

1 GOVERNMENT OF THE DISTRICT OF COLUMBIA
2 ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
3 ALCOHOLIC BEVERAGE CONTROL BOARD

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5 IN THE MATTER OF: :
6 S & B Market, LLC :
7 t/a MLK Mini Market : Case # 15-PR0-00117
8 3333 Martin Luther King, JR Ave SE :
9 License #95905 :
10 Retailer B ANC 8C. :
11 Substantial Change :
12 Wednesday, March 9, 2016 :

13 - - - - - X

14 Wednesday, March 9, 2016

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16 Whereupon, the above referenced matter
17 came on for hearing at the Alcoholic Beverage
18 Control Board, Reeves Center, 2000 14th Street,
19 N.W., Suite 400 S, Washington, D.C. 20009.

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1 CHAIRPERSON: DONOVAN ANDERSON, Presiding

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3 MEMBERS OF THE BOARD

4 NICK ALBERTI, BOARD MEMBER

5 RUTHANNE MILLER, BOARD MEMBER

6 JAMES SHORT, BOARD MEMBER

7 MIKE SILVERSTEIN, BOARD MEMBER

8

9 OTHER PERSONS PRESENT

10 MARY CUTHBERG, On behalf of ANC 8co3

11 JEFFREY MCCOY, COMMISSIONER WARD 8CO1

12 MEKDES ESHETE

13 BIRUKTAY KELIFA

14 MAJA RASHEED

15 MS. TEKLE, INTERPRETER

16 MS. DESINA, INTERPRETER

17

1 P R O C E E D I N G S

2 CHAIRPERSON ANDERSON: The next case is #
3 15-PR0-00117, MLK Mini Market 3333,
4 License#95905. Will the parties please approach.
5 On the sign-in sheet that I would like everyone
6 to sign in and please identify yourself for the
7 record, please.

8 MS. ESHETE: Hi, my name is Mekdes
9 Eshete, and I'm with MLK Mini Market.

10 MS. BIRUKTAY: Biruktay Kelifa.

11 CHAIRPERSON ANDERSON: And you are.

12 MR. CCOY: My names is Jeffrey McCoy and
13 I'm the commissioner of Ward 8C01.

14 CHAIRPERSON ANDERSON: Good afternoon.

15 MS. CUTHBERG: Mary Cuthberg, ANC8C03 and
16 the chair.

17 CHAIRPERSON ANDERSON: Good afternoon.

18 MS. RASHEED: Maja Rasheed, Director of
19 Kumba Learning Center.

20 CHAIRPERSON ANDERSON: Could I have the
21 two translators again, please? Translate this.
22 Do you swear and affirm that you will translate

1 the proceedings from Anharic to English and from
2 English to Anharic -- that you will faithfully
3 translate to the best of your abilities?

4 MS. TEKLE: I do.

5 MS. DESINA: I do.

6 CHAIRPERSON ANDERSON: All right, thank
7 you. We are here because we started this case I
8 think about two or three weeks ago and there was
9 some confusion over whether or not there were
10 some impediments -- whether or not the board
11 could consider granting this license based on the
12 protest that was followed. So, what I think the
13 board had requested the investigator do, for the
14 investigator to go back out and to do some
15 further investigation. So, the board will recall
16 our witness, Mr. Townsend. Mr. Townsend, can you
17 please approach? And I'm not going to swear you
18 in again because you were -- well, you know what?
19 I'll swear you in again. I was hoping to --
20 [inaudible 30:12] but do you swear and affirm to
21 tell the truth and nothing but the truth?

22 MR. TOWNSEND: Yes.

1 CHAIRPERSON ANDERSON: All right thank
2 you. Have a seat. You're aware of the protest
3 and there was some confusion raised over the last
4 -- since our last hearing -- regarding the
5 existence or nonexistence of a school -- a school
6 or schools within 50 feet of the establishment.
7 Can you tell us what is it that you were able to
8 find out?

9 MR. TOWNSEND: I was able to confirm that
10 through the office of the State Superintendent of
11 Education's office, OSSE, that the Kumba Learning
12 Center is actually -- the Kumba Learning Center
13 and the National Childrens' Center are both
14 certified through OSSE as Educational Facilities.
15 And so, specifically the Kumba Learning Center --
16 I'm sorry, specifically NCC -- I visited the
17 facility on February 26, 2016, and met with the
18 director of the facility. Her name is Hilda
19 Compton. She stated that the facility is an
20 early learning center, just recently, as of
21 January 2016, the campus has consolidated and
22 moved -- moved the older students, as well as

1 adults, to the Northwest campus, so this
2 southeast facility only services children from
3 six weeks old to five years old. However, Ms.
4 Compton stated that she's confident that the
5 southeast campus will, in fact, serve children
6 and adults in the future sometime, but as for now
7 the campus has been consolidated and the majority
8 of -- actually, all of the services for anyone
9 over the age of five years old has been
10 transferred to the Northwest campus.

11 Speaking to Dr. Edgar Stewart, who is a
12 supervisory monitor specialist with OSSE, he
13 confirmed that NCC is a non-public special
14 education school and they have a full certificate
15 of approval from OSSE to serve district students
16 with disabilities.

17 Excuse me one second. In an e-mail that
18 I received on Tuesday, March 8th, yesterday, from
19 a program analyst Stephanie Thomas with the
20 office of the State Superintendent of Education's
21 office. She confirmed that the Kumba Learning
22 Center was accredited through the National

1 Association for the Education of Young Children
2 which is recognized by OSSE. Kumba received
3 their accreditation in 2006 and serves grade PK 3
4 through 8th grade. Their instructional program
5 is deemed approved by OSSE subject to their
6 continuing status as an agency accredited by the
7 NAEYC, which is short for the National
8 Association for the Education of Young Children.

9 So, with that being said, I went out and
10 measured, physically measured, the distance of
11 MLK Mini Market to Kumba Learning Center as well
12 as NCC, the distance from Kumba Learning Center
13 to MLK's Mini Market's front door is 136 feet.
14 From MLK Mini Market to NCC's, the sidewalk
15 directly in front of the NCC, which is the
16 National Childrens' Center, I measured at 187
17 feet. So, with that information I would conclude
18 that the two facilities in question are, in fact
19 within 400 feet of MLK Mini Market. In addition
20 to that, both of these facilities, Kumba Learning
21 Center, and the NCC, are located in the R4 zoning
22 district according to the D.C. Office of Zoning.

1 CHAIRPERSON ANDERSON: And, so what does
2 all of this mean, then?

3 MR. TOWNSEND: That the establishment,
4 MLK Mini Market is located -- they have two
5 schools located within 400 feet of the
6 establishment.

7 CHAIRPERSON ANDERSON: And I'm not sure -
8 - why is that relevant? That's what I'm asking
9 you, I'm not sure if I'm asking the right person,
10 so from your report why is that relevant?

11 MR. TOWNSEND: According to D.C. Official
12 Code 25-314 B1 it states that A stores cannot be
13 located within 400 feet of a school.

14 CHAIRPERSON ANDERSON: The reason I'm
15 asking the investigator the issues is that the
16 investigator explains to me that it's within 400
17 feet, it's within 400 feet, and I'm just asking
18 the investigator from his report why is it
19 relevant? Why is it that -- and that is not to
20 put you on -- I'm also new, so you're throwing
21 things out to me so that's why I'm saying why is
22 it that it's relevant or necessary for your

1 report for you to go and measure why is that so?
2 So that's the reason I'm asking to clarify the
3 record why you're telling us that it's -- how far
4 it is from the establishment -- how far the
5 schools are from the establishment.

6 MR. TOWNSEND: To determine if it's
7 within 400 feet of the establishment.

8 CHAIRPERSON ANDERSON: All right, okay,
9 thank you. All right. Do we have any questions
10 from -- yes, Ms. Miller?

11 MS. MILLER: Thank you very much for
12 doing that additional investigation. I just want
13 to be clear of how you interpreted the fact
14 there's schools under the statute which you cited
15 which 25-314(b)1 which says "no license shall be
16 issued for any establishment within 400 feet of a
17 public, private or parochial, primary, elementary
18 or high school, college or university." And then
19 they go into other things. So, could you kind of
20 review for me when you were reading -- when you
21 were discussing Kumba and the other learning
22 center, what they fit into in this? Are they a

1 public, private, are they secondary, elementary?
2 What are they?

3 MR. TOWNSEND: According to Kumba
4 Learning Center's license that was issued by
5 OSSE, they are licensed for a child development
6 facility and it specifically states that they're
7 restricted to 20 children six weeks through 12
8 years old, only six may be under two, 20 children
9 four years through 12, 24 -- 20 children ages
10 three through 18 years old. And for its --

11 MS. MILLER: Are they public or are they
12 private? Do you know? I mean both are covered,
13 I'm just curious.

14 MR. TOWNSEND: I'm not sure if they're
15 public or private.

16 MS. MILLER: That's okay. They're both
17 covered. What was the other one?

18 MR. TOWNSEND: ANC C in an e-mail from
19 Dr. Stewart at OSSE, he confirmed that NCC is a
20 nonpublic special education school.

21 MS. MILLER: And what were the ages or
22 grades at that one?

1 MR. TOWNSEND: Six weeks -- as of January
2 2016, six weeks through five years old.

3 MS. MILLER: Okay. Thank you.

4 CHAIRPERSON ANDERSON: Do we have any
5 other questions by other board members? Mr.
6 Alberti.

7 MR. ALBERTI: I'm just -- because I don't
8 know if I saw it in your report but the bottom
9 line you are getting is that OSSE, the Office of
10 Superintendent of whatever it is -- I forget what
11 the acronym stands for

12 MR. SILVERSTEIN: Office of State
13 Superintendent of Education.

14 MR. ALBERTI: The Office of State
15 Superintendent of Education is the body that
16 accredits educational facilities and it has said
17 that these are both accredited as educational
18 facilities. Is that correct?

19 MR. SILVERSTEIN: Thank you.

20 CHAIRPERSON ANDERSON: Any other
21 questions by any of the -- ?

22 MR. SILVERSTEIN: Mr. Chairman?

1 CHAIRPERSON ANDERSON: Yes, Mr.
2 Silverstein?

3 MR. SILVERSTEIN: Given that there are two
4 schools within 400 feet of the --

5 CHAIRPERSON ANDERSON: I know, but I'm --

6 MR. SILVERSTEIN: I'm trying to move
7 forward, this poring over documents.

8 CHAIRPERSON ANDERSON: I'm still -- we're
9 still asking questions, so, I mean, folks can
10 still ask questions, so I'm going to have folks
11 ask questions and then we'll move -- we're going
12 to make a motion. So, I'm still asking are there
13 any other questions of the investigator from the
14 board?

15 MR. SILVERSTEIN: Absolutely not.

16 CHAIRPERSON ANDERSON: All right. Let's
17 see. The applicant, do you have any questions
18 that you have of the investigator based on the
19 report that he just --

20 MS. ESHETE: No.

21 CHAIRPERSON ANDERSON: No you don't have
22 any questions. Does any of the protestant have

1 any questions of the investigator?

2 MS. CUTHBERG: No.

3 CHAIRPERSON ANDERSON: Yes, what is it,
4 sir? You're asking him a question? Yes. Based
5 on his report. Based on the presentation I want
6 to make a motion to deny the application and the
7 reason why I'm presenting this motion to deny the
8 application under Section 23-314 (b)1 states no
9 license shall be established for any
10 establishment within 400 feet of a public,
11 private or parochial, primary, elementary, or
12 high school, college or university -- D.C.
13 Official Code 25-314 B1 clearly based on the
14 presentation that was made by the board Kumba
15 Learning Center is located 136 feet from the
16 establishment and NCC is also located at 187 feet
17 from the establishment, and therefore, by
18 regulations, the board is prohibited to grant a
19 class A license for this establishment. Is there
20 a second?

21 MR. SHORT: Second.

22 CHAIRPERSON ANDERSON: Mr. Short has

1 seconded the motion. I'm just going to take a
2 roll call vote on this matter. Ms. Miller?

3 MS. MILLER: I approve.

4 CHAIRPERSON ANDERSON: Mr. Alberti?

5 MR. ALBERTI: I agree.

6 CHAIRPERSON ANDERSON: Mr. Short?

7 MR. SHORT: I agree.

8 CHAIRPERSON ANDERSON: Mr. Silverstein?

9 MR. SILVERSTEIN: I agree.

10 MR. ANDERSON: I agree. The motion has
11 passed 5-zero-zero. We are denying the motion.
12 You do have the right -- you do have the right to
13 appeal this matter. The board will issue a board
14 order on this matter and you will have -- once
15 you receive -- once you receive the board order
16 you have a right to appeal it.

17 MR. SILVERSTEIN: Mr. Chairman. Thank
18 you. I'd like to thank you all. There's always
19 a question about schools, whether they're.

20 CHAIRPERSON ANDERSON: Hold on, hold on,
21 I'm sorry, let me finish this first.

22 MR. SILVERSTEIN: I'm sorry.

1 CHAIRPERSON ANDERSON: The board will
2 issue a written order in this matter and once the
3 board order is written you have 10 days to appeal
4 this matter. Okay? So, once you receive the
5 order, you can review it and then you have 10
6 days to appeal this matter and then you can have
7 another hearing the appeal, okay? Do you
8 understand? Yes, Mr. Silverstein, go ahead.

9 MR. SILVERSTEIN: Thank you, Mr. Chairman.
10 This is dealing with matters whether it's schools
11 are too close for the public good, and that's
12 what the law is about, and there is some question
13 about the National Childrens' Center because they
14 had closed part of their facility. But there can
15 be no question about the Kumba Learning Center
16 and that's because of what we're seeing in rows
17 two through six in our audience. We know for
18 sure that you folks are here. We know for sure
19 that you're taking part in the government, and
20 thank you for your attendance, we thank you for
21 your splendid behavior and we wish you well.

22 CHAIRPERSON ANDERSON: Before, just -- I

1 just want to clarify what I just stated. The
2 board is denying the application because it
3 conflicts with the law. The law says you cannot
4 have a class A establishment within 400 feet of a
5 school, and the evidence has shown that the Kumba
6 Learning Center and NCC, which were certified to
7 the board as schools by OSSE, which OSSE is the
8 department within the District of Columbia that
9 certifies schools, and so they have certified to
10 us that these two businesses are bonafide schools
11 within the District of Columbia and so,
12 therefore, that is why the board is denying the
13 applicant. And as I stated before, once we issue
14 a written order, then you'll have ten days -- you
15 have the right to appeal this matter but you have
16 to do it within 10 days. Okay? And I want to
17 thank everyone for their participation,
18 especially the students and I hope that this is a
19 civic lesson for you and I hope you write a
20 report on it, but I just want to thank you for
21 your participation and it's not that board is
22 against issuing licenses, but we have to comply

1 with the law to state what it is. Okay? All
2 right folks, thank you.

3 (Whereupon the above-entitled matter was
4 concluded.)

5