

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

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In the Matter of:	)		
	)		
Aki & Muller Corporation	)	Case No.:	14-PRO-00075
t/a Wheeler Market	)	License No:	088835
	)	Order No:	2015-358
Application to Renew a	)		
Retailer's Class B License	)		
	)		
at premises	)		
4133 Wheeler Road, S.E.	)		
Washington, D.C. 20032	)		

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**BEFORE:** Ruthanne Miller, Chairperson  
Nick Alberti, Member  
Donald Brooks, Member  
Herman Jones, Member  
Mike Silverstein, Member  
Hector Rodriguez, Member  
James Short, Member

**ALSO PRESENT:** Aki & Muller Corporation, t/a Wheeler Market, Applicant  
  
Bernard Dietz, Counsel, on behalf of the Applicant  
  
Anthony Muhammad, Chairperson, Advisory Neighborhood Commission  
(ANC) 8E, Protestants  
  
Martha Jenkins, General Counsel  
Alcoholic Beverage Regulation Administration

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**FINDINGS OF FACT, CONCLUSIONS OF LAW,  
AND ORDER**

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**INTRODUCTION**

The Alcoholic Beverage Control Board (Board) hereby approves the Application to Renew a Retailer's Class B License filed by Aki & Muller Corporation, t/a Wheeler Market, (hereinafter "Applicant" or "Wheeler Market").

## *Procedural Background*

The Notice of Public Hearing advertising Wheeler Market's Application was posted on September 12, 2014, and informed the public that objections to the Application could be filed on or before October 27, 2014. *ABRA Protest File No. 14-PRO-00075*, Notice of Public Hearing [*Notice of Public Hearing*]. The Alcoholic Beverage Regulation Administration (ABRA) received protest letters from Advisory Neighborhood Commission (ANC) 8E. *ABRA Protest File No. 14-PRO-00075*, Roll Call Hearing Results.

The parties came before the Board's Agent for a Roll Call Hearing on November 11, 2014, where all of the above-mentioned objectors were granted standing to protest the Application. On March 18, 2015, the parties came before the Board for a Protest Status Hearing. Finally, the Protest Hearing in this matter occurred on May 6, 2015.

The Board recognizes that an ANC's properly adopted written recommendations are entitled to great weight from the Board. *See Foggy Bottom Ass'n v. District of Columbia Alcoholic Beverage Control Bd.*, 445 A.2d 643, 646 (D.C. 1982); D.C. Official Code §§ 1-309.10(d); 25-609 (West Supp. 2015). Accordingly, the Board "must elaborate, with precision, its response to the ANC[']s issues and concerns." *Foggy Bottom Ass'n*, 445 A.2d at 646. The Board notes that it received a properly adopted written recommendation from ANC 8E. The ANC's issues and concerns shall be addressed by the Board in its Conclusions of Law, below.

Based on the issues raised by the Protestants, the Board may only grant the Application if the Board finds that the request will not have an adverse impact on the peace, order, and quiet of the area located within 1,200 feet of the establishment. D.C. Official Code § 25-313(b); 23 DCMR §§ 1607.2; 1607.7(b) (West Supp. 2015).

## **FINDINGS OF FACT**

The Board, having considered the evidence, the testimony of the witnesses, the arguments of the parties, and all documents comprising the Board's official file, makes the following findings:

### **I. Background**

1. Wheeler Market has submitted an Application to Renew a Retailer's Class B License at 4133 Wheeler Road, S.E., Washington, D.C. *Notice of Public Hearing*.
2. ABRA Investigator Dorshae Demby investigated the Application and prepared the Protest Report submitted to the Board. *ABRA Protest File No. 14-PRO-00075, Protest Report* (Apr. 2015) [*Protest Report*].
3. Only one licensed establishment is located within 1,200 feet of the establishment. *Protest Report*, at 3. There are no schools, recreation centers, public libraries, or day care centers located within 400 feet of the establishment. *Id.* The establishment's investigative history contains no violations related to loitering, underage drinking, public drinking, or crimes.

*Id.* at 6. Wheeler Market's proposed hours of operation and hours of sale and service run from 7:00 a.m. to 10:00 p.m., seven days per week. *Id.* at 4.

4. Wheeler Market sits in "a small commercial shopping center." *Transcript (Tr.)*, May 6, 2015 at 15. The establishment is surrounded by residents. *Id.* at 15, 23-24. The store sells alcohol, groceries, and other convenience items. *Id.* at 15.

5. The establishment was monitored by ABRA investigators between March 25, 2015, and April 28, 2015. *Id.* at 5. No violations were observed during the monitoring period. *Id.* at 16. The establishment has never been the subject of a noise complaint. *Id.* The records of the Metropolitan Police Department (MPD) show that only fourteen calls for service related to the establishment's address have been made between May 2014 and March 2015. *Id.* at 16-17. Investigator Demby did not observe excessive trash or litter during his two visits to the establishment. *Id.* at 22, 37-38.

6. During his visits, Investigator Demby observed some people loitering in the shopping center during his visits. *Id.* at 20. Nevertheless, these individuals were not loitering in front of Wheeler Market. *Id.* at 20-21. Instead, they appeared to be customers of the barbershop or liquor store located in the shopping center. *Id.* at 21.

## **II. ANC Commissioner Karlene Armstead**

7. ANC Commissioner Karlene Armstead represents the Single-Member District where the establishment is located. *Id.* at 40. According to Ms. Armstead, she has never received any complaints regarding the operations of Wheeler Market. *Id.* at 40-41, 43.

8. Ms. Armstead is familiar with the area surrounding the establishment because she walks by the area when she commutes to work. *Id.* at 42. She noted that the area surrounding the store is generally clean and well patrolled by MPD. *Id.* at 41-42, 54. She further noted that the owner does not sell drug paraphernalia. *Id.* at 47.

## **III. Schyla Pondexter-Moore**

9. Schyla Pondexter-Moore lives on Wheeler Road, S.E., and patronizes Wheeler Market. *Id.* at 80. She noted that there are no grocery stores in the neighborhood, and the store is one of the few that offers fresh fruits and vegetables. *Id.* at 80. She noted that the owner regularly cleans the area around the establishment. *Id.* at 84.

## **IV. ANC Chairperson Anthony Muhammad**

10. ANC Chairperson Anthony Muhammad discussed his observations about the establishment. *Id.* at 88. Chairperson Muhammad has observed trash outside the establishment on occasion. *Id.* He also has observed people loitering in the shopping center's parking lot. *Id.* at 103. Mr. Muhammad is concerned about the sale of synthetic drugs in the community. *Id.* at 89.

## CONCLUSIONS OF LAW

11. The Board may approve an Application to Renew a Retailer's Class B License when the proposed establishment will not have an adverse impact on the neighborhood. D.C. Official Code §§ 25-104, 25-313(b); 23 DCMR §§ 1607.2; 1607.7(b) (West Supp. 2015). Specifically, the question in this matter is whether the Application will have a negative impact on the peace, order, and quiet within 1,200 feet of the establishment. D.C. Official Code § 25-313(b); 23 DCMR §§ 1607.2; 1607.7(b) (West Supp. 2015).

### I. THE ESTABLISHMENT IS APPROPRIATE FOR THE NEIGHBORHOOD.

12. Under the appropriateness test, “. . . the applicant shall bear the burden of proving to the satisfaction of the Board that the establishment for which the license is sought is appropriate for the locality, section, or portion of the District where it is to be located . . .” D.C. Official Code § 25-311(a). The Board shall only rely on “reliable” and “probative evidence” and base its decision on the “substantial evidence” contained in the record. 23 DCMR § 1718.3 (West Supp. 2014).

13. The appropriateness test has never been limited to mere compliance with the law. *See Panutat, LLC v. D.C. Alcoholic Beverage Control Bd.*, 75 A.3d 269, 277 n. 12 (D.C. 2013) (“However, in mandating consideration of the effect on peace, order, and quiet, § 25-313(b)(2) does not limit the Board's consideration to the types of noises described in § 25-725.”). It has been said, that each location where an establishment is located is “unique,” which requires the Board to evaluate each establishment “. . . according to the particular circumstances involved.” *Le Jimmy, Inc. v. D.C. Alcoholic Beverage Control Bd.*, 433 A.2d 1090, 1093 (D.C. 1981). Under this test, the Board must consider the “prospective” effect of the establishment on the neighborhood.” *Id.* Among other considerations, this may include the Applicant’s efforts to mitigate or alleviate operational concerns,<sup>1</sup> the “character of the neighborhood,”<sup>2</sup> the character of the establishment,<sup>3</sup> and the license holder’s future plans.<sup>4</sup> Thus, the appropriateness test seeks to determine whether the applicant’s future operations will satisfy the reasonable expectations of residents to be free from disturbances and other nuisances. D.C. Council, Bill 6-504, the “District of Columbia Alcoholic Beverage Control Act Reform Amendment Act of 1986,” Committee on Consumer and Regulatory Affairs, 38 (Nov. 12, 1986).

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<sup>1</sup> *Donnelly v. District of Columbia Alcoholic Beverage Control Board*, 452 A.2d 364, 369 (D.C. 1982) (saying that the Board could rely on testimony related to the licensee’s “past and future efforts” to control negative impacts of the operation); *Upper Georgia Ave. Planning Comm. v. Alcoholic Beverage Control Bd.*, 500 A.2d 987, 992 (D.C. 1985) (saying the Board may consider an applicant’s efforts to “alleviate” operational concerns).

<sup>2</sup> *Citizens Ass’n of Georgetown, Inc. v. D.C. Alcoholic Beverage Control Bd.*, 410 A.2d 197, 200 (D.C. 1979).

<sup>3</sup> *Gerber v. D.C. Alcoholic Beverage Control Bd.*, 499 A.2d 1193, 1196 (D.C. 1985); *Sophia’s Inc. v. Alcoholic Beverage Control Bd.*, 268 A.2d 799, 801 (D.C. 1970).

<sup>4</sup> *Sophia’s Inc.*, 268 A.2d at 800.

**a. Peace, Order, and Quiet.**

14. The Board deems the establishment appropriate under the law. “In determining the appropriateness of an establishment, the Board shall consider . . . [t]he effect of the establishment on peace, order, and quiet, including the noise and litter provisions set forth in §§ 25-725 and 25-726.” D.C. Official Code § 25-313(b)(2); *see also* D.C. Official Code §§ 25-101(35A), 25-314(a)(4). Among other considerations, the Board is instructed to consider “. . . noise, rowdiness, loitering, litter, and criminal activity.” 23 DCMR § 400.1(a) (West Supp. 2015).

15. In this case, the facts demonstrate that Wheeler Market is not the source of any adverse impact on the community. First, there does not appear to be any significant trash or litter problems near the establishment and the licensee regularly cleans the area around the store. *Supra*, at ¶¶ 5, 9. Second, the presence of Wheeler Market in the shopping plaza does not appear to cause loitering; instead, any loitering that occurs appears to be caused by the other stores in the shopping center. *Supra*, at ¶¶ 6, 10. Third, there is no evidence that Wheeler Market causes excessive noise. *Supra*, at ¶ 5. Under these circumstances, the record shows that Wheeler Market’s presence does not have a negative impact on peace, order, or quiet.

**II. THE ESTABLISHMENT’S RECORD OF COMPLIANCE AT THIS JUNCTURE MERITS RENEWAL OF THE LICENSE.**

16. Under § 25-315, “[t]he Board shall consider the licensee's record of compliance with this title and the regulations promulgated under this title and any conditions placed on the license during the period of licensure, including the terms of a settlement agreement.” D.C. Official Code § 25-315(b)(1). In this case, Wheeler Market’s investigative history shows that it has no violations related to loitering, underage drinking, public drinking, or other crimes. Under these circumstances, Wheeler Market merits renewal pursuant to § 25-315.

**III. THE BOARD HAS SATISFIED THE GREAT WEIGHT REQUIREMENT BY ADDRESSING ANC 8E’S ISSUES AND CONCERNS.**

17. ANC 8E’s written recommendation submitted in accordance with D.C. Official Code § 25-609(a) indicated that its protest was based on concerns that the Applicant encourages underage drinking, crime, loitering, and public drinking. *Letter from Anthony Muhammad, Chairperson, Advisory Neighborhood Commission, to Sarah Fashbaugh, Alcoholic Beverage Regulation Administration* (Oct. 9, 2014). The Board notes that it specifically addressed these concerns in Paragraphs 14 through 16 of this Order. The Board further notes that the ANC had concerns regarding the sale and distribution of synthetic drugs in the community. *Supra*, at ¶ 10. Nevertheless, there is no evidence that Wheeler Market actually sells or distributes synthetic drugs; therefore, there is no basis for the Board to address the issue of synthetic drugs in this Order.

**IV. THE APPLICATION SATISFIES ALL REMAINING REQUIREMENTS IMPOSED BY TITLE 25.**

18. Finally, the Board is only required to produce findings of fact and conclusions of law related to those matters raised by the Protestant in its initial protest. *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 (West Supp. 2015). Accordingly, based on the Board’s review of the Application and the record, the Applicant has satisfied all remaining requirements imposed by Title 25 of the D.C. Official Code and Title 23 of the D.C. Municipal Regulations.

**ORDER**

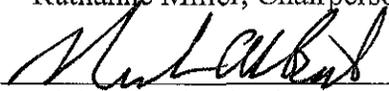
Therefore, the Board, on this 15th day of July 2015, hereby **APPROVES** the Application to Renew a Retailer's Class B License at premises 4133 Wheeler Road, S.E. filed by Aki & Muller Corporation, t/a Wheeler Market.

**IT IS FURTHER ORDERED** that the Board’s findings of fact and conclusions of law contained in this Order shall be deemed severable. If any part of this determination is deemed invalid, the Board intends that its ruling remain in effect so long as sufficient facts and authority support the decision.

The ABRA shall deliver a copy of this order to the Applicant and ANC 8E.

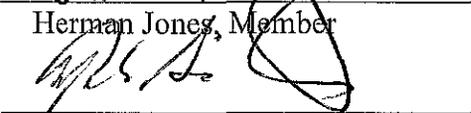
District of Columbia  
Alcoholic Beverage Control Board

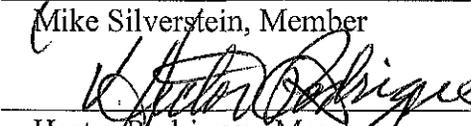
  
Ruthanne Miller, Chairperson

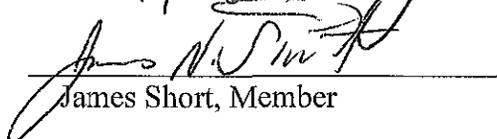
  
Nick Alberti, Member

  
Donald Brooks, Member

  
Herman Jones, Member

  
Mike Silverstein, Member

  
Hector Rodriguez, Member

  
James Short, Member

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, 430 E Street, N.W., Washington, D.C. 20001; (202/879-1010). 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).