

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

In the Matter of:)	
)	
AKA, Inc.)	Case No. 10-PRO-00182
t/a Club AKA 555)	License No. 084241
)	Order No. 2011-405
Application for Renew of a)	
Retailer's Class CN License)	
)	
at premises)	
2046 West Virginia Avenue, N.E.)	
Washington, D.C. 20001)	

Paul Kadlick, on behalf of the Applicant

Don Padou, on behalf of A Group of Five or More Individuals

Martha Jenkins, General Counsel
Alcoholic Beverage Regulation Administration

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

**ORDER DENYING IN PART AND GRANTING IN PART THE PROTESTANTS'
MOTION FOR RECONSIDERATION AND AMENDING BOARD ORDER NO.
2011-291**

The Application filed by AKA, Inc., t/a Club AKA 555 (Applicant), at premises 2046 West Virginia Avenue, N.E., Washington, D.C., to renew a Retailer's Class CN License, having been protested by A Group of Five or More Individuals (Protestants), represented by Don Padou, came before the Alcoholic Beverage Regulation Board (Board) for a Roll Call Hearing on January 18, 2011, and a Status Hearing on February 23, 2011, in accordance with D.C. Code § 25-601 (2001). The Protest Hearing was held on April 6, 2011. The Board renewed the Applicant's license with conditions in Board Order No. 2011-291, dated June 22, 2011. AKA, Inc., t/a Club AKA 555, Board Order No. 2011-291, 8-9 (D.C.A.B.C.B. Jun. 22, 2011).

The Protestants filed a Motion for Reconsideration (Motion), which argued that the Board's Order was in error. First, the Protestants argue that the Board failed to determine that the Applicant has met the criteria outlined in D.C. Code § 25-301.

Second, the Protestants insist that the Applicant never properly appeared before the Board. Third, the Protestants state that the Board should dismiss the Application because the Applicant allegedly failed to serve a Motion to Set Aside Mediation and its Protestant Information Form (PIF) on the Applicant. Fourth, the Applicant argues that the Board's decision regarding appropriateness was in error in light of the nearby vocational school and chapel. Fifth, the Protestants argue that the Application should have been denied because the Applicant has only filed a draft security plan. Finally, the Protestants also argue that the Board did not make a proper finding in respect to impact of the establishment on real property values and the peace, order, and quiet of the neighborhood. The Applicant has chosen not to respond to the Motion.

Summary

We deny in part, and grant in part, the Motion for Reconsideration. We find that the Protestants are not entitled to raise issues or submit evidence related to the Applicant's compliance with § 25-301 for the first time in a Motion for Reconsideration. Nevertheless, we agree that our prior Order failed to make the necessary determination that the Application complies with § 25-301 and will amend the Order to include the necessary finding. We further find that Mr. Kadlick was properly recognized as the Applicant's designated representative and the Board was not required to require further proof of his status pursuant to 23 DCMR § 1706.4. The Board also concludes that the Protestants' arguments regarding the Applicant's alleged failure to serve them with a Motion to Set Aside Mediation are moot and cannot be raised for the first time in a Motion for Reconsideration. Similarly, the Protestants' arguments regarding the Applicant's failure to serve them with the Protestant Information Form (PIF) cannot be raised for the first time in a Motion for Reconsideration, and even if the Board were to reach the issue, such a failure would not merit the dismissal of the Application pursuant to 23 DCMR §§ 1600.2 and 1703.8. We further affirm our holding that the distance requirement from schools and churches contained in the ABC laws apply only to the issuance or transfer of a license respectively, and do not apply to the renewal of a preexisting license. Further, even if we were to reach the issue, the nearby vocational school and chapel do not fall within the definition of a school or church as outlined in D.C. Code §§ 25-314 and § 25-374(e). The Board also finds that the Applicant submitted a valid security plan in accordance with D.C. Code § 25-403 and that the Board's conditions correct any possible threat to the neighborhood's peace, order, and quiet. We also amend our prior Order to include our finding that the Applicant will not have a negative impact on the neighborhood's real property values. Finally, we find that the Board's prior Order included a well-reasoned finding that supports our conclusion that the Applicant would not have a negative impact on the neighborhood's peace, order, and quiet. Our reasoning is further explained below.

D.C. Code § 25-301

The Protestants may not, for the first time, raise the issue of whether the Applicant complies with § 25-301 in a Motion for Reconsideration. Furthermore, even if the Protestants were permitted to raise such an issue at this late juncture, the record

definitively demonstrates that the Applicant demonstrated to the Board that it has complied with the criteria outlined in § 25-301.

A. *New Arguments*

The Protestants may not dispute the Applicant's compliance with § 25-301 because the Protestants failed to raise such issues before the Protest Hearing.

"Protest Petitions may be filed to indicate whether the signatories believe, or do not believe, that the establishment is appropriate under the provisions of D.C. Official Code §§ 25-313 and 25-314, and [23 DCMR] § 400." 23 DCMR § 1800.2(b) (2008). Additionally, when the parties initially present themselves before the Board's agent at the first administrative review hearing, they are, at that time, entitled to raise issues that fall outside of the issues delineated in § 1800.2(b). 23 DCMR § 1601.8 (2008). In contrast, a Motion for Reconsideration is not an appropriate vehicle for raising new questions of law and fact that could have been raised before the Board entered its decision. 23 DCMR § 1719.4; see also District No.1-Pacific Coast District v. Travelers Cas. And Sur. Co., 782, A.2d 269, 277-79 (D.C. 2001). Indeed, the only way for a party to raise a new matter in a motion for reconsideration is to submit an affidavit stating "that 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." § 1719.4. As such, matters that are raised for the first time in a Motion for Reconsideration will not be considered by the Board. § 1719.4.

Furthermore, by failing to raise the issue at the proper time, the Protestants have waived their right to submit evidence regarding § 25-301. The Court of Appeals has stated:

the Board can[] restrict protestants' presentation of evidence to issues raised in its protest petition and preliminary hearings. There is no inherent unfairness in rules which require advance notice to the opposing party of issues raised by a protestant in a contested proceeding. On the contrary, the interest of fairness and an orderly procedure is advanced by such rules.

Craig v. District of Columbia Alcoholic Beverage Control Bd., 721 A.2d 584, 590 (D.C. 1998) (protestants failed to raise the issue of the Applicant's character in their protest petition and during preliminary hearings).

At no point before the Protest Hearing did the Protestants challenge the Applicant's compliance with the criteria listed in § 25-301 or even mention § 25-301. See ABRA Protest File No. 10-PRO-00182, *Motion to Place Before the Board Legal Impediments to Licensure*; see generally *Transcript (Tr.)*, February 23, 2011; *Tr.*, January 18, 2011. Further, we note that the Protestants have not submitted an appropriate affidavit pursuant to § 1719.4. As such, the Protestants have waived their arguments related to this issue and are not permitted to raise any issues related to § 25-301 in a Motion for Reconsideration because such matters were not presented to the Board before the Protest Hearing.¹

¹ We also note that the Protestants failure to raise this issue during the protest proceedings prevents them from raising this issue on appeal. Gillespie v. Washington, 395 A.2d 18, 21 (D.C. 1978) ("It is a well-

Thus, the Applicants, by failing to raise the issue pursuant to § 1601.8, have waived the right to present arguments related to § 25-301 and may not object to the Application on this ground.

B. Satisfying D.C. Code § 25-301

Nevertheless, we agree with the Protestants that the Order failed to state the Board's conclusion regarding § 25-301. In turn, we find that the Application satisfied § 25-301 and will amend our prior Order to include the necessary finding.

In brief, D.C. Code § 25-301 requires the Board to determine whether:

- (1) the applicant is "of good character" and fit for licensure;
- (2) the applicant is at least 21 years old;
- (3) the applicant "has not been convicted of any felony in the 10 years before filing the application;"
- (4) the applicant "has not been convicted of any misdemeanor bearing on fitness for licensure in the 5 years before filing the application;"
- (5) the applicant is "the true and actual owner" and does not intend to "carry on the business for" another;
- (6) the "establishment will be managed by the applicant in person or by a Board-licensed manager;"
- (7) "[t]he applicant has complied with all the requirements of this title and regulations issued under this title; and
- (8) the applicant "has [not] failed to file required District tax returns or owes more than \$ 100 in outstanding debt to the District as a result of the items specified in § 47-2862(a)(1) through (9), subject to the exceptions specified in § 47-2862(b)."

D.C. Code § 25-301. The Board is obligated to determine whether the Applicant complies with D.C. Code § 25-301 regardless of whether the matter is contested. See Craig, 721 A.2d at 590. Nevertheless, if a matter is not contested, the Board is not required to make findings of fact. Id.; 23 DCMR § 1718.2 (2008) ("Findings of Fact and Conclusions of Law shall consist of a concise statement of the Board's conclusions on each *contested issue* of fact . . .") (emphasis added).

As such, because the Protestants failed to challenge the Application under § 25-301, the Board is only required to state its conclusion in its final Order.

However, we note that the Board has sufficient evidence to determine whether the Applicant has satisfied § 25-301. As in every case, the Board determined that the Applicant complied with § 25-301 through the notarized ABRA Application submitted by the Applicant. We note that the license application process provides the Board with the Applicant's criminal, tax, and business records, as well as general information about the Applicant's business plans. See ABRA Licensing File No. 084241. Therefore, the completion of the ABRA Application submitted to the Board by the Applicant provides prima facie evidence that the Applicant has complied with § 25-301. Indeed, as a matter

established rule that a party who fails to raise an issue at trial generally waives the right to raise that issue on appeal.").

of policy and practice, applications that do not meet the criteria outlined in § 25-301 are immediately rejected by ABRA staff, are not sent to the Board for review, and are not placarded.

We note though that even if the Board was forced to provide findings of fact that addressed § 25-301 in its Order, the Applicant has demonstrated compliance. First, none of the Applicant's owners has criminal histories or has had prior liquor licenses revoked in other jurisdictions. ABRA Licensing File No. 084241 (see the file labeled: "Personal History Information"); § 25-301(a)(1). Second, none of the owners are under 21 years of age or have criminal records. ABRA Licensing File No. 084241 (see the file labeled: "Personal History Information"); § 25-301(a)(2)-(4). Third, the Applicant, through its listed owners, is the true and actual owner of the establishment, the Applicant will not be the agent of another, and the establishment will be managed by the Applicant or a board-licensed manager. ABRA Licensing File No. 084241, *ABRA Application* (see the answers to questions 16 and 18), *Business Information* (see the answers to questions 5 and 9); § 25-301(a)(5)-(6). Fourth, there is no evidence that the Applicant has not complied with Title 25 of the District of Columbia Code or Title 23 of the District of Columbia Municipal Regulations. See § 25-301(a)(7). Finally, the Applicant has not failed to file its District tax returns, nor has any debts to the District in excess of \$100.00. *Citywide Clean Hands Compliance Status*; § 25-301(b).

C. Conclusion

Consequently, we reject the Protestants' attempt to get a "second bite of the apple." We find that their arguments related to § 25-301 are untimely as a matter of procedure and do not permit the Applicant to submit evidence related to § 25-301. Furthermore, although we are not required to make any findings of fact related to § 25-301 because the matter was not contested, our prior Order will be amended to include the necessary determination.

Representation of the Applicant

The Protestants' argument that the Applicant failed to appear pursuant to §§ 1706.3 and 1707.1 is wrong as a matter of law.

Under § 1706.3, "In any proceeding before the Board, an officer of a corporation or association may represent the corporation or association, if authorized to do so by the Board of Directors of the corporation or association." 23 DCMR § 1706.3 (2008). Further, "[a] partner or officer appearing pursuant to §§ 1706.2 or 1706.3 *may* be required to establish his or her authority to act in that capacity." 23 DCMR § 1706.4 (2008) (emphasis added).

As § 1706.4 makes clear, the decision to force an officer of a corporation to establish their authority rests entirely in the discretion of the Board. Rather than waste the Board's time, we were satisfied that Mr. Kadlick was entitled to represent the Applicant based on the Applicant's ABRA Application and Mr. Kadlick's prior representation of the Applicant in other matters related to the Applicant. The failure of the Applicant to include any evidence that shows that there is some elaborate fraud on the part of Mr. Kadlick is sufficient proof that the Board made the correct decision.

Simply put, the Protestants' arguments that the Board failed to establish that Mr. Kadlick has the authority to represent the Applicant fails to address the controlling legal authority that applies to this issue and are frivolous.² Therefore, we find that the Applicant properly appeared and thus, reject the Protestants attempt to add unnecessary and wasteful procedures to the licensing process.

Procedural Compliance

The Protestants' Motion asks the Board to dismiss the Application because the Applicant allegedly failed to serve a Motion to Set Aside Mediation on the Protestants and did not serve its Protestant Information Form (PIF) on the Protestants. We note that the regulations specifically state that: "Failure to serve all parties of record, or their designated representatives, may result in the Board delaying action on the matter at issue until such time as service is properly accomplished." 23 DCMR § 1703.8 (2008). As a result, even if the Protestants were correct, the failure to serve the Protestants, at best, will only delay the Board taking action on a Motion, not result in Application's dismissal.³

Nevertheless, the Board will not reach this issue because the Protestants failed to object to the failure to serve them during the Protest process and because the Protestants have not submitted an affidavit explaining why the objection is coming after the Board reached its decision. Furthermore, even if the Protestants were entitled to raise such issues in their Motion, their arguments lack merit and are blatantly contradicted by the record. The Protestants arguments regarding the mediation and the PIF are discussed separately below.

A. Mediation

The Protestants arguments related to mediation are untimely and moot.

As we have stated above, matters that are raised for the first time in a Motion for Reconsideration will not be considered by the Board. § 1719.4. At no time prior to the Board entering its final decision in this matter, did the Protestants raise any objections regarding the Applicant's failure to serve a Motion to Set Aside Mediation on the

² Furthermore, the Board is deeply disappointed by the Protestants' arguments on this point. Section 1706.4 directly references § 1706.3 and is located directly after § 1706.3 in the regulations. See 23 DCMR §§ 1706.3-1706.4 (2008). As such, it is quite shocking that this rule was not included in the Protestants' arguments; especially, when it directly applies to the question raised by the Protestants. We remind the Protestants' representative that parties have a duty to disclose pertinent legal authorities. District of Columbia Rules of Professional Conduct, § 3.3(a)(3) (2007) (A lawyer shall not "[f]ail to disclose to the tribunal legal authority in the controlling jurisdiction not disclosed by opposing counsel and known to the lawyer to be dispositive of a question at issue."); Id. at Commentary, [3] ("A lawyer is not required to make a disinterested exposition of the law, but must recognize the existence of pertinent legal authorities [A]n advocate has a duty to disclose directly adverse authority in the controlling jurisdiction that has not been disclosed by the opposing party and that is dispositive of a question at issue."). We urge the Protestants to research their legal arguments more thoroughly in the future in order to avoid missing pertinent legal authorities, as was the case here.

³ In contrast, we note that the failure to file a Motion or other papers with the Board is often fatal to a party's claims.

Protestants. See generally *Transcript (Tr.)*, February 23, 2011; *Tr.*, January 18, 2011. Instead, on the record, Mr. Padou stated: “We did meet on the day that mediation was scheduled and we did not come to any resolution.” *Tr.*, February 23, 2011, at 3. Consequently, the Protestants are not entitled to raise such an issue at this time because they did not raise the issue before the Board entered its final decision nor have they submitted an affidavit in accordance with § 1719.4 explaining their failure.

Moreover, the issue of service is irrelevant because both parties in this matter have satisfied the minimal mediation requirements outlined by the ABC laws. See generally 23 DCMR § 1608, *et seq.* (2008). As Mr. Padou’s statement makes clear, both parties appeared at the mediation and no resolution to the dispute occurred. *Tr.*, 2/23/11, at 3. The Board cannot force parties to negotiate with each other or make concessions. As such, there is nothing more the Board can do related to this issue, and certainly no prejudice to the Protestants has occurred.

Therefore, we find that the Protestants arguments regarding the alleged failure of the Applicant to serve its Motion to Set Aside Mediation on the Applicant are untimely, meritless, and moot.

B. PIF

Similarly, the Protestants’ arguments related to the Applicant failing to serve the PIF on the Protestants are untimely. Further, even if the Board were to reach the issue, the Board rejects the Protestants’ arguments that it was required to dismiss the Applicant for failing to serve its PIF because dismissal is not guaranteed under § 1703.8, the Applicant was not at fault for failing to serve its PIF on the Protestants, and allowing the protest to continue was in the best interests of justice.

We note that this is the first time the Protestants have made this argument to the Board. During the hearing, Mr. Padou questioned the Applicant about serving the PIF and told the Board that the failure to serve the PIF was evidence that the Applicant would adversely impact peace, order, and quiet. *Tr.* 4/6/11 at 20-24. However, the Protestants did not ask that the Application be dismissed during the hearing. As such, pursuant to § 1719.4, the Protestants have waived their right to raise this issue and may not subsequently raise the matter for the first time in a Motion for Reconsideration; especially, when they have not submitted an affidavit in accordance with § 1719.4 explaining their failure.

Nevertheless, even if the Protestants had not slept on their rights, if the Board were to consider the issue, we would not dismiss the Applicant for failing to serve its PIF on the Protestants.

First, we note that the Applicant filed its PIF with the Board and only failed to serve its PIF on the Protestants. According to the regulations, the Board has discretion when dealing with a party that fails to serve their opponents. § 1703.8. At the hearing, the Protestants could have asked for more time to prepare or another remedy; but instead, Mr. Padou stated that the failure was “not a big deal.” *Tr.* 4/6/11 at 24. As a result, based on the representations of Mr. Padou, there was no reason for the Board to take further action and properly allowed the hearing to go forward, regardless of any procedural errors on the part of the Applicant.

Second, even if the failure to serve the PIF on another party was grounds for dismissal and the Protestants did not indicate that they would not be prejudiced by continuing the hearing, the Board would still make the same finding. Pursuant to § 1600.2, “The Board may, for good cause shown and in the interest of justice or to prevent hardship, waive any provision of this chapter which is not required by the Act in any proceeding after duly advising the parties of its intention to do so.” 23 DCMR § 1600.2; see also AKA, Inc., t/a Club AKA 555, Board Order No. 2010-555, 1-2 (D.C.A.B.C.B. Nov. 5, 2010)⁴ (The Board reversed its prior dismissal of the Applicant for failing to submit its PIF because the Applicant demonstrated good cause by showing that the PIF was mailed to the wrong address). Here, the Board credits Mr. Kadlick’s representations that he did not serve the PIF on the Protestants because he was advised by an ABRA employee after he submitted his PIF to the Board that he would not have to take any further action. *Tr.* 4/6/11 at 22. As such, if the Board were forced to reach the issue, we would waive the requirement because the Applicant has demonstrated good cause and the interests of justice demands that the Board excuse the Applicant’s failure; especially, when there is no showing of prejudice on the part of the Protestants.

Therefore, we find the Protestants arguments regarding the failure of the Applicant to serve the PIF on the Protestants to be untimely, without merit, and contrary to the interests of justice.

C. Conclusion

On a final note, the Protestants’ claims that the Board’s application of the PIF rule is biased is not based on fact or grounded in reality. As stated above, the Board dismisses parties that fail to file their PIFs with the Board, not those that merely fail to serve them. Further, the Board’s records clearly show that the Board frequently dismisses applicants for failing to submit their PIFs. See e.g., Brightwood Bistro, LLC, t/a Brightwood Bistro, Board Order No. 2010-360 (D.C.A.B.C.B. Jun. 23 2010); JVLHC, LLC, t/a Jimmy Valentine’s Lonely Hearts Club, Board Order No. 2011-196 (D.C.A.B.C.B. Apr. 27, 2011). For these reasons, we find that the Protestants’ claims of bias are careless accusations that are completely without merit.

Appropriateness

We also reject the Protestants’ appropriateness arguments because they are simply incorrect that a school or a church as defined by the ABC laws is located within the requisite distance. As a preliminary matter, neither of the restrictions on the issuance or transfer of licenses contained in §§ 25-314(b)(1) and 25-374 apply in this matter, because those statutes, by their text, do not apply to the renewal of a license, which is the case here. Compare D.C. Code § 25-314(b)(1) (2001) (“No license shall be issued . . .”) with § 25-374(e) (Supp. 2011) (“. . . a license may be transferred to . . .”). Yet, even if these statutes were applicable to the renewal of a license, there is no school or church, as defined by the ABC laws, within the requisite distance, that prohibit the Board from granting the Application.

⁴ This case involves a separate Application for a Substantial Change filed by the Applicant, which is not related to this matter.

A. School

We affirm our previous decision, which found that there is no school as defined by the ABC laws near the establishment.

Under § 25-314, “No license shall be issued for any establishment within 400 feet of a public, private, or parochial *primary, elementary, or high school*; college or university; or recreation area operated by the District of Columbia Department of Parks and Recreation” § 25-314(b)(1) (emphasis added).

The Protestants, in their argument, wish to pretend that the Council of the District of Columbia did not insert the words “primary, elementary, or high school” into the statute.

In contrast, as a legislatively created body, the Board does not share this luxury and must give meaning to every word in the statute. U.S. v. Shelton, 721 A.2d 603, 612 (D.C. 1998). Although some primary schools, elementary schools, and high schools may contain vocational programs not all vocational schools are primary schools, elementary schools, or high schools. As a result, in order to give meaning to the Council’s words, the Board is compelled to exclude those schools that fall outside of the category of “primary, elementary, or high school.” Here, there was no evidence that the vocational school cited by the Protestants is a primary school, an elementary school, or a high school. As such, § 25-314(b)(1) does not apply in this case.

Indeed, such a strict interpretation of § 25-314 is called for because the District is not allowed to prohibit adult entertainment. City of Renton v. Playtime Theatres, Inc., 475 U.S. 41, 46 (1986). Consequently, as a matter of caution, the Board should avoid interpretations that expand restrictions like § 25-314(b)(1) to the point that they create *de facto* prohibitions in violation of the First Amendment.

B. Church

We also affirm our previous decision that there is no church as defined by the ABC laws near the Applicant’s establishment.

The code states that strip clubs that were previously located within 2000 feet of the Ballpark or in a CM or M zone shall not be located within 600 feet of a church. D.C. Code §§ 25-374(b)(1), 25-374(e) (Supp. 2011).

The Mount Olivet Cemetery, which is close to the establishment, does not constitute a church as contemplated by § 25-374(e). Although the cemetery contains a chapel, there is no evidence that the chapel is used regularly, has a pastor, has congregants, is affiliated with any denomination, or is even used except when there is inclement weather. As such, it can hardly be called a church.

We further add that under the Protestants’ definition, any building used occasionally for religious purposes would be considered a church. This is unacceptable. As we stated above, broad and unrestricted interpretations of restrictions on speech create severe risks of violating the First Amendment. City of Renton, 475 U.S. at 46.

C. Conclusion

As we have stated, none of the laws cited by the Protestants apply to the renewal of a license. Further, even if they did, neither the vocational school nor the chapel would be considered a school or church respectively under the ABC laws. For these reasons, the Board affirms its decision regarding the appropriateness of renewing the license.

Security Plan

The Protestants' argument that the security plan is inadequate because it is a draft or that the plan does not prove appropriateness is without merit. The Protestants fail to recognize that Applicant's draft is considered to be a binding security plan by the Board and that security plans are not heavily relied upon by the Board to determine appropriateness.

The law requires that all Applicants for a nightclub license "submit a written security plan." D.C. Code § 25-403 (2001). Nightclubs are required to comply with their security plans once they begin operations. D.C. Code § 25-113(d) (Supp. 2011). However, nothing in the ABC law prevents licensees from unilaterally amending their security plans at any time.

Here, the Applicant submitted a security plan with its Application. See ABRA Protest File No. 10-PRO-00182, *Security Plan*. Irrespective of whether it was labeled a draft by the Applicant, by granting the license, the Board has bound the Applicant to follow the security plan it filed with the Board pursuant to § 25-113(d) until the Applicant amends it. Indeed, the Applicant stated to the Protestants on the record that the submitted security plan was the establishment's complete security plan. *Tr.*, 4/6/11 at 94. As such, the Applicant has satisfied § 25-403.

Based on the ephemeral nature of security plans, the Board looks to other evidence that an applicant is capable of running a safe and orderly establishment. Specifically, based on the testimony of Mr. Akkus, the establishment's General Manager, we found that the Applicant had not put enough thought into how it would provide for the safety of its customers and the community. However, subject to the Board's interpretation of the facts, we did not believe this failure was fatal to the Application. See D.C. Code § 25-313(b) (2001). Instead, we imposed conditions to provide for staff training, a camera security system, and the possibility of forcing the Applicant to pay for an MPD Reimbursable Detail in the future. See D.C. Code § 25-104(e) (2001). As such, once these conditions were placed on the Applicant's license, we no longer were of the view that the Applicant's operations would threaten the peace, order, and quiet of the community.

As such, arguments that the Applicant has failed to file a security plan or that the Applicant did not meet its burden are without merit.

Real Property Values

We do agree with the Protestants that the Board's prior Order did not address the effect of the establishment on the real property values of the neighborhood. As our Findings of Fact indicate, there is no evidence that the establishment will have a negative

impact on the neighborhood's real property values. We noted that the license is located in a commercial zone. AKA, Inc., t/a Club AKA 555, Board Order No. 2011-291, para. 2 (D.C.A.B.C.B. Jun. 22, 2011). We also found that the establishment is located near commercial and industrial establishments, including a number of automotive shops. Id. at para. 5. Testimony by Mr. Kadlick indicated that the establishment will be renovating the property. Id. at para. 16. We also note that the Protestants have failed to submit any compelling or convincing evidence that the Applicant's establishment will have an adverse impact on the neighborhood's real property values. See Id. at para. 23, para. 24. As such, given the commercial and industrial nature of the neighborhood and the Applicant's planned renovations, we find that the Applicant has proven that granting the Application will not have an adverse impact on the neighborhood's real property values.

As such, the Board will amend its prior Order in order to address the effect of the establishment on the neighborhood's real property values.

Peace, Order, and Quiet

Finally, Mr. Padou writes the Motion for Reconsideration that:

the Board failed to make a specific finding that the renewal of the license will not have an adverse impact on the pace and order of the neighborhood. The closest the Board comes is a conclusory statement that the establishment is "appropriate." *Order at* ¶33.

Protestants' Motion fore Reconsideration, at 4.

This argument is both fallacious and disingenuous. The Board specifically justified its conclusion regarding peace, order, and quiet in paragraphs 28, 30, and 32 of its Conclusions of Law. Specifically, we noted that ABRA's investigators never observed any trash, litter, or noise near the establishment during the agency's monitoring visits and that Mr. Kadlick has over 20 years of experience in the nightlife business. AKA, Inc., t/a Club AKA 555, Board Order No. 2011-291 at para. 28. We further noted that the Applicant included soundproofing in its construction plan. Id. at para. 30. Finally, because the Board was not satisfied with the Applicant's security measures, we imposed additional conditions that remove any adverse impacts on the community's peace, order, and quiet. Id. at 32. As a result, contrary to the Protestants mistaken assertions, the Board clearly and adequately addressed the establishment's effect on peace, order, and quiet, in its Order.

Conclusion

For the reasons expressed in this opinion, we deny in part, and grant in part, the Protestants' Motion for Reconsideration. We, therefore, affirm our renewal of the Applicant's license.

ORDER

Accordingly, it is this 21st day of September 2011, **ORDERED** that the Motion for Reconsideration filed by the Group of Five or More Individuals is **DENIED IN PART** and **GRANTED IN PART**.

1. Board Order No. 2011-291 is **AMENDED** as follows:
 - a. Paragraph 33 shall be relabeled Paragraph 34.
 - b. The sentence “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,” found in Paragraph 26, shall be replaced with the following:
 - i. In making its determination, the Board shall consider all relevant evidence, including the effect of the establishment on peace, order, and quiet, noise, real property values, and parking and pedestrian safety.
 - c. A new Paragraph 33 shall be inserted and shall read as follows:
 - i. The Board finds that the renewal of the license will not have an adverse impact on the neighborhood’s real property values. The facts demonstrate that the establishment is located in a commercial zone and surrounded by many commercial and industrial establishments, including a number of automotive shops. Testimony by Mr. Kadlick indicated that the Applicant plans to renovate the property and thus, improve upon it. We are convinced that the Applicant’s renovations will have a positive impact on the neighborhood’s property values. We note that none of the evidence submitted by the Protestants contradicts these facts or convinces the Board that the establishment will have a negative impact on the neighborhoods real property values. As such, we find that the Applicant has demonstrated that the establishment will not have an adverse impact on the neighborhood’s real property values.
 - d. Paragraph 34 shall be struck and replaced with the following:
 - i. Accordingly, the Board finds that the Licensee has demonstrated that the renewal of the Retailer’s Class CN License is appropriate for the location and does not adversely impact the peace, order, and quiet, residential parking, real property value, or pedestrian or vehicular safety of the neighborhood, and as such, will grant the renewal, conditioned on the Applicant’s compliance with the

requirements outlined below. We further find, based on the Application, that the Applicant has satisfied D.C. Code § 25-301. As such, the Application is approved.

2. All other terms and conditions of Order No. 2011-291 shall remain in full force and effect.

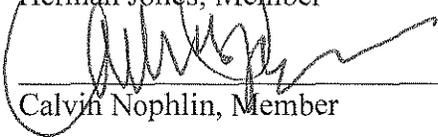
Copies of this Order shall be sent to the Applicant and the Protestants.

District of Columbia
Alcoholic Beverage Control Board


Nick Alberti, Interim Chairperson


Donald Brooks, Member


Herman Jones, Member


Calvin Nophlin, Member

Mike Silverstein, 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 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).