

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

_____)		
In the Matter of:)		
AKA, Inc.)	License No.:	ABRA-084241
t/a Club AKA 555)	Case No.:	10-PRO-00097
Application for a Substantial Change)	Order No.:	2011-003
To a Retailer's Class CN License)		
at premises)		
2046 West Virginia Avenue, N.E.)		
Washington, D.C. 20002)		
_____)		

BEFORE: Charles Brodsky, Chairperson
Mital Gandhi, Member
Nick Alberti, Member
Donald Brooks, Member
Calvin Nophlin, Member
Michael Silverstein, Member

ALSO PRESENT: Paul Kadlick, on behalf of the Applicant

William Shelton, on behalf of the Protestant, Advisory Neighborhood
Commission 5B

Aulander Stevenson, on behalf of the Protestant, Arboretum
Neighborhood Association

Martha Jenkins, General Counsel
Alcoholic Beverage Regulation Administration

**FINDINGS OF FACT, CONCLUSIONS OF LAW,
AND ORDER**

AKA, Inc., t/a Club AKA 555 (Applicant), filed an Application for a Substantial Change to its Retailer's Class CN License located at premises 2045 West Virginia Avenue, N.E., Washington, D.C. The Application came before the Alcoholic Beverage Control Board (Board) for a Roll Call Hearing on July 26, 2010, and a Status Hearing on August 26, 2010.

On July 12, 2010 a protest against the Application was timely filed by Advisory Neighborhood Association (ANC) 5B. ANC 5B was granted standing at the Roll Call Hearing. A second protest was filed by the Arboretum Neighborhood Association on July 9, 2010. They were also granted standing. A protest was also filed by A Group of Five or More Individuals on July 12, 2010, represented by Don Padou and subsequently dismissed at the Status Hearing on August 26, 2010. *See* Board Order Nos. 2010-542 and 2010-547.

Pursuant to D.C. Official Code § 25-602(a) (2009), the protest issues are whether the renewal of the license will adversely impact the peace, order, and quiet of the neighborhood and whether residential parking and vehicular and pedestrian safety will be adversely impacted.

The Parties were unsuccessful in reaching a Voluntary Agreement prior to the Protest Hearing and thus the matter was heard by the Board at a Protest Hearing on November 18, 2010.

At the conclusion of the Protest Hearing, the Board took the matter under advisement. The Board, having considered the evidence, the testimony of the witnesses, the arguments of the parties, the parties' Proposed Findings of Facts and Conclusions of Law, and all documents comprising the Board's official file, makes the following:

FINDINGS OF FACT

1. The Licensee seeks a Substantial Change to its Retailer's Class CN License. *See ABRA Licensing File No. 84241, ABRA Protest Report, Case Report No. 10-CMP-00097.* Specially, the Licensee seeks to move the operations of its nightclub from the second floor to the first floor of the building where the business is already located and licensed. *See ABRA Licensing File No. 84241.*
2. The Licensee's establishment is located at 2046 West Virginia Avenue, N.E. *ABRA Licensing File No. 84241.* It is located within a C-M-1 zone in an area of the District of Columbia known as Ivy City. *ABRA Protest Report, Case Report No. 10-CMP-00097.* There are two ABC licensed establishments within 1,200 feet of the Applicant: Elite Wines (Wholesaler Class A) and Peacock Liquors (Retailer's Class A). *ABRA Protest Report, Case Report No. 10-PRO-00097.*
3. By petition, the Arboretum Neighborhood Association and ANC 5B protested the Application for a Substantial Change to the operations of the Retailer's Class CN License. *See ABRA Protest File No. 10-PRO-00097.* The Protestants believe that granting the Substantial Change Application would be detrimental to the peace, order, and quiet in the neighborhood, and that it would adversely affect the residential parking and vehicular and pedestrian safety. *See ABRA Protest File No. 10-PRO-0009.* William Shelton represented ANC 5B, Aulander Stevenson represented Arboretum Neighborhood Association, and Paul Kadlick represented the Licensee.

4. The Board called ABRA Investigator Erin Mathieson to testify. *Tr.*, 11/18/10 at 9. She was assigned to investigate the protest of the Substantial Change Application for a Retailer's Class CN License. *Tr.*, 11/18/10 at 10. The substantial change was the construction of the first floor of the establishment occupancy and use by the Applicant. *Tr.*, 11/18/10 at 10, 23. The original application indicated that the Applicant would occupy the second floor of the building. *Tr.*, 11/18/10 at 10, 26. The proposed total occupancy load to include the number of seats is 399 patrons. *Tr.*, 11/18/10 at 10. Investigator Mathieson testified that two parties were protesting the application, Arboretum Neighborhood Association and ANC 5B. *Tr.*, 11/18/10 at 10.

5. On Wednesday, October 6, 2010, Investigator Mathieson interviewed, Bleik Pickett, the designated representative for the Arboretum Neighborhood Association. *Tr.*, 11/18/10 at 11. He stated that his concerns regarding the establishment were related to the potential in increased crime and noise, which would affect the general peace, order and quiet of the neighborhood. *Tr.*, 11/18/10 at 11. Mr. Pickett informed Investigator Mathieson that a previous club located in that neighborhood had problems with prostitution and shooting. *Tr.*, 11/18/10 at 11. He is concerned that once this Applicant opens for business, there will be noise created by loud music and people that will disturb the area residents. *Tr.*, 11/18/10 at 12.

6. Mr. Pickett also informed Investigator Mathieson that the establishment would draw large crowds that will park in the residential neighborhoods displacing the parking for people who live there. *Tr.*, 11/18/10 at 12. He is also concerned that there will be an increase in the number of intoxicated persons waking around the neighborhood as they return to their vehicles when departing from the club. *Tr.*, 11/18/10 at 12.

7. Investigator Mathieson requested that Mr. Pickett provide her with the names and addresses of members of the Arboretum Neighborhood Association who would be most proximate to the establishment in order to determine how detrimental the potential increase in noise, intoxicated patrons and vehicular parking might be. *Tr.*, 11/18/10 at 13. She did not receive that requested information as of the Protest Hearing on November 18, 2010. *Tr.*, 11/18/10 at 13-14.

8. On Wednesday, October 13, 2010, Investigator Mathieson interviewed William Shelton, Chairperson of ANC 5B and the designated representative for the ANC. *Tr.*, 11/18/10 at 14. Commissioner Shelton has two concerns with the establishment: parking and vehicular traffic, and the peace, order and quiet of the neighborhood. *Tr.*, 11/18/10 at 14.

9. With regard to the parking and vehicular traffic, Commissioner Shelton informed Investigator Mathieson that there are constant traffic issues on Virginia Avenue, N.E. *Tr.*, 11/18/10 at 14. He is also concerned that the Applicant has not provided him with copies of contracts for parking, secured lots or valet services. *Tr.*, 11/18/10 at 15.

10. With regard to concerns related to peace, order and quiet, Commissioner Shelton stated that the type of patrons frequenting the establishment will lead to an increase in crime. *Tr.*, 11/18/10 at 15. He says that the neighborhood experiences an increase in auto theft and robbery

anytime another nightclub in the neighborhood is open. *Tr.*, 11/18/10 at 16. Additionally, Commissioner Shelton stated that the ANC has not received a copy of any Security Plan nor does he know what type of security the establishment intends to employ. *Tr.*, 11/18/10 at 16. Lastly, Commissioner Shelton is concerned about the increase in noise. *Tr.*, 11/18/10 at 16. He is not certain what type of sound-proofing the Applicant intends to use but he believes that it is needed. *Tr.*, 11/18/10 at 16.

11. On October 6, 2010, Investigator Mathieson interviewed Paul Kadlick, one of the owners of the establishment. *Tr.*, 11/18/10 at 16. Mr. Kadlick was designated by the other three owners, Delores Dixon, Ronald Dixon and Gokhan Akkus to represent the Licensee. *Tr.*, 11/18/10 at 16. Mr. Kadlick informed Investigator Mathieson that as of the hearing date, no construction had begun inside the establishment and thus, the location on West Virginia Avenue, N.E. is still an empty warehouse. *Tr.*, 11/18/10 at 17, 25.

12. Mr. Kadlick indicated that he plans to have the establishment open at 11:00 a.m. every day to accommodate the lunch crowd. *Tr.*, 11/18/10 at 17. The club will remain open every day until 2:00 a.m. on week nights and 3:00 a.m. on weekends. *Tr.*, 11/18/10 at 17. The establishment intends to operate as a sport bar and game room in the front part of the building and the rear of the building will operate as a gentlemen's club. *Tr.*, 11/18/10 at 17. He also told Investigator Mathieson that although the building is located in a commercial zone, he intends to soundproof the new construction in order to reduce the noise emanating from the building. *Tr.*, 11/18/10 at 17. He also intends to employ a sound and visual engineer to assist with the construction. *Tr.*, 11/18/10 at 17-18.

13. With regard to parking, Mr. Kadlick stated that he has already secured a contract with a valet company for the use of a secured lot seven days a week. *Tr.*, 11/18/10 at 18. The lot will be available for use throughout the day, but Mr. Kadlick hasn't yet determined if the valet service is available during the day hours. *Tr.*, 11/18/10 at 18.

14. With regard to security, Mr. Kadlick informed Investigator Mathieson that the establishment will have a camera security system installed with cameras located both inside and outside the establishment. *Tr.*, 11/18/10 at 19. The video footage will be maintained for 30 days. *Tr.*, 11/18/10 at 19. He stated that he has already submitted a detailed Security Plan to ABRA. *Tr.*, 11/18/10 at 19. He intends to take a proactive approach to crime and has included a detailed listing of phone numbers of key Metropolitan Police Department (MPD) personnel. *Tr.*, 11/18/10 at 19. Additionally, his security staff will walk patrons to their car as needed. *Tr.*, 11/18/10 at 19.

15. Investigator Mathieson testified to the characteristics of the neighborhood. *Tr.*, 11/18/10 at 19. The establishment is located in a CM-1 Zone. *Tr.*, 11/18/10 at 19. There are currently two other ABC licensed establishments operating within 1,200 feet of the Applicant. *Tr.*, 11/18/10 at 20. One of the licensees is a wholesaler and the other holds a Retailer's Class A license. *Tr.*, 11/18/10 at 20.

16. The building where the establishment will be housed is a medium sized warehouse that has two levels. *Tr.*, 11/18/10 at 20. Most of the area contains industrial and commercial businesses. *Tr.*, 11/18/10 at 20. Across the street from the establishment is the Mount Olivet Cemetery. *Tr.*, 11/18/10 at 20.

17. The warehouse had not been renovated at the time of the Protest Hearing. *Tr.*, 11/18/10 at 20. The Licensee provided a detailed floor plan of the establishment and a detailed plan for the proposed operations. *Tr.*, 11/18/10 at 20. The establishment intends to serve a light menu of American styled foods. *Tr.*, 11/18/10 at 21.

18. ABRA investigators monitored the location on 24 different occasions, at all hours of the day, from September 16th to October 20, 2010. *Tr.*, 11/18/10 at 21, 27. The establishment was not open for business so monitoring was limited to assessing the activity near the warehouse during the day and evening hours. *Tr.*, 11/18/10 at 21. At no point did ABRA investigators hear any noise or observe any other issues with regard to peace, order and quiet. *Tr.*, 11/18/10 at 21.

19. On most monitoring visits, public parking was available on both sides of West Virginia Avenue N.E. in the allotted four hour parking spaces. *Tr.*, 11/18/10 at 21. Investigator Mathieson testified that there were very few instances of vehicular and pedestrian traffic and most of that was during the day. *Tr.*, 11/18/10 at 21. Parking is available on the streets for four hour increments, Monday through Friday, 7:00 am to 6:30 pm. *Tr.*, 11/18/10 at 22. The parking is not metered. *Tr.*, 11/18/10 at 22. There is one Metrobus stop located directly across from the establishment. *Tr.*, 11/18/10 at 19. Additionally there is a metro stop, the red line at Gallaudet University that is a moderate walk from the establishment. *Tr.*, 11/18/10 at 22. Lastly, the Applicant intends to use a valet company and has secured a parking lot located at 2130 West Virginia Ave N.E. for parking. *Tr.*, 11/18/10 at 22.

20. The Applicant called Ron Dickson to testify. *Tr.*, 11/18/10 at 30. Mr. Dickson testified that he has been in the nightclub business for twenty years. *Tr.*, 11/18/10 at 30. He is also a former police officer with the Metropolitan Police Department (MPD) and the Metro Transit Police. *Tr.*, 11/18/10 at 30. Mr. Dickson believes that he and his wife have been good stewards of the responsibilities associated with running a nightclub. *Tr.*, 11/18/10 at 33.

21. Mr. Dickson testified that the Security Plan submitted by the Applicant provides for the installation of cameras both inside and outside of the club. *Tr.*, 11/18/10 at 31. The camera angle will capture viewpoints both up and down the streets. *Tr.*, 11/18/10 at 31. There will also be several security personnel on hand at all times. *Tr.*, 11/18/10 at 31. Mr. Dickson also intends to serve as security to ensure that safety is adequate. *Tr.*, 11/18/10 at 32. There will also be a "time-out room" where intoxicated patrons will be taken to sober up. *Tr.*, 11/18/10 at 32. If they don't get sober, management will call a cab and send them home at the licensee's expense. *Tr.*, 11/18/10 at 32. Mr. Dickson also testified that the security personnel will also be positioned outside the establishment. *Tr.*, 11/18/10 at 32.

22. Mr. Dickson stated that the establishment has a “walk-through” metal detector and security personnel will also be using hand held metal detecting devices to screen patrons. *Tr.*, 11/18/10 at 33. Mr. Dickson testified that every patron entering the establishment will be subjected to a search, even upon re-entry. *Tr.*, 11/18/10 at 33. The establishment will also have a secured locker room available for patrons to store their personal belongings. *Tr.*, 11/18/10 at 33.

23. Mr. Dickson stated that MPD will be able to monitor the video tape recordings from the monitors in the camera security system. *Tr.*, 11/18/10 at 34. The establishment’s management will house the security tape recordings for up to 30 days. *Tr.*, 11/18/10 at 34-35.

24. Mr. Dickson testified that the location of the establishment was already properly licensed and that the purpose of the Protest hearing was to get the Board’s approval to operate on the first floor. *Tr.*, 11/18/10 at 36-37. He confirmed that the establishment would not be operating on the second floor. *Tr.*, 11/18/10 at 36-37. The second floor will be used for storage. *Tr.*, 11/18/10 at 30.

25. The Applicant then called Gokhan Akkus as its next witness. *Tr.*, 11/18/10 at 33. Mr. Akkus testified that he has been in the nightclub business for 12 years, both as a manager and as an entertainer. *Tr.*, 11/18/10 at 40, 42. None of his past positions however, included the direct supervision of security staff. *Tr.*, 11/18/10 at 42-43. He will be serving as the General Manager, overseeing the entire operations of the nightclub. *Tr.*, 11/18/10 at 40. He will wear an earpiece and keep in constant contact with security at all times. *Tr.*, 11/18/10 at 40. He will also ensure that the female employees are escorted to their cars and there will be car service for patrons who can’t drive home. *Tr.*, 11/18/10 at 40.

26. Mr. Akkus then testified regarding the issue of peace, order and quiet as it relates to the establishment’s sound system and noise soundproofing measures. *Tr.*, 11/18/10 at 41. He stated that the Licensee will be installing a state of the art sound system under the advisement of an acoustics engineer. *Tr.*, 11/18/10 at 41. Additionally, the ceilings will be dropped in certain areas of the club and will be built to absorb noise. *Tr.*, 11/18/10 at 41. Mr. Akkus stated that there is no differentiation between the nightclub operating on the first floor as opposed to operating on the second floor. *Tr.*, 11/18/10 at 41.

27. The Protestant, Arboretum Neighborhood Association, was represented by Aulander Stevenson. *Tr.*, 11/18/10 at 44-45. Mr. Stevenson testified that his association represents a small, quiet neighborhood, which is located about four blocks from the establishment. *Tr.*, 11/18/10 at 45-48. He has lived in that neighborhood for 35 years. *Tr.*, 11/18/10 at 45.

28. Mr. Stevenson testified that the Applicant is opening a business across the street from where a former nightclub, the Skylark Club, used to be located. *Tr.*, 11/18/10 at 46. According to Mr. Stevenson, the Skylark Club wreaked havoc on West Virginia Avenue N.E. and also in the neighborhood. *Tr.*, 11/18/10 at 46-47. Mr. Stevenson stated that the Skylark Club was also licensed as a nude dancing club and people would drive along West Virginia Avenue soliciting

the services of the area prostitutes. *Tr.*, 11/18/10 at 46-47. These same people would conduct their business, litter the area and then leave the neighborhood. *Tr.*, 11/18/10 at 47.

29. Mr. Stevenson testified that he is protesting the substantial change application because he believes that the establishment will operate similar to the Skylark Club and will engender prostitution and littering. *Tr.*, 11/18/10 at 47, 50. Mr. Stevenson admitted that he did not know what to expect once the Applicant opened for business. *Tr.*, 11/18/10 at 49, 53. Mr. Stevenson stated that his neighborhood simply does not want the Applicant to open for business at all. *Tr.*, 11/18/10 at 54.

30. Mr. Stevenson stated that the proposed nightclub was also located near another establishment by the name of LOVE. *Tr.*, 11/18/10 at 58. He stated that LOVE is a large operation that takes up the entire neighborhood and consumes all of the available public parking when it is open for business. *Tr.*, 11/18/10 at 58.

31. The Protestant, ANC 5B, called Commissioner Jacqueline Manning to testify. *Tr.*, 11/18/10 at 59. Commissioner Manning testified that her Single Member District (SMD) includes Ivy City, Gateway South Central and the Arboretum. *Tr.*, 11/18/10 at 60-61. Specifically, the SMD includes West Virginia Avenue, N.E. to Bladensburg Road, N.E., and New York Avenue from the 9th Street bridge to South Dakota Avenue, N.E. *Tr.*, 11/18/10 at 60-61. The Applicant would be located in the Ivy City community. *Tr.*, 11/18/10 at 61.

32. Commissioner Manning testified that the neighborhood is undergoing significant reconstruction with the addition of 48 new homes and three churches. *Tr.*, 11/18/10 at 62, 66. One of the churches is only 100 feet from the establishment. *Tr.*, 11/18/10 at 62. She testified that there are existing problems with illegal drug activity and prostitution in that area. *Tr.*, 11/18/10 at 63. She also stated that the establishment was across the street from where the Skylark Club was once located. *Tr.*, 11/18/10 at 63. She believes that clubs such as the Licensee's and the Skylark Club contribute to the blight of the community, rather than enhance it. *Tr.*, 11/18/10 at 65, 67. Commissioner Manning stated that the area is zoned both commercial and residential and that developers don't take into consideration the residents who live there. *Tr.*, 11/18/10 at 65-66. She also stated that the ANC has not seen any diagrams, parking plans or a security plan from the Applicant. *Tr.*, 11/18/10 at 69, 71. Commissioner Manning testified that parking is a problem when the existing clubs are open for business. *Tr.*, 11/18/10 at 73. The entire neighborhood is congested with traffic even outside of rush hour. *Tr.*, 11/18/10 at 74.

CONCLUSIONS OF LAW

33. Pursuant to D.C. Official Code § 25-313(a), an Applicant must demonstrate to the Board's satisfaction that the establishment for which an ABC license is sought is appropriate for the neighborhood in which it will be located. Under D.C. Official Code § 25-313, to qualify for the issuance, renewal, transfer of a license to a new location, or approval of a substantial change

in operation as determined by the Board, an Applicant shall demonstrate that the establishment is appropriate for the area where it will be located. In making its determination, the Board shall consider all relevant evidence, including the effect of the establishment on peace, order, and quiet, noise, and parking and pedestrian safety. Having considered the evidence upon which this determination must be made and the findings of fact adduced at the Protest Hearing, the Board concludes that the Applicant has demonstrated that the substantial change to the operations of its Retailer's Class "CN" License is appropriate for the area in which the establishment is located.

34. The Board recognizes that pursuant to D.C. Official Code § 1-309.10(d) (2010) and D.C. Official Code § 25-609 (2001), an ANC's properly adopted written recommendations are entitled to great weight from the Board. See Foggy Bottom Ass'n v. District of Columbia ABC Bd., 445 A.2d 643 (D.C. 1982). Accordingly, the Board "must elaborate, with precision, its response to the ANC issues and concerns." Foggy Bottom Ass'n, 445 A.2d at 646. Here, ANC 5A filed a protest which was given great weight by the Board.

35. The Board's finding that the substantial change to the operations of the establishment as proposed in the Application will not affect the peace, order and quiet of the neighborhood. This is underscored by the testimony of the Board's witness, Investigator Mathieson and the testimony of the Licensee's witnesses. There was ample testimony from Investigator Mathieson that during the separate monitoring visits made to the establishment by ABRA investigators, there was never any observation of trash, noise or litter. Additionally, the Licensee testified that he has over 20 years of experience in operating ABC licensed nightclubs and has always been in compliance with the laws and regulations that govern licensed establishments.

36. Specifically, with regard to the issue of residential parking, the Board must determine whether the substantial change sought by the Applicant will have an adverse effect on residential parking needs pursuant to D.C. Official Code § 25-313(b)(3). The Board is not convinced that moving the operations of the nightclub from the second floor to the first floor will exacerbate the residential parking concerns of the neighborhood. The proposed substantial change does not alter the total occupancy of the establishment already in place with the existing license. Moreover, the Applicant's witness testified that a contract has been secured for off-street lot parking seven days a week. As a result, the Board finds that granting the renewal of the license will not have an adverse effect on residential parking.

37. The Board is not persuaded by the Protestants' contention that approving the substantial change in operations will create or exacerbate noise problems. The Board recognizes that the property is located in a commercial zone. However, the Board also recognizes that because the nightclub is not yet open for business, it is difficult to measure the effect of noise in the neighborhood. Thus the Board relies on the testimony that the Licensee is undertaking soundproofing for the new construction. Additionally, the Licensee stated that he intends to employ a sound engineer to assist with the construction in order to reduce the noise emanating from the building. The Board believes that the proposed efforts undertaken by the Licensee to mitigate the noise should satisfy any concerns raised by the Protestants.

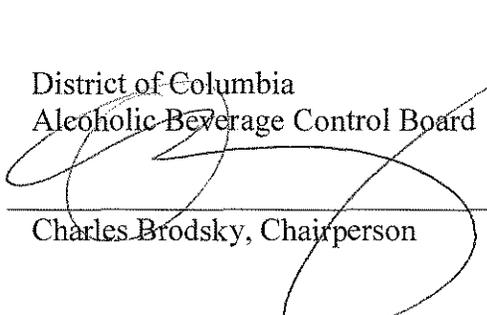
38. Accordingly, the Board finds that the Licensee has demonstrated that the Substantial Change Application for a Retailer's Class CN License is appropriate for the location and does not adversely impact the peace, order, and quiet of the neighborhood, residential parking, or pedestrian or vehicular safety.

ORDER

Therefore, this 16th day of February 2011, it is hereby **ORDERED** that the Application for a Substantial Change to the operations of the Retailer's Class CN License requested by AKA, Inc., t/a Club AKA 555, at premises 2045 West Virginia Avenue, N.E., Washington, D.C., is hereby **GRANTED**. Copies of this Order shall be sent to the Licensee and the Protestants.

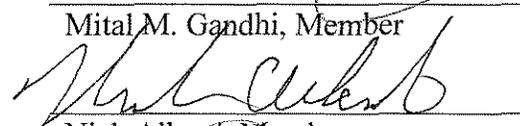
It is **FURTHER ORDERED** that the Licensee shall provide to the Protestants, a copy of its Security Plan and a copy of its Valet/Parking Lot contract within thirty (30) days of this Order.

District of Columbia
Alcoholic Beverage Control Board



Charles Brodsky, Chairperson

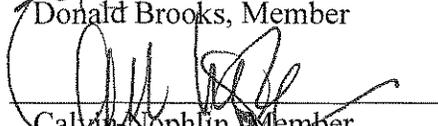
Mital M. Gandhi, Member



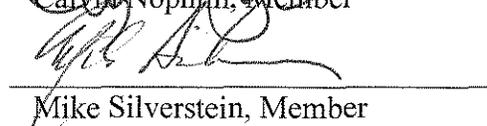
Nick Alberti, Member



Donald Brooks, Member



Calvin Nophlin, Member



Mike Silverstein, Member

Pursuant to 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, 1250 U Street, N.W., 3rd Floor, Washington, D.C. 20009.

Also, 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 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 (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).