

District of Columbia (D.C.) Code § 25-601(3). In re Walgreen Co., t/a Walgreens #11408, Case No. 12-PRO-00013, Board Order No. 2012-090, 1-2 (D.C.A.B.C.B. Mar. 7, 2012).

The Applicant and ANC 3F came before the Alcoholic Beverage Control Board (Board) for a Roll Call Hearing on March 5, 2011, and a Protest Status Hearing on April 11, 2012. The Protest Hearing occurred on August 8, 2012.

Before the Protest Hearing, the Applicant requested that the Board determine whether it qualified for the full service grocery store exception to the moratorium on Retailer's Class B Licenses under §§ 25-331(d) and 25-332(c). In response to this request, the Board held a Fact Finding Hearing on April 18, 2012, where ANC 3F was not present and no witnesses testified under oath. The Board then issued an Advisory Opinion, dated August 1, 2012, which described the legal standard for proving an exception to the moratorium on Retailer's Class B Licenses. We emphasize that the Advisory Opinion did not make a determination as to whether Walgreens qualified as a full-service grocery store under §§ 25-331(d) and 25-332(c)

The parties then appeared at the Protest Hearing on August 8, 2012. While the parties did submit some evidence on the grocery store issue during the Protest Hearing, the primary focus of the hearing was the appropriateness issues articulated under §§ 25-313 and 25-314, including, in particular, peace, order and quiet. However, the Application presents a case of first impression for the Board—whether a store commonly thought of as a drug store or pharmacy may qualify as grocery store under §§ 25-331(d) and 25-332(c)—and thus, we find that this case merits further examination.

For this reason, the Board has decided under § 1717.1 of the D.C. Municipal Regulations to reopen the record for the sole purposes of making a factual finding as to whether the Applicant qualifies for the requested exception to the moratorium on the issuance of Retailer's Class B Licenses. Under § 1717.1, the Board is entitled to reopen the record when “all parties are afforded due notice and an opportunity to rebut the information” presented. 23 DCMR § 1717.1(a)-(b) (West Supp. 2012).

In accordance with § 1717.1, the Board will hold a hearing on December 12, 2012 at 1:30 P.M. to determine whether the Applicant qualifies for licensure under §§ 25-331(d) and 25-332(c). The Applicant's qualification for the exception shall be the sole issue addressed at the hearing, as the matter of the Applicant's appropriateness was properly addressed at the Protest Hearing on August 8, 2012.

We further require the Applicant to present its case on why it qualifies for licensure under §§ 25-331(d) and 25-332(c) at the hearing on December 13, 2012. In determining whether the Applicant qualifies for licensure under §§ 25-331(d) and 25-332(c), the Board will only consider the evidence submitted during this hearing. The Board will then give ANC 3F an opportunity to cross-examine the Applicant's witnesses, present its interpretation of the law, and present any other evidence and testimony it deems appropriate related to the Applicant's qualifications for licensure under §§ 25-331(d) and 25-332(c).

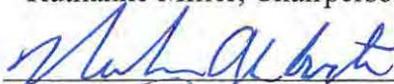
ORDER

Therefore, the Board, on this 20th day of November 2012, hereby **ORDERS** that the record in Case Number 12-PRO-00013 is reopened under 23 DCMR § 1717. The parties shall appear before the Board on December 13, 2012, at 1:30 P.M. for a hearing in accordance with this Order.

District of Columbia
Alcoholic Beverage Control Board



Ruthanne Miller, Chairperson

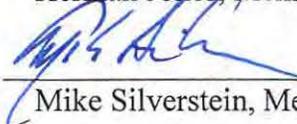


Nick Alberti, Member



Donald Brooks, Member

Herman Jones, Member



Mike Silverstein, Member

Under 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, under 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 under 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).