

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

In the Matter of:)	
)	
S&B Market, LLC)	Case No.: 15-PRO-00117
t/a MLK Mini Market)	License No: 095905
)	Order No: 2016-114
Application to Convert License into)	
Retailer's Class A License)	
)	
at premises)	
3333 Martin Luther King, Jr.)	
Washington, D.C. 20032)	

BEFORE: Donovan Anderson, Chairperson
Nick Alberti, Member
Mike Silverstein, Member
Ruthanne Miller, Member
James Short, Member

ALSO PRESENT: S&B Market, LLC t/a MLK Mini Market, Applicant

Mary Cuthbert, Advisory Neighborhood Commission (ANC) 8C,
Protestant

Martha Jenkins, General Counsel
Alcoholic Beverage Regulation Administration

ORDER DENYING APPLICATION

The Alcoholic Beverage Control Board (Board) hereby denies the Application to Convert its License into Retailer's Class A License filed by S&B Market, LLC t/a MLK Mini Market, (Applicant) because the Applicant's proposed location is within 400 feet of a school in violation of District of Columbia (D.C.) Official Code § 25-314(b)(1).

As the applicant, the burden is on the Applicant to demonstrate through substantial evidence that its proposed location qualifies for licensure under § 25-314(b)(1). *Haight v. D.C. Alcoholic Beverage Control Bd.*, 439 A.2d 487, 493 (D.C. 1981); D.C. Official Code § 2-509(b), 25-314(b)(1); 23 DCMR § 1718.3 (West Supp. 2016).

Under § 25-314(b)(1), “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 . . .” D.C. Official Code § 25-314(b)(1). When measuring distances, the Board measures “linearly” and looks to “. . . the shortest distance between the property lines of the places.” D.C. Official Code § 25-312(c); *see also* 23 DCMR § 101.2 (West Supp. 2016). The dictionary defines an “elementary school” as “[a] school usu[ally] for the first six to eight grades.” WEBSTER’S II NEW COLLEGE DICTIONARY, 364 (2001) (“elementary school”). A high school is defined as “[a] secondary school of grades 9 or 10 through 12 or grades 7 through 12.” *Id.* at 523 (“high school”).

On February 26, 2016, Alcoholic Beverage Regulation Administration (ABRA) Investigator Shawn Townsend determined that Kuumba Learning Center (KLC), a school with sixty students between the ages of six months to 18 years of age, is located within 136 feet of the proposed location. *Case Report No. 15-PRO-00117(a)*, at 1-2. Furthermore, the investigator further determined that the National Children’s Center (NCC), a private special education school, is located 187 feet from the proposed location. *Id.* at 2. Based on these facts, it is clear that the Application does not comply with § 25-314(b)(1), based on the distance of the establishment from the KLC and the NCC.

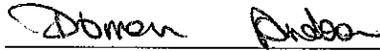
ORDER

Therefore, the Board, on this 9th day of May 2016, hereby **DENIES** the Application to Convert its License into a Retailer’s Class A License at premises 3333 Martin Luther King, Jr., filed by the Applicant.

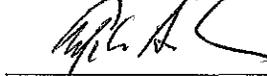
IT IS FURTHER ORDERED that if the Applicant files a request for hearing, the Board will convert this Order into a Proposed Order and will hold a contested fact finding hearing for the purpose of allowing the Applicant to challenge this determination, to address the issues and facts identified in Case Report No. 15-PRO-00117(a), and to allow the parties to submit additional evidence into the record. Otherwise, if the Applicant fails to file a request for a hearing within ten (10) days of receipt of this Order, this Order shall be deemed final.

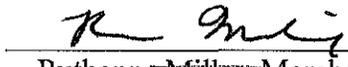
The ABRA shall deliver a copy of this Order to the Applicant and the Protestant.

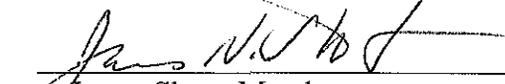
District of Columbia
Alcoholic Beverage Control Board


Donovan Anderson, Chairperson


Nick Alberti, Member


Mike Silverstein, Member


Ruthanne Miller, Member


James Short, Member

If you request a hearing, please note the following: under D.C. Official Code § 2-509(b), you may personally appear at the hearing, and you, as well as the applicant, may be represented by legal counsel. At your scheduled hearing, you have the right to produce witnesses and evidence on your behalf and to cross-examine witnesses. You may also examine evidence produced and have subpoenas issued on your behalf to require the production of witnesses and evidence.

The Board reserves the right to amend this notice in accordance with D.C. Official Code § 2-509 based on new information that is discovered during the hearing process. The Board also reserves the right to schedule additional hearings to address preliminary motions or additional information received by the Board during the hearing process.

All hearings are conducted before the Board in the English language. If a party or witness is deaf, or because of a hearing impediment cannot readily understand or communicate the spoken English language, the party or witness may apply to the Board for the appointment of a qualified interpreter.

Please note that under § 2-509, your failure to appear at the time and place set for the hearing, either in person or through counsel, or both, will not preclude the Board from proceeding in this matter or entering a default judgment.

If no request for a hearing is received, please note the following: pursuant to 23 DCMR § 1719.1, 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, 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 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).