

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

In the Matter of:)
)

Greenleaf Buzzard, LLC)
t/a Buzzard Point Fish House)

Application for a New)
Retailer's Class CR License)

at premises)
2100 2nd Street, S.W.)
Washington, D.C. 20593)

Case No.: 18-PRO-00083
License No: ABRA-111655
Order No: 2019-448

BEFORE: Donovan Anderson, Chairperson
Mike Silverstein, Member
James Short, Member
Bobby Cato, Member
Rema Wahabzadah, Member

ALSO PRESENT: Greenleaf Buzzard, LLC, t/a Buzzard Point Fish House, Applicant

Andrew Kline and Sidon Yohannes, Counsels, on behalf of the Applicant

Coralie Farlee and Andy Litsky, Chair, Alcoholic Beverage Control
Committee, on behalf of Advisory Neighborhood Commission (ANC) 6D,
Protestant

Martha Jenkins, General Counsel
Alcoholic Beverage Regulation Administration

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

INTRODUCTION

The Alcoholic Beverage Control Board (Board) approves the Application for a New Retailer's Class CR License filed by Greenleaf Buzzard, LLC, t/a Buzzard Point Fish House, (hereinafter "Applicant"; "Buzzard Point Fish House"; or "BP") subject to limits on the maximum occupancy of the premises, the hours and occupancy of the exterior seating areas, and other conditions necessary for the peace, order, and quiet of the community.

Procedural Background

The Notice of Public Hearing advertising Buzzard Point Fish House's Application was posted on October 26, 2018, and informed the public that objections to the Application could be filed on or before December 10, 2018. *ABRA Protest File No. 111655*, Notice of Public Hearing [*Notice of Public Hearing*]. The records of the Alcoholic Beverage Regulation Administration (ABRA) indicate that Advisory Neighborhood Commission (ANC) 6D has filed a protest against the Application. *ABRA Protest File No. 18-PRO-00083*, Roll Call Hearing Results.

The parties came before the Board's Agent for a Roll Call Hearing on December 24, 2018, where the above-mentioned objector was granted standing to protest the Application. On January 16, 2019, the parties came before the Board for a Protest Status Hearing. Finally, the Protest Hearing in this matter occurred on April 3, 2019.

The Board recognizes that an ANC's properly adopted written recommendations are entitled to great weight from the Board. D.C. Code §§ 1-309.10(d), 25-609; *Foggy Bottom Ass'n v. District of Columbia Alcoholic Beverage Control Bd.*, 445 A.2d 643, 646 (D.C. 1982). 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 6D. 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 and residential parking and vehicular and pedestrian safety of the area located within 1,200 feet of the establishment. D.C. Code § 25-313(b); 23 DCMR §§ 1607.2; 1607.7(b) (West Supp. 2019).

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. Buzzard Point Fish House has submitted an Application for a New Retailer's Class CR License at 2100 2nd Street, S.W., Washington, D.C. *Notice of Public Hearing*.
2. ABRA Investigator Anthony Howze investigated the Application and prepared the Protest Report submitted to the Board. *ABRA Protest File No. 18-PRO-00083*, *Protest Report* (Apr. 2019) [*Protest Report*]. The proposed establishment is located in a CG-5 zone. *Protest Report*, at 4. One licensed establishment is located within 1,200 feet of the proposed location. *Id.* There are no schools, recreation centers, public libraries, or day care centers located within 400 feet of the establishment. *Id.*

3. According to the public notice, BP's proposed hours of operation are as follows: 7:00 a.m. to 2:00 a.m., Sunday through Thursday, and 7:00 a.m. to 3:00 a.m. on Friday and Saturday. *Id.* at 5. The establishment's proposed hours of alcoholic beverage sales, service, and consumption are the same, except they begin at 8:00 a.m. *Id.* The establishment's proposed hours of entertainment are also the same, except they begin at 6:00 a.m. *Id.* The summer garden has the same proposed hours of operation, hours of sales, service, and consumption, and hours of entertainment as the interior. *Id.*

4. The establishment has proposed having three summer gardens. *Transcript (Tr.)*, April 3, 2019 at 56. One summer garden may have 250 seats. *Id.* The other two may have 50 seats. *Id.* The summer gardens will be located near the water. *Id.* at 58. They will likely be located on the pier, the deck, and the sundeck. *Id.*

5. The proposed location is near two Metro stations. *Id.* at 62. Specifically, if built, the establishment will be located within three miles of the Navy Yard and Capital South metro stations. *Id.* at 62, 76. Investigator Howze estimated that it takes approximately 10 minutes to walk to a metro station from the establishment. *Id.* at 77.

6. Currently, only a parking lot and other vacant lots are located near the proposed location. *Id.* at 62, 64, 75. An apartment building is being built across the street from the establishment. *Id.* at 62-63. Audi Field, a soccer stadium, is located a block north of the proposed location. *Id.* at 78. The stadium has a number of parking lots available. *Id.* at 78-79.

II. Gregory Casten

7. Gregory Casten is a member of the partnership that owns Tony and Joe's Seafood Place and Nick's Riverside Grill, which are restaurants located in Georgetown. *Id.* at 94. He also owns Ivy City Smokehouse and City Tavern. *Id.* He has owned and operated restaurants in the District of Columbia since the early 1980's. *Id.* at 96-97. His restaurants in Georgetown have large outdoor seating areas and operate near the waterfront. *Id.* at 97-99. The Georgetown restaurants have offices and residences above them. *Id.* at 194. In the past, his establishments in Georgetown have only had one complaint in the two years prior to the hearing. *Id.* at 195. His establishments have earned various recognitions and awards. *Id.* at 107.

8. The ownership intends BP to operate as a seafood restaurant. *Id.* at 104. There will be fish tanks with live fish, lobsters, and crab legs, a sushi bar, and a raw bar. *Id.* at 104-05, 127. BP will also serve seafood from tins, which are popular in Europe, and local fish. *Id.* at 105.

9. The entrance to the premises will be located on 2nd Street, S.W. *Id.* at 125. Some of the windows on the premises will be fish tanks. *Id.* The interior of the restaurant will have two private dining rooms that can be combined into a single dining room with 40 seats. *Id.* at 126; *Applicant's Exhibit No. 5*. The restaurant also has another area that can be used for large parties or events. *Tr.*, 4/3/19 at 127. The restaurant will have an open kitchen. *Id.* at 128. The premises will also have a "sister restaurant" called Beside the Point. *Id.* Beside the Point will operate as a fast casual restaurant that offers appetizers and serves soft serve ice cream. *Id.* The sister restaurant will offer carry-out and will not serve alcohol. *Id.* at 147. The owner noted that

many pieces of furniture planned for the establishment will be “fixed and stationary.” *Id.* at 131; *Applicant’s Exhibit No. 12.*

10. BP has applied for an entertainment endorsement but will not operate as a nightclub. *Tr.*, 4/3/19 at 130. Instead, the ownership applied for the endorsement so that wedding parties and others could have access to a dance floor if they desired. *Id.* Live entertainment may also be offered outside. *Id.* at 198.

11. The outdoor seating area will feature a “sound enhancing awning system.” *Id.* at 133. The awning is designed to control the emission of sounds and recommended by audio professionals. *Id.* at 135; *Applicant’s Exhibit No. 3.* The awning will cost approximately \$400,000. *Id.* There will also be walls outside the outdoor seating area that will help mitigate sound emissions. *Tr.*, 4/3/19 at 148. In the interior, the sounds system will feature little speakers pointed at individual tables so that the volume can be controlled on an individual basis. *Id.* at 140. The ceiling will also be built with materials that mitigate sound. *Id.* at 140-41. The current plan is to play music appropriate for a “fine-dining” establishment. *Id.* at 182.

12. The premises are located within a building shared with other entities. *Id.* at 142; *Applicant’s Exhibit No. 1.* In addition to BP, James Creek Marina is located in the building. *Tr.*, 4/3/19 at 142. The marina has 395 boat slips. *Id.*

13. Currently, the marina has 300 parking spaces available. *Id.* Furthermore, BP’s lease guarantees the establishment 85 to 92 parking spaces. *Id.* at 154. There will also be additional parking in the building. *Id.* at 155.

14. The neighborhood is currently being developed around Audi Stadium. *Id.* at 143. Additional residences will be built in the neighborhood in the near future. *Id.* at 143-44. The ownership expects that large crowds will be attracted to the neighborhood to attend soccer games, on holidays, such as Independence Day, and other events. *Id.* at 156. In combination with baseball games at Nationals Stadium, which is farther away from the restaurant, the ownership expects that there will be about 200 high volume days per year. *Id.* at 157.

III. Matthew Stickney

15. Matthew Stickney will be BP’s general manager when it opens. *Id.* at 209-210. He has worked in the hospitality industry for approximately nine years. *Id.* at 210. He has prior experience managing establishments with outdoor entertainment. *Id.* at 211.

IV. ANC Commissioner Anthony Dale

16. ANC Commissioner Anthony Dale represents 6D05, which includes the location proposed by BP. *Id.* at 220. He believes that the vast majority of his constituents support BP’s Application. *Id.* at 221. He also noted that street parking will likely be removed near the establishment as the area develops. *Id.* at 276.

V. ANC Commissioner Andy Litsky

17. ANC Commissioner Andy Litsky opposes the Application due to concerns about the impact on peace, order, and quiet; pedestrian and traffic safety; and parking. *Id.* at 258. He is concerned that noise from the establishment will carry based on its proximity to open water. *Id.* at 259-60. In particular, noise at the establishment may be problematic for people living in houseboats at the marina. *Id.* at 260. He further noted that approximately 6,000 residents are expected to live in the Buzzard Point area and across the Anacostia River. *Id.* at 263; *Protestant's Exhibit No. 3*. Moreover, the current plan is to use the areas near the river as a park. *Tr.*, 4/3/19 at 264. Finally, he believes that there is insufficient information about how the Applicant will handle issues such as security or sound management. *Id.* at 264, 266.

18. In regards to traffic and parking concerns, Commissioner Litsky indicated that he worries that patrons and for-hire vehicles will drive through nearby residential neighborhoods in ANC 6D06 to reach the establishment. *Id.* at 279, 281. He noted that a new Frederick Douglass Bridge will be constructed in the neighborhood. *Id.* at 281-82. He also has managed establishments located near residents. *Id.* at 214.

VI. Zoning Order

19. On July 13, 2017, the Zoning Commission of the District of Columbia released an order related to a variance request for the building where the proposed establishment will be located. *Protestant's Exhibit No. 1*, at 1. According to the order, the building will have a “below-grade parking garage” with “[t]wo levels of parking.” *Id.* at 3, 5. According to the zoning order, the parking garage will have approximately “361 striped parking spaces”; “168 long-term bicycle parking spaces; and “41 short-term bicycle parking spaces.” *Id.* at 5. The project will also include “a 19-dock Capital Bikeshare station”; electronic displays “showing real-time transportation information”; shower and locker facilities to encourage biking; and unbundled fees for parking to encourage public transportation use. *Id.* at 14. The report further noted that the developer of the project satisfied the concerns of the D.C. Department of Transportation (DDOT). *Id.* at 15.

20. The zoning order further indicates that the Anacostia Riverwalk Trail will be located on the property. *Id.* The park will include trails, plantings, public art, educational signs, and seating for public use. *Id.* at 5-6.

VII. Capacity

21. During closing arguments, BP indicated that it was seeking approval for an overall capacity of 750 persons for the interior. *Tr.*, 4/3/19 at 394, 399. BP further indicated that it was requesting a maximum capacity of 300 seats for the interior of the establishment, 85 seats for the exterior sun deck, and 140 seats for the patio covered by the canopy. *Id.* at 395.

CONCLUSIONS OF LAW

22. The Board may approve an Application for a New Retailer's Class CR License when the proposed establishment will not have an adverse impact on the neighborhood. D.C. Code §§ 25-104, 25-313(b); 23 DCMR §§ 1607.2; 1607.7(b) (West Supp. 2019). Specifically, the question in this matter is whether the Application will have a negative impact on the peace, order, and quiet and residential parking and vehicular and pedestrian safety of the area located within 1,200 feet of the establishment. D.C. Code § 25-313(b); 23 DCMR §§ 1607.2; 1607.7(b) (West Supp. 2019).

I. The Establishment is Appropriate for the Neighborhood Subject to Conditions.

23. 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. 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. 2019). The substantial evidence standard requires the Board to rely on “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” *Clark v. D.C. Dep't of Employment Servs.*, 772 A.2d 198, 201 (D.C. 2001) citing *Children's Defense Fund v. District of Columbia Dep't of Employment Servs.*, 726 A.2d 1242, 1247 (D.C.1999).

24. In determining appropriateness, the Board must consider whether the applicant’s future operations will satisfy the reasonable expectations of residents to be free from disturbances and other nuisances—not just whether the Application complies with the minimum requirements of the law. 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); 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.”). As part of its analysis, the Board should evaluate each “unique” location “according to the particular circumstances involved” and attempt to determine the “prospective” effect of the establishment on the neighborhood. *Le Jimmy, Inc. v. D.C. Alcoholic Beverage Control Bd.*, 433 A.2d 1090, 1093 (D.C. 1981). Furthermore, the analysis may also include the Applicant’s efforts to mitigate or alleviate operational concerns, the “character of the neighborhood,” the character of the establishment, and the license holder’s future plans. *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); *Citizens Ass'n of Georgetown, Inc. v. D.C. Alcoholic Beverage Control Bd.*, 410 A.2d 197, 200 (D.C. 1979); *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, 800-801 (D.C. 1970).

25. Under § 25-104(e), the Board is also granted the authority to impose conditions on a license when “. . . the inclusion of conditions will be in the best interest of the [neighborhood] . . .” D.C. Code § 25-104(e). In determining whether conditions are warranted, the Board has previously indicated that conditions may be appropriate “to enforce any promises or pledges made by the applicant when they are relied upon to approve the application.” *In re HRH Services, LLC, t/a The Alibi*, Case No. 15-PRO-00096, Board Order No. 2016-280, ¶ 98 (D.C.A.B.C.B. May 18, 2016). Furthermore, conditions may be warranted to when the establishment may potentially have a negative impact on the community. *See In re Dos Ventures, LLC, t/a Riverfront at the Ball Park*, Case No. 092040, Board Order No. 2014-512. ¶ 49 (D.C.A.B.C.B. Nov. 13, 2013) (saying “[i]n practice, the Board has imposed conditions when it is shown that there are valid concerns regarding appropriateness that may be fixed through the imposition of specific operational limits and requirements on the license”).

- a. **BP will not have a negative impact on the peace, order, and quiet of the neighborhood so long as there are limits on the occupancy of the exterior seating areas, entertainment hours, and sound.**

26. “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. Code § 25-313(b)(2); *see also* D.C. 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. 2019).

27. In this case, the ownership’s history of operating restaurants and plans presented to the Board, demonstrate that BP intends to operate as a high-end seafood establishment, not a nightclub. *Supra*, at ¶ 7. Moreover, the location of a restaurant adheres to the character of the neighborhood as an entertainment area, which features a soccer and baseball stadium. *Supra*, at ¶ 14.

28. Nevertheless, the Board will impose some minor limits on the use of the exterior space in order to prevent noise from disturbing future nearby residents. Specifically, it has been shown that BP will be located in an area that will have over 6,000 residents and an apartment building will be located across the street. *Supra*, at ¶¶ 6, 17. BP will have two large outdoor seating areas with a combined 225 seats. *Supra*, at ¶ 21. BP also plans to occasionally have entertainment outside. *Supra*, at ¶ 10. In order to mitigate sound, the establishment will install an awning with sound mitigation abilities and a wall. *Supra*, at ¶ 11.

29. One of the main issues in this case is whether BP will create noise problems based on its location near future residents, open water, and plans to have outdoor entertainment and speakers. *Supra*, at ¶¶ 10-11, 17. While BP’s plans could potentially lead to noise problems for residents, the Board is persuaded that the ownership has adequate ability, desire, and plans to generally mitigate noise issues that may arise. *Supra*, at ¶ 11. As the Board’s approval is based on these plans, the Board will impose a noise condition on the license. The Board notes that it is imposing an overall standard for BP to meet; namely, that no amplified sound be heard in a residence with its windows and doors shut. The Board notes that it declines to require specific

soundproofing requirements so that BP retains the flexibility to make adjustments on an as-needed basis without having to petition the Board for relief. The Board will further limit the maximum occupancy and hours of the exterior space, because noise from a large crowd and amplified music may be disturbing to nearby residents.¹

b. BP will not have a negative impact on residential parking needs and vehicular and pedestrian safety so long as there are limits on the occupancy

30. “In determining the appropriateness of an establishment, the Board shall consider . . . [t]he effect of the establishment upon residential parking needs and vehicular and pedestrian safety . . .” D.C. Code § 25-313(b)(3); *see also* D.C. Code §§ 25-101(35A), 25-314(a)(4). Among other considerations, the Board is instructed to consider the availability of both private and public parking, any parking arrangements made by the establishment, whether “[t]he flow of traffic . . . will be of such pattern and volume as to . . . increase the [reasonable] likelihood of vehicular [or pedestrian] accidents . . .” 23 DCMR § 400.1(b), (c) (West Supp. 2019).

31. In this case, there is no evidence that a large amount of traffic accidents occur in the area or that the area poses a challenge to pedestrians and vehicles. The establishment will also be located within three miles of two metro stations. *Supra*, at ¶ 5. In addition, BP will be located in a building with 300 parking spaces with approximately 92 parking spaces reserved for use by the establishment. *Supra*, at ¶ 13. The Board also finds it reasonable to presume that the presence of the stadium may make finding parking spaces outside the premises difficult. Consequently, in light of the large distance from the nearby metro stations, the Board is not satisfied that the majority of patrons will take public transportation or walk to the establishment. Nevertheless, in light of the available parking in the building and availability of for-hire vehicles, the Board is satisfied that BP’s current parking arrangements are satisfactory to support an establishment with an occupancy of 750 persons.² Therefore, the Board finds BP qualifies as appropriate so long as the maximum occupancy of the premises is limited to 750 persons.

II. The Board Has Satisfied the Great Weight Requirement by Addressing ANC 6D’s Issues and Concerns.

32. ANC 6D’s written recommendation submitted in accordance with D.C. Code § 25-609(a) indicated that its protest was based on concerns regarding Buzzard Point Fish House’s impact on peace, order, and quiet and residential parking and vehicular and pedestrian safety; and real property values. These concerns were addressed in the proceedings paragraphs; therefore, the “great weight” requirement is satisfied.

¹ In most cases, the Board has generally limited outdoor seating hours to 11:00 a.m. during the week and midnight during the weekend. *In re Amduff, LLC t/a Duffy’s Irish Restaurant*, Case Number 13-PRO-00004, Board Order No. 2013- 343, ¶¶ 21-23 (D.C.A.B.C.B. Jul. 10, 2013). Nevertheless, in light of the establishment’s proximity to the stadium and location in a future entertainment area, greater (but not unlimited) activity is warranted.

² BP also indicated during the hearing that it would rely on fixed furniture arrangements in a large part of an establishment; as a result, it does not appear that BP requires additional occupancy at this time.

III. The Application Satisfies All Remaining Requirements Imposed by Title 25.

33. Finally, the Board is only required to produce findings of fact and conclusions of law related to those matters raised by the Protestants in their 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. 2019). 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 5th day of June 2019, hereby **APPROVES** the Application for a New Retailer's Class CR License at premises 2100 2nd Street, S.W., filed by Greenleaf Buzzard, LLC, t/a Buzzard Point Fish House subject to the following **CONDITIONS**:

1. The maximum occupancy of the interior and exterior of the premises shall be 750 people;
2. The maximum occupancy of the exterior patio shall be 140 people, while the maximum occupancy for the exterior sun deck shall be 85 people;
3. The entertainment hours of all exterior seating areas shall end at 12:00 a.m., Sunday through Thursday, and 1:00 a.m. on Friday and Saturday;
4. The hours of operation for all exterior seating areas shall end at 12:00 a.m., Sunday through Thursday, and 2:00 a.m. on Friday and Saturday; and
5. The license holder shall not permit any amplified sounds to be heard in any residence or dwelling so long as the residence or dwelling has its windows or doors shut at the time the amplified sound is heard.

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 Parties.

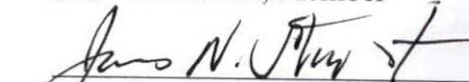
District of Columbia
Alcoholic Beverage Control Board



Donovan Anderson, Chairperson



Mike Silverstein, Member



James Short, Member



Bobby Cato, Member

Rema Wahabzadah, Member

Pursuant to D.C. Official Code § 25-433(d)(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. 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. 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).