

The Board granted the Application on July 20, 2011. Eun & Peter, Inc., t/a Uncle Lee's Seafood, Board Order No. 2011-310, 8 (D.C.A.B.C.B. Jul. 20, 2011). Subsequently, the Protestants filed a Motion of Reconsideration on August 1, 2011, requesting that the Board reverse its decision to grant the Application. The Protestants assert that (1) the Protestants are entitled to submit additional evidence because the process for submitting evidence was not explained adequately before the Protestants waived the submission of Findings of Fact and Conclusions of Law; (2) Mr. Cornish has a conflict of interest because he was employed by the Applicant; (3) the Board did not take into account the fact that the Applicant does not intend to continue as a deli; (4) the Board should have found the "profanity-laced shouting" of the vendor located in the Applicant's parking lot illegal; (5) the Board should have attributed the illegal pedestrian crossings near the establishment to the Applicant; (6) the Board should reverse its findings regarding overconcentration based on the testimony from the representative of the District Office of Planning; and (7) permitting the establishment to operate will "degrade attempts to increase social control and bonds." The Applicant submitted its reply on August 1, 2011.

We deny the Motion for Reconsideration.

First, the Board finds that the Protestants are not entitled to submit new evidence into the record after the matter has been closed. 23 DCMR § 1717.1 (2008). At the end of the hearing, the Protestants' representative could have asked for the record to be reopened, but chose not to. *Transcript*, April 13, 2011 at 173 ("MS. BROWN: But I think that we have significant factors here, so proceed.").

Second, the Board was fully aware that Mr. Cornish had been employed by the Applicant but decided that this fact did not affect his credibility. The Protestants could have rebutted his testimony that loitering was not an issue, but based on the Protestants' evidence, we could not reach that conclusion. Eun & Peter, Inc., t/a Uncle Lee's Seafood, Board Order No. 2011-310, at para. 21.

Third, the Board's Conclusions of Law do not presume that the Applicant will be operating as a deli in the future. See generally id. at para. 18-31. When the Board stated, "[t]he term "neighborhood-serving convenience retail" includes delicatessens like the Applicant," we recognized that the Applicant is currently operating as a deli, not that it intends to operate as a deli in the future. Id. at para. 5, 12. We note that the Board included the testimony of Mr. Andargeh only because the Small Area Plan for Deanwood is relevant as a description of the neighborhood. The Small Area Plan for Deanwood is not relevant as to whether the Applicant will have an adverse impact on the neighborhood pursuant to D.C. Code § 25-313 and 23 DCMR § 400.1, because licensees are not required to conform to District of Columbia planning documents, which lack the force of law.

Fourth, although the Board will not accept new evidence, we note that even if we did, there is insufficient evidence in the record to determine that the profanity shouted by the vendor located in the Applicant's parking lot is illegal. Other than the profanity shouted by the vendor, which the vendor is free to spout pursuant to the First Amendment, there is no evidence of a specific threat. Furthermore, even if a specific threat was made, Ms. Lawson or the picketers being shouted at were free to report such behavior to the police. *Protestants' Motion for Reconsideration*, 1. Nevertheless, if a crime occurred, we see no evidence of an arrest or a police report in the record. As such, it would simply be

presumptuous for the Board to deny the Application based on the vendor's behavior; especially, when such behavior is protected by the Constitution.

Fifth, the Protestants' arguments regarding traffic and parking were already taken into account by the Board. As we stated in our prior Order, we focus on the "effect of the establishment" on the neighborhood, meaning we look to any negative impacts caused by the Applicant. D.C. Code § 25-313(b)(3) (2001). However, in our prior Order we noted that "although evidence was presented that speeding and jaywalking are issues in the neighborhood, no evidence was presented that these occurrences are caused by the Applicant's operations." Eun & Peter, Inc., t/a Uncle Lee's Seafood, Board Order No. 2011-310, at para. 24. As such, the Board had no basis to find that granting the Application would adversely impact vehicular and pedestrian safety in the neighborhood.

Sixth, the Protestants' arguments regarding the overconcentration of ABC-licensed establishments were already taken into account by the Board. As we mentioned above, the Board included the testimony of Mr. Andargeh only because the Small Area Plan for Deanwood is relevant as a description of the neighborhood. The Small Area Plan for Deanwood is not relevant as to whether the Applicant will have an adverse impact on the neighborhood pursuant to D.C. Code § 25-313 and 23 DCMR § 400.1, because licensees are not required to conform to District of Columbia planning documents. More importantly, the Board's investigator indicated that "[t]here are no other District of Columbia ABC-licensed establishments located within 1,200 feet of the Applicant." Id. at para. 2. In this matter, the Board was not permitted to look beyond the 1,200 feet requirement. 23 DCMR 1607.2 (2008). As such, based on these facts, we could not say that the neighborhood suffers from overconcentration. Id. at para. 6-7.

Seventh, the Protestants' argument that the Application will "degrade attempts to increase social control and bonds" is not relevant to the Board's determination. The Board's statutes are clear that the relevant issues are those contained in D.C. Code § 25-313 and 23 DCMR § 400.1, not social control.

ORDER

Therefore, it is hereby **ORDERED**, on this 17th day of August 2011, that the Motion for Reconsideration filed by the Protestants is **DENIED**. In addition,

- (1) the first paragraph on page 8 of Board Order No. 2011-310 shall be struck because it is merely a typographical error that has no bearing on the Board's decision;
- (2) in order to further clarify Board Order No. 2011-310, the text of paragraph 29 shall be struck and amended as follows:
 - a. The Board further notes that no evidence regarding the establishment's effect on real property values was presented by the Protestants during the hearing. Therefore, we find that the establishment will not have an adverse impact on real property values. See Craig v. District of Columbia Alcoholic Beverage Control Bd., 721 A.2d 584, 590 (D.C. 1998) ("The Board's regulations require findings only on contested issues of fact."); 23 DCMR § 1718.2 (2008).

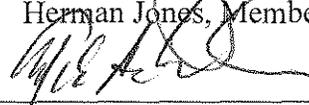
- (3) the Applicant is reminded that if it seeks to operate as a deli or serve prepared food in the future it should ask the Board whether such operations are considered a substantial change pursuant to D.C. Code § 25-762, because the Application did not indicate that other business activities would be occurring on the premises;
- (4) all other terms and conditions of Board Order No. 2011-310 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


Donald Brooks, Interim Chairperson


Herman Jones, 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, 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 (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).