THE DISTRICT OF COLUMBIA
ALCOHOLIC BEVERAGE CONTROL BOARD

In the Matter of:	)	
	)	
Eun & Peter, Inc.	)	Case Number: 11-PRO-00005
t/a Uncle Lee's Seafood	)	License Number: 085918
	)	Order Number: 2011-379
Application for a New	)	
Retailer's Class A License	)	
	)	
at premises	)	
1100 Eastern Avenue, N.E.	)	
Washington, D.C. 20019	)	
	)	

BEFORE: Donald Brooks, Interim Chairperson
Herman Jones, Member
Mike Silverstein, Member

ALSO PRESENT: Eun & Peter, Inc., t/a Uncle Lee's Seafood, Applicant

Kevin Lee, Esq., on behalf of the Applicant

Sylvia A. Brown, on behalf of A Group of Five or More Individuals, Protestant

Randall Marshall and Ronald F. Strett, on behalf of the Capitol View Civic Association, Protestant

Martha Jenkins, General Counsel
Alcoholic Beverage Regulation Administration

ORDER GRANTING APPLICANT'S MOTION FOR RECONSIDERATION

Eun & Peter, Inc., t/a Uncle Lee's Seafood (Applicant), filed an Application for a new Retailer's Class A License (Application) at premises 1100 Eastern Avenue, N.E., Washington, D.C. The Capitol View Civic Association, represented by Randall Marshall and Ronald F. Strett, and A Group of Five or More Individuals, represented by Sylvia Brown, filed protests on January 3, 2011, and January 8, 2011, respectively. The Board notes that the protests of Alice Bush, Vernessa L. Dickens, and The Eastern Plaza Condominium Association were dismissed because they did not meet the standing requirements of D.C Code § 25-601 (2001). Eun & Peter, Inc., t/a Uncle Lee's Seafood, Board Order No. 2011-098, 1-2 (D.C.A.B.C.B. Feb. 2, 2011). The Board also dismissed the protests of Louis Jones, Lillian Lane, Guyle Hall, Diane Mclain, Kevin Lane, Ricky Gordon, Janett Gordon, John Tyree, Jonette Tyree, Dionne Hunte, Lunda Dabury, Patricia Small, William Smal, Nataly Hall, Jervon Hall, Emanuel Gullmon, Joe Nudson, Ivette Tyree, Sheze Hall, Ezekiel Sistrunk, William Sam, Kenneth Elliot, Brenda Williams, and

Lisa Tyree because they lived in wards that were not in reasonable proximity to the establishment. Eun & Peter, Inc., t/a Uncle Lee's Seafood, Board Order No. 2011-098, 1-2 (D.C.A.B.C.B. Feb. 2, 2011). The Alcoholic Beverage Control Board (Board) held the Roll Call Hearing on January 24, 2011, and held a Status Hearing with the parties on March 9, 2011. The Protest Hearing was held on April 13, 2011. 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). Furthermore, we denied the Protestants' Motion for Reconsideration on August 17, 2011. Eun & Peter, Inc., t/a Uncle Lee's Seafood, Board Order No. 2011-373 (D.C.A.B.C.B. Aug. 17, 2011).

In response, the Applicant has filed a Motion for Reconsideration, dated August 18, 2011, arguing that it was presumed that the Applicant sought to continue its deli operations if it was granted a license, because the Notice of Public Hearing indicated that the Applicant sought to operate a deli, in addition to selling alcoholic beverages. The Protestants responded that the Applicant is merely trying to "clean up the record." We agree with the Applicant.

In our prior Order, we stated:

> . . . 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.

Eun & Peter, Inc., t/a Uncle Lee's Seafood, Board Order No. 2011-373 at 2.

We then stated that:

> 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.

Eun & Peter, Inc., t/a Uncle Lee's Seafood, Board Order No. 2011-373 at 3.

We revisit our denial of the Protestants' Motion for Reconsideration because our prior Order did not consider that the Board's public notice described the establishment as one that offered off-premise consumption of alcoholic beverages "and [a] delicatessen." *ABRA Protest File No. 11-PRO-00005, Notice of Public Hearing*. Under the law, the public notice shall provide "a description of the nature of the operation the applicant has proposed or the proposed change in operation." D.C. Code § 25-421(b) (2001). Based on the notice, both the public and the Protestants had notice that the Applicant intends to operate a deli and had the opportunity to present evidence that such operations were harmful to the community. As such, there is no reason to prevent the Applicant from operating as a deli or, further, any reason to require the Applicant to go through the substantial change process in the future if it seeks to continue operating as a deli, because such matters were lawfully considered during the Protest Hearing.

ORDER

Therefore, it is hereby **ORDERED**, on this 14th day of September 2011, that Board Order No. 2011-373 is **AMENDED** as follows:

1. The following language is struck from Board Order No. 2011-373:

    a. 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. 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.

2. The following language shall replace the language indicated above from Board Order No. 2011-373:

    a. Third, although the Applicant did not state in its Application that it intended to operate a delicatessen, we note that Board's public notice stated that the Applicant intended to operate as a delicatessen. *ABRA Protest File No. 11-PRO-00005, Notice of Public Hearing.* As such, the Applicant is entitled to operate as delicatessen because the public had sufficient notice of the Applicant's operational plans and such plans were lawfully considered during the Protest Hearing. See D.C. Code § 25-421(b) (2001). Finally, we note that there is no credible evidence that the Applicant's operations as a deli have had or will have a negative impact on the community.

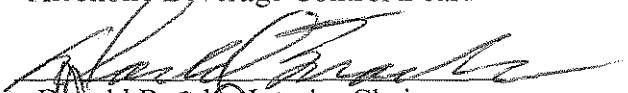
3. The following language shall be struck from the Order contained in Board Order No. 2011-373:

    a. 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.

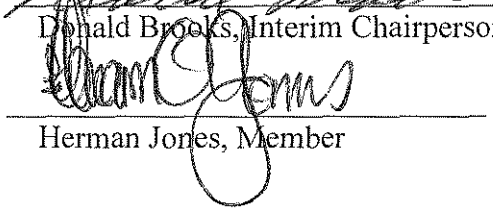
4. All other terms and conditions of Order No. 2011-373 shall remain in full force and effect.

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