

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

In the Matter of:)		
)		
Brookland's Finest, LLC)	Case Number:	13-PRO-00057
t/a Brookland's Finest Bar & Kitchen)	License Number:	092010
)	Order Number:	2013-574
Application for a)		
New Retailer's Class CT License)		
)		
at premises)		
3126-3128 12th Street, N.W.)		
Washington, D.C. 20017)		

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

ALSO PRESENT: Brookland's Finest, LLC, t/a Brookland's Finest Bar & Kitchen,
Applicant

Andrew Kline, on behalf of the Applicant

Carolyn Steptoe, Commissioner, on behalf of Advisory
Neighborhood Commission 5B, Protestant

Sharona Donaldson & Jessica Parrish, on behalf of a Group of 35,
Protestant

Carlos M. Recio, on behalf of the Protestants

Martha Jenkins, General Counsel
Alcoholic Beverage Regulation Administration

ORDER DENYING THE PROTESTANTS' MOTION FOR RECONSIDERATION

Brookland's Finest, LLC, t/a Brookland's Finest Bar & Kitchen, (Applicant) filed an Application for a New Retailer's Class CT License (Application) at premises 3126-3128 12th Street, N.W., Washington, D.C. The Application was protested by Advisory Neighborhood Commission (ANC) 5B and A Group of 35 (collectively the "Protestants"). The parties came before the Alcoholic Beverage Control Board (Board) for a Roll Call Hearing on July 8, 2013 and a Protest Status Hearing on July 17, 2013. The Protest Hearing in this matter occurred on August 14, 2013.

On October 23, 2013, the Board issued an Order granting the Application without restrictions, because the Board found that there would be no adverse impact on the neighborhood. In re Brookland's Finest, LLC, t/a Brookland's Finest Bar & Kitchen, Case No. 13-PRO-00057, Board Order No. 2013-453, 7-10 (D.C.A.B.C.B. Oct. 23, 2013).

Subsequently, the Protestants filed a Motion for Reconsideration, which requests that the Board reverse its decision on the following grounds: (1) "the overwhelming majority of . . . residents" oppose the issuance of the license; (2) the Board should give residents within 400 feet special deference; (3) the Board failed to establish the geographic boundaries; (4) a day care center may be within 400 feet of the proposed establishment; (5) schools, day care facilities, and churches may be within 1200 feet of the establishment and adversely impacted by the proposed establishment; (6) the Board failed to "address and examine the nature of the establishment in the context of an established quiet residential neighborhood"; and (7) the Protestants provided further evidence and exhibits in support of their position. Motion for Reconsideration, 1-3.

We agree with the Applicant that the submission of new evidence and facts by the Protestants is not in accordance with § 1719, which requires that in order for the Protestants to submit new information into the record for consideration, such information must be accompanied by an affidavit explaining how the information could not have been known or discovered at the time of the hearing if the Protestants had exercised due diligence. Response, 1-2; 23 DCMR § 1719.4.¹ Because the Protestants submitted no affidavit, we agree with the Applicant that the Protestants are not permitted to submit new information into the record. Response, 2. We also agree with the Applicant that Title 25 of the D.C. Official Code (Title 25) provides no special deference to residents living within 400 feet of the proposed establishment or institutes any form of "popularity contest;" instead, the key issue is whether the establishment satisfies the appropriateness criteria. Id. at 2.

In addition to the reasons provided by the Applicant, the Board also disagrees with the Motion for Reconsideration for the following reasons:

First, the Board considered the area with 1,200 square feet of the establishment as required under our regulations. Under § 1607.2, the geographic boundaries reviewed by the Board shall be the area within 1,200 square feet of the proposed establishment if no alternative geographic boundaries are proposed by the parties.² 23 DCMR § 1607.2. In its Order, the Board explicitly considered the area within 1,200 feet of the establishment in

¹ The Board also notes that even if we considered the information provided by the Applicant, none of the information provided, either individually or in its totality, would change our current determination to issue a license without conditions. For example, (1) the Applicant's efforts to reach out to the community are not a relevant factor for the purposes of determining appropriateness; (2) a record of calls for service is generally not persuasive, because the document does not indicate whether the establishment is responsible for the crime (or even whether a crime actually occurred); and (3) the Protestants evidence is overcome by Investigator Mathieson's testimony that there is ample parking in the neighborhood and alternative means of transportation available.

² The Protestants also fail to explain how this alleged failure prejudices their case. Furthermore, the Board finds that the Protestants waived their opportunity to challenge the geographic boundaries in this matter by failing to raise an objection in accordance with 23 DCMR § 1607.3.

Paragraph 2 and on Page 9 of its Order. Therefore, there is no merit to the Protestants' claim that the Board failed to establish proper geographic boundaries.

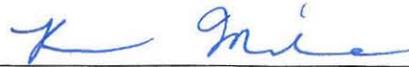
Second, the Protestants accusations that the establishment will have a negative impact on nearby schools, day care centers, and churches are conclusory and speculative. Therefore, the Protestants allegations on these grounds are without merit.

And third, the Board's Findings of Fact and Conclusions of Law demonstrate that the Applicant can coexist peacefully with the surrounding neighborhood. As a result, the Protestants' allegations that the Board did not consider the nature of the establishment and surrounding neighborhood are conclusory, speculative, and without merit.

ORDER

Therefore, the Board, on this 20th day of November 2013, hereby **DENIES** the Motion for Reconsideration filed by the Protestants. The ABRA shall distribute copies of this Order to the Applicant and the Protestants.

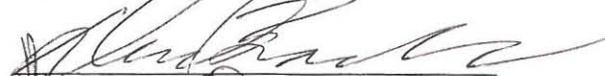
District of Columbia
Alcoholic Beverage Control Board



Ruthanne Miller, Chairperson



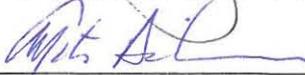
Nick Alberti, Member



Donald Brooks, Member



Herman Jones, 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).