THE DISTRICT OF COLUMBIA
ALCOHOLIC BEVERAGE CONTROL BOARD

In the Matter of:	)		
	)		
All Souls, LLC	)	Case Number:	11-PRO-00090
t/a All Souls	)	License Number:	088179
	)	Order Number:	2012-333
Application for a New	)		
Retailer's Class CT License	)		
	)		
at premises	)		
725 T Street, N.W.	)		
Washington, D.C. 20001	)		
	)		

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

ALSO PRESENT: All Souls, LLC, t/a All Souls, Applicant

Andrew Kline, Non-Lawyer Representative, on behalf of the Applicant

Bertha Dudley and Stanley Mayes, on behalf of A Group of Five or More Individuals, Protestants

Erica Hurtt, on behalf of A Group of Five or More Individuals, Protestants

Martha Jenkins, General Counsel
Alcoholic Beverage Regulation Administration

ORDER DENYING PROTESTANT'S MOTION FOR RECONSIDERATION

INTRODUCTION

All Souls, LLC, t/a All Souls, (Applicant) filed an Application for a new Retailer's Class CT License (Application) at premises 725 T Street, N.W., Washington, D.C. Two Groups of Five or More Individuals (Protestants), one represented by Bertha Dudley and Stanley Mayes, and the other represented by Erica Hurtt, timely filed a protest against the

Application under District of Columbia Official Code § 25-602. The parties came before the Alcoholic Beverage Control Board (Board) for a Roll Call Hearing on December 27, 2011, and a Protest Status Hearing on February 8, 2012. The Protest Hearing occurred on March 21, 2012. On June 20, 2012, we granted the Application. All Souls, LLC, t/a All Souls, Case No. 11-PRO-00090, Board Order No. 2012-278, 1-2, 10 (D.C.A.B.C.B. Jun. 20, 2012).

The Group of Five or More Individuals, represented by Bertha Dudley and Stanley Mayes, filed a Motion for Reconsideration on June 29, 2012. The Protestants ask us to reverse our decision granting the Application, because the caption of the Order mistakenly refers to the Application as a renewal and the Order does not set a standard for determining overconcentration. *Petition for Reconsideration of Order No. 2012-278 Granting Retailer's Class CT License for All Souls LLC t/a All Souls*, 1-2. The Protestants also ask us to reconsider our measurements finding that Mesobe Restaurant and Deli Market is within the 400 foot prohibition zone under § 25-313(b). Id. Finally, the Protestants dispute our factual findings regarding the adequacy of the public transportation offerings in the neighborhood and the security at the nearby school. Id.

First, the body of the Order is clear that the Application is for a new license. All Souls, Board Order No. 2012-278, 1, 6, 10. A clerical error does invalidate the Board's determination. Farrow v. J. Crew Group Inc., 12 A.3d 28, 32-33 (D.C. 2011). Therefore, although the Order's caption contains a minor clerical error, this does not require any change in the Board's determination that the Application is appropriate. Nonetheless, the Board will reissue the Order with a corrected caption.

Second, we reject any notion that our decision regarding overconcentration lacks standards. The determination of whether a neighborhood is suffering from overconcentration is a highly fact-based determination. D.C. Code § 25-313(b); 25-314 (West Supp. 2012) (saying that determining appropriateness requires the Board to "consider all relevant evidence of record . . . .") Specifically, under the overconcentration factor, the Board must examine whether there are too many licensed establishments in a neighborhood. Tiger Wyk Ltd., Inc. v. District of Columbia Alcoholic Beverage Control Bd., 825 A.2d 303, 307 (D.C. 2003). Here, because we found that the neighborhood's growing arts, culture, and entertainment scene supports the presence of additional licensed establishments, we found that the Applicant demonstrated that the neighborhood did not suffer from an overconcentration of licensed establishments at this time. Therefore, our determination regarding overconcentration is supported by both precedent and the substantial evidence contained in the record.

Third, we see no reason to reject our measurements of the distance between the Applicant's proposed establishment and Mesobe Restaurant and Deli Market from Cleveland Elementary School. As stated in our Order, the measurements come from the Geographic Information System (GIS), which we find to be a reliable and accurate representation of the District of Columbia. All Souls, Board Order No. 2012-278, 3, 9. The Protestants have not submitted any evidence that leads us to believe that the GIS is flawed or incorrect; therefore, we see no reason to overturn the measurements in our prior Order.

Fourth, we will not disturb our conclusions regarding the public transportation services and the ability of third parties to access Cleveland Elementary School. We note that Motions for Reconsideration should not contain new arguments unless "the petitioner could not by due diligence have known or discovered the new matter prior to the date the case was presented to the Board for decision." 23 DCMR § 1719.4 (West Supp. 2012). Here, the Protestants had an adequate opportunity during the hearing to rebut evidence showing that there are adequate public transportation options in the neighborhood, and that the Applicant's patrons could not easily access Cleveland Elementary School's playground.[1] All Souls, Board Order No. 2012-278, at ¶¶ 30, 33-37.

ORDER

Therefore, for the foregoing reasons, the Board, on this 8th day of August 2012, hereby **DENIES** the Motion for Reconsideration filed by the Group of Five or More Individuals, represented by Bertha Dudley and Stanley Mayes. The Board **AMENDS** the caption of Board Order No. 2012-278 to reflect that Application is an Application for New Retailer's Class CT License. ABRA shall deliver a copy of this Order to the Applicant and the Protestants.

[1] We also note that the Protestants' present arguments regarding public transportation completely ignore the Metrobus routes that pass by the establishment. All Souls, Board Order No. 2012-278, at ¶ 30.

District of Columbia
Alcoholic Beverage Control Board

Ruthanne Miller, Chairperson

Nick Alberti, Member

Donald Brooks, Member

Herman Jones, Member

Calvin Nophlin, Member

Mike Silverstein, Member

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).