hickson, Commander, First District, Metropolitan Police Department, Protestant

Martha Jenkins, General Counsel
Alcoholic Beverage Regulation Administration

ORDER GRANTING APPLICANT'S MOTION FOR EN BANC REVIEW AND DENYING APPLICANT'S MOTION FOR RECONSIDERATION

On November 13, 2013, the Alcoholic Beverage Control Board (Board) denied the Application for a New Retailer's Class CT License (Application) filed by Dos Ventures,

LLC, t/a Riverfront at the Ball Park (hereinafter "Applicant" or "Riverfront"), because it was inappropriate under District of Columbia (D.C.) Official Code § 25-313. In re Dos Ventures, LLC, t/a Riverfront at the Ball Park, Case Number 13-PRO-00088, Board Order No. 2013-512, 11 (D.C.A.B.C.B. Nov. 11, 2013). In its Order, the Board also discussed its reasons for not using its discretionary authority to grant the Application with conditions in accordance with District of Columbia (D.C.) Official Code § 25-104(e). Id.

Riverfront subsequently filed a timely Motion for Reconsideration (Motion) with the Board. The Motion does not challenge the Board's underlying findings of fact and conclusions of law, but rather, proposes conditions that would render the license appropriate. Mot. for Recon., at 2-8. ANC 6D objects to the Motion and highlights its continued concerns regarding the Application. Letter from Andy Litsky, Chairman, ANC 6D to the Board (Dec. 2, 2013). Riverfront then filed a Reply. Rep. to Opp., 1-4. The Board initially voted to deny the Motion in a 2-1 vote.[1] Before the issuance of a written order, Riverfront requested that the entire Board vote on their Motion. The Board grants this request, and denies the Motion through this Order.

The Board affirms its prior decision for two reasons. First, the conditions proposed by Riverfront are unacceptable. The Board does not find that the reduction in capacity offered by Riverfront alleviates the serious pedestrian safety concerns raised by the Metropolitan Police Department (MPD), or, given the MPD's limited resources, prove that the MPD can safely police the proposed establishment. . In re Dos Ventures, LLC, t/a Riverfront at the Ball Park, Board Order No. 2013-512, at ¶¶ 16, 40, 47. The Board also notes that the Applicant has not offered any conditions to alleviate the potential noise problems discussed in the Board's Order. Id. at ¶ 42. Finally, the parking and traffic conditions suggested by the Applicant are not specific enough to change the Board's determination regarding pedestrian safety, as pedestrians are still required to cross South Capitol Street, S.E.[2] Id. at ¶ 47. Therefore, even if the Board accepted the conditions, significant issues with the Application would remain.

Second, the time for Riverfront to concede or change portions of its Application and enter new information into the record was during the Protest Hearing—not after the record is closed, and the Board has issued final findings of fact and conclusions of law. 23 DCMR §§ 1719.3-1719.4 (West Supp. 2014).

ORDER

Therefore, the Board, on this 12th day of February 2014, hereby **GRANTS** the Motion for En Banc Review filed by Dos Ventures, LLC, t/a Riverfront at the Ball Park.

IT IS FURTHER ORDERED that the Motion for Reconsideration filed by Riverfront is **DENIED**.

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[1] Under § 25-431 ". . . the Board may meet in panels of at least 3 members for the purpose of conducting hearings and taking official actions. Three members shall constitute a quorum." D.C. Official Code § 25-431(b).

[2] For example, merely joining the "TOPP" does not necessarily mean anything has changed. Mot. for Recon., at 5.

The ABRA shall distribute copies of this Order to the Applicant and the Protestants.

District of Columbia
Alcoholic Beverage Control Board

Nick Alberti, Member

Donald Brooks, Member

Herman Jones, Member

Mike Silverstein, Member

My dissent is limited to the issue of whether the Board may consider in a motion for reconsideration an Applicant's good faith effort to meet concerns set forth in the Board's order. The Board ruled that the time for the Applicant to propose any revisions was during the Protest Hearing. However, § 25-433(d)(1) provides that a petition for reconsideration, rehearing, reargument, or stay of a decision or order of the Board may be filed by a party within 10 days after receipt of the Board's final order. The motion proposes a scaled down operation with conditions to meet the concerns set forth in the order based on the evidence presented at the hearing. In my view the Board could have and should have more fully considered the motion by extending the opportunity to all parties to respond to the motion and scheduling a limited hearing if the Board determined that such hearing would be necessary to provide due process to all parties.

Accordingly, my dissent is not based on the merits of the application, but the denial of the opportunity to more fully consider the proposed revisions, particularly in light of Section 25-338 which prohibits this applicant from subsequently applying for the same class of license for 5 years from the date of denial.

Ruthanne Miller, Chairperson

Under 23 DCMR § 1719.1 (2008), 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, under 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 under 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).