

**THE DISTRICT OF COLUMBIA  
ALCOHOLIC BEVERAGE AND CANNABIS BOARD**

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In the Matter of:	)	
	)	
	)	
UND Necessities	)	Case No.: 24-PRO-00009
t/a DC Smoke	)	License No.: ABCA-126787
	)	Order No.: 2024-280
Application for a New	)	
Medical Cannabis Business License	)	
	)	
at premises	)	
717 D Street, N.W.	)	
Washington, D.C. 20004	)	

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**BEFORE:** Donovan Anderson, Chairperson  
James Short, Member  
Silas Grant, Jr., Member

**ALSO PRESENT:** UND Necessities, t/a DC Smoke, Applicant

Meredith Kinner and John McGowan, Counsel, on behalf of the Applicant

Thomas S. Lee and Michael Shankle, Commissioners, Advisory  
Neighborhood Commission 2C Protestants

Martha Jenkins, General Counsel  
Alcoholic Beverage and Cannabis Administration

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

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**INTRODUCTION**

The Alcoholic Beverage and Cannabis Board (Board) approves the Application for a New Medical Cannabis Retailer's License filed by UND Necessities, t/a DC Smoke (hereinafter "Applicant" or "DC Smoke"). The Board finds that the Applicant will not have a negative impact on the community and has sufficient operational and security plans to address issues related to its proximity to two schools. The Board further found that objections made against the Applicant were not supported by sufficient evidence and too speculative to merit denial or the imposition of conditions. The Board further advises that the argument that the mere sight of an alcohol or cannabis facility or related advertising are harmful to children is a policy question

better addressed to the political branches, and should not form the basis of a protest, because such matters fall outside the scope of the appropriateness test in most cases.

### ***Procedural Background***

The Notice of Public Hearing advertising DC Smoke’s Application was posted on December 8, 2023, and informed the public that objections to the Application could be filed on or before January 22, 2024 by affected advisory neighborhood commissions. *ABCA Protest File No. 24-PRO-*, Notice of Public Hearing [*Notice of Public Hearing*]. The records of the Alcoholic Beverage and Cannabis Administration (ABCA) indicate that Advisory Neighborhood Commission (ANC) 2C has filed a protest against the Application. *ABCA Protest File No. 24-PRO-*, Roll Call Hearing Results.

The parties came before the Board’s Agent for a Roll Call Hearing on February 12, 2024, where the above-mentioned objector was granted standing to protest the Application. Finally, the Protest Hearing in this matter occurred on April 3, 2024.

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 2C, which indicated that its protest is based on concerns regarding DC Smoke’s impact on peace, order, and quiet; residential parking and vehicular and pedestrian safety; and real property values. 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 ANC, the Board may only grant the Application if the request will not have an adverse impact on the peace, order, and quiet; residential parking and vehicular and pedestrian safety; and real property values of the area located within 1,200 feet of the establishment. D.C. Code § 7-1671.06a(h)-(l); 22-C DCMR §§ 5403, 5421, 5435.

### **FINDINGS OF FACT**

The following statements represent the Board’s findings of fact based on the evidentiary record. In reaching its determination, the Board considered the evidence, the testimony of the witnesses, the arguments of the parties, and all documents comprising the Board’s official file. The Board credits all testimony and evidence identified or cited below unless otherwise stated.

#### **I. Background**

1. UND Necessities, t/a DC Smoke, has submitted an Application for a New Medical Cannabis Retailer's License at 717 D Street, N.W., Washington, D.C. *Notice of Public Hearing*. It is eligible to apply for the license as an “unlicensed establishment” in accordance with D.C. Official Code § 7-1671.06a.

2. ABCA Supervisory Investigator (SI) Jason Peru investigated the Application and prepared the Protest Report submitted to the Board. *ABCA Protest File No. 24-PRO-00009, Protest Report* (Mar. 2024) [*Protest Report*]. The proposed establishment is in a D-6-R zone. *Id.* at 3. The Protest Report indicates that BASIS charter school is located within 300 feet of the proposed location at 410 8th Street, N.W., which is allowed by D.C. Official Code § 7-1671.06a(c). *Id.* at 3. There are no recreation centers within 300 feet of the proposed location. *Id.* There are no other medical cannabis licensees located within 400 feet of the establishment. *Id.*

3. The establishment's proposed hours of operation are from 10:00 a.m. to 9:00 p.m. seven days per week. *Id.* at 4. The hours of sale and service of medical cannabis are from 11:00 a.m. to 8:00 p.m. *Id.*

4. SI Peru visited the proposed location on three occasions. *Id.* The investigator did not observe any issues related to peace, order, and quiet or other issues indicative of residential parking or vehicular and pedestrian safety issues. *Id.* SI Peru did observe children in the area near the school. *Id.*

5. The business will be located on the ground floor of an office building. *Id.* The store will have a large glass window on D Street, N.W., and 8th Street, N.W. *Id.* The building's entrance uses a call box that restricts public access to the premises. *Id.* The building appears to be well maintained and there is no indication of blight. *Id.* at Exhibit Nos. 2-4.

6. SI Peru noted that similar to cannabis establishments, alcohol licenses may be located "near and around schools" due to exceptions in the law. *Transcript (Tr.)*, April 3, 2024 at 50. He further noted that several unlicensed cannabis sellers operate in the Chinatown area near the proposed location. *Id.* at 57.

7. DC Smoke has not applied for a safe-use treatment facility endorsement to authorize the consumption of medical cannabis at its proposed location. *Id.* at 60. Consumption of cannabis is also not permitted in public space. *Id.* at 61. The store is also not authorized to sell tobacco products or alcohol. *Id.* Current law also prohibits medical cannabis from being visible from the street. *Id.* at 63-64, 66. During his investigation, SI Peru observed people double park on 8th Street, N.W. *Id.* at 69.

8. The business can only sell medical cannabis to persons registered with ABCA as a medical cannabis patient and not the general public. *Id.* at 77.

## **II. Tommy Mounghounsavath**

9. Tommy Mounghounsavath owns the Applicant. *Id.* at 92-93. He chose the proposed location due to its downtown location, proximity to the stadium, and access to tourists. *Id.* at 93. It is also close to the Gallery Place Metro Station and Navy Yard Metro Station. *Id.* at 93-94. The business will occupy approximately 2,100 square feet in a building that contains both commercial and residential tenants. *Id.* at 97-98.

10. The Application included a security plan. *Id.* at 96. As part of the plan, the business will utilize security cameras. *Id.* at 99, 123. The owner also intends to comply with other security requirements mandated by the relevant laws and regulations. *Id.* at 100. He also intends to have security monitor and address loitering in front of the premises. *Id.* at 104. The owner understands that the law limits who may access his proposed facility under the terms of the license. *Id.* The business will also have at least two security guards present when in operation. *Id.* at 122. The business will also prohibit the consumption of cannabis inside the facility and security will monitor for consumption outside the premises. *Id.* at 123-24. The windows used by the store will be frosted to prevent persons outside from seeing inside the business. *Id.* at 125. Moreover, at the entrance, a person will only see security and a door in the waiting area. *Id.*

11. The owner also described the intended admission procedures. *Id.* at 122. When in operation, the business will check identifications and customers will wait in the waiting room until they are permitted access to the facility. *Id.* at 123. The waiting room will be large enough to prevent lines from forming outside the establishment. *Id.* at 127. Inside the facility, once a patron's identity and age are confirmed, they will use a tablet computer with the assistance of a store associate to select products. *Id.* at 11-12.

12. The owner indicated that he previously operated a cannabis gifting business in the past. *Id.* at 115. The record contains no evidence that the owner has ever sold, provided, or permitted a minor to engage in the purchase, possession, or consumption of cannabis. The record further contains no evidence that the owner has ever created or caused to be disseminated advertisements or speech targeted at children or encouraging children to obtain or consume cannabis. There is no evidence in the record of the owner providing cannabis to a third party and that third party giving it to a minor or of loitering problems in front of any business owned or controlled by the owner. Finally, there is no evidence in the record that the owner's other businesses have been the victim of robberies or that any security staff employed by the owner have engaged in inappropriate or illegal behavior.

### **III. Alexander Cobalt**

13. Alexander Cobalt serves as the head of school for BASIS DC Public Charter School located in Gallery Place. *Id.* at 136. The school serves 700 students with ages ranging from 10 until 18. *Id.* The school serves Grades 5 through 12. *Id.* School starts at 7:30 a.m. and students may be in the building until 6:30 p.m. *Id.* at 146. Students in grade 8 and up may leave the campus during lunch. *Id.* At pickup and drop off, the school uses staff to supervise students within 500 feet of the school. *Id.* at 156.

14. In response to the opening of the retail establishment the school is undertaking several actions. *Id.* at 139. First, the school is directing staff to provide additional student supervision before and after school and during lunch. *Id.* Second, the school is undertaking educational programming related to drug and cannabis usage based on the likelihood of students seeing medical cannabis related signage and patients in the vicinity. *Id.* at 141.

15. Mr. Cobalt has heard concerns from student families about increasing drug education and student interactions with the facility and its patients. *Id.* at 144. He noted that students often use

public transportation and would need to frequently pass the facility to get to school. *Id.* at 145. Mr. Cobalt is aware that on occasion people have been seen using cannabis on public streets. *Id.* at 162-63.

#### **IV. David Stevenson**

16. David Stevenson has two children that attend BASIS DC. *Id.* at 164. He believes the presence of the retailer makes it more likely that children will engage in underage cannabis usage. *Id.* at 172. He also believes that cannabis usage is inappropriate and harmful to minors. *Id.* at 190.

#### **V. Calvin Foster**

17. Calvin Foster is the head of school at Templeton Academy. *Id.* at 194. Templeton Academy is a private school that serves approximately 80 students. *Id.* Students at the school will pass by the proposed location when coming and going to the school. *Id.* at 195. He noted that the school will share an alley with the store if approved. *Id.*

18. In response to the application the school has reworked their security plans. *Id.* at 197. The school is concerned about the potential for break-ins, the presence of potentially armed, and security. *Id.* at 199. The school is also concerned about traffic caused by the store. *Id.* at 199-200.

#### **VI. Commissioner Thomas Lee**

19. ANC Commissioner Thomas Lee represents ANC 2C03, which is where the Applicant intends to locate the business. *Id.* at 206-07. Commissioner Lee has received complaints from parents whose children attend the nearby schools. *Id.* at 208, 214. He has heard concerns about congestion near the store. *Id.* at 207. The Commissioner noted that his own children would need to pass the proposed location to get to school. *Id.* at 218. He indicated that if the store was located on an upper floor or not in plain sight, he does not believe there would have been a protest. *Id.* at 220.

### **CONCLUSIONS OF LAW**

20. The Board may approve Application for a New Medical Cannabis Retailer's License when the proposed establishment will not have an adverse impact on the neighborhood. D.C. Code D.C. Code § 7-1671.06a(h)-(l); 22-C DCMR §§ 5403, 5421, 5435. Specifically, the question in this matter is whether the Application will have a negative impact on the peace, order, and quiet; residential parking and vehicular and pedestrian safety; and real property values of the area located within 1,200 feet of the establishment. *Id.*

**I. The Burden of Proof Lies with the Applicant to Prove its Case Through Substantial Evidence.**

21. The burden of proof in this matter is assigned to the Applicant. 22-C DCMR § 9712. “. . . [T]he Applicant in meeting its burden may rely on the record as a whole, which includes information provided in the Protest Report and the Protestant’s case, and not just what the Applicant presents during its case-in-chief.” *In re The New 7307, t/a Premier Lounge*, Case No. 22-PRO-000222, Board Order No. 2022-701, ¶ 1 (D.C.A.B.C. B. Oct. 19, 2022) *citing Esgar Corp. v. Commissioner of Internal Revenue*, 744 F.3d 648, 655 (10th Cir. 2014); *see also Washington Metro. Area Transit Auth. v. Dist. of Columbia Dept. of Employment Services*, 992 A.2d 1276, 1283 (D.C. 2010) *citing Dale v. S & S Builders, LLC*, 188 P.3d 554, 561 (Wyo. 2008) (saying in determining whether a party met its burden during an administrative hearing the court will look at the “record as a whole”). The Board further notes that where there is an “absence of evidence on an essential point [this] supports denial rather than granting of an application.” *Conrad v. Dist. of Columbia Alcoholic Beverage Control Bd.*, 21-AA-748, 2023 WL 163964, at \*5 (D.C. Jan. 12, 2023).

22. Furthermore, in determining whether the Applicant has met its burden, the Board shall only base its decision on the “substantial evidence” contained in the record. 22-C DCMR § 9719.2. 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). It should be noted that “. . . hearsay evidence is admissible in administrative proceedings” and may constitute “substantial evidence.” *Compton v. Dist. of Columbia Bd. of Psychology*, 858 A.2d 470, 476 (D.C. 2004). In that vein, “The weight to be given to any piece of hearsay evidence is a function of its truthfulness, reasonableness, and credibility.” *Id.* at 477.

**I. The Establishment is Appropriate for the Neighborhood.**

23. Under the appropriateness test, “. . . an applicant shall demonstrate to the satisfaction of the Board that the medical cannabis establishment is appropriate for the locality, section, or portion of the District where it is to be located.” 22-C DCMR § 5400.3. While not bound by cases and decisions interpreting Title 25 of the D.C. Official Code and Title 23 of the D.C. Municipal Relations, the Board finds this authority and case law persuasive in interpreting Title 7 of the D.C. Official Code and Title 22-C of the D.C. Municipal Regulations.

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).

**a. The Applicant will not have a negative impact on peace, order, and quiet.**

25. In determining the appropriateness of an establishment, the Board shall consider whether the “establishment will not interfere with the peace, order, and quiet of the relevant area, considering such elements as noise, rowdiness, loitering, litter, and criminal activity.” 22-C DCMR § 5421.5(a).

26. The Applicant’s proposed plans indicate that is highly unlikely that its operations will interfere with the operations of the nearby schools or be harmful to children. First, the Applicant has not applied for a safe-use treatment facility endorsement; therefore, there will be no on-premises consumption. *Supra*, at ¶ 7. This makes it unlikely that students will encounter any inebriated or intoxicated patrons coming and going from the establishment. Second, the establishment will operate under the auspices of a security plan, which includes security cameras and security staff, which will discourage crime and access to the facility by youth. *Supra*, at ¶ 10. Third, the business intends to frost its windows, which will prevent persons and youth outside the facility from being able to see inside. *Id.* This will discourage “smash and grab” robberies and other crimes of opportunity because persons outside will not know where medical cannabis, money, and other valuables are located inside the facility. Fourth, screening by security and the use of a waiting room will further discourage access by youth, robberies, and shoplifting because it further denies immediate access to medical cannabis, money, and other valuables. Fifth, the presence of youth inside the facility will be limited because the establishment will engage in age checking before providing admittance. *Supra*, at ¶ 11. Sixth, the establishment has sufficient space and does not intend to utilize an outdoor queue; therefore, this will further discourage interactions between the Applicant’s customers and students. *Supra*, at ¶ 11. And seventh, there is no evidence that any existing facility owned or managed by the Applicant has suffered any of the problems alleged by the ANC. *Supra*, at ¶ 12. In light of all of these facts, the Applicant has affirmatively met its burden to demonstrate appropriateness and has demonstrated that the ANC’s concerns regarding loitering, robberies, underage possession, and usage of cannabis and similar issues are unreasonable and speculative at this time based on the record before the Board. Therefore, the Board finds that the Applicant will not have a negative impact on peace, order, and quiet.

27. The Board further finds that as a matter of law, the appropriateness criteria does not include any harms stemming from the mere sight of a cannabis facility and related advertising, which are policy questions that should be addressed by legislation. Under Title 7, appropriateness requires consideration of the establishment's impact on peace, order, and quiet, including noise, rowdiness, loitering, and crime. § 5421.5(a). Any alleged harm related to the mere sight of a medical cannabis facility, such as the potential for encouraging substance abuse, does not fall under these categories of negative impact. Therefore, as a matter of law, the "mere sight" argument has no or de minimis relation to the appropriateness test contained in Title 7, and should be directed to the political branches because it is a policy argument, not a legal argument that the Board can address.

28. This conclusion is further mandated by the Board's prior decision in the *All Souls* case. The Board notes that cannabis shares similar qualities to alcohol where it is illegal for persons under the age of 21 to possess or consume alcoholic beverages and it is well recognized that the use of alcohol, like cannabis, is harmful to minors in a similar fashion. Thus, the Board's reasoning in *All Souls* related to the issuance of a tavern license near a school likewise applies to the present case. *In re All Souls, LLC, t/a All Souls, Case No. 11-PRO-00090, Board Order No. 2012-278*, ¶ 1 (D.C.A.B.C.B. Jun. 20, 2012). There, the Board stated that it could not accept the argument that the "mere sight" of the tavern could be "detrimental to students" when the law specifically allowed for the operations of the alcohol business near the school. *Id.* at ¶ 36. The Board further reasoned that to grant an exception related to the mere sight of alcohol establishments was "unworkable" and "unreasonable" where alcohol is sold and consumed in the presence of children at restaurants, sporting events, and at home and parents frequently take their children to neighborhoods with large concentrations of alcohol establishments, such as Adams Morgan or U Street. *Supra*, at ¶ 36. Likewise, in the context of medical cannabis, creating case law prohibiting medical cannabis facilities near schools based on mere sight does not make sense when the possession of small amounts of non-medical cannabis has been decriminalized under local law and widely available for adult and medical usage. D.C. Code § 48-904.01.

**b. The Applicant will not have a negative impact on residential parking needs and vehicular and pedestrian safety.**

29. In determining the appropriateness of an establishment, the Board shall consider whether the "establishment will not have an adverse impact on residential parking needs, considering available public and private parking and any arrangements made to secure such parking for the clientele of the establishment." 22-C DCMR § 5421.5(b). Furthermore, the Board will consider whether the "flow of traffic to be generated by the establishment will be of such pattern and volume as to neither increase the likelihood of vehicular accidents nor put pedestrians at an unreasonable risk of harm from vehicles." 22-C DCMR § 5421.5(c). In this case, the establishment will be located near two Metro Stations; as a result, the availability of public transportation makes it unlikely that the establishment will cause accidents or rely on residential parking. *Supra*, at ¶ 9. The Board notes that mere congestion or double parking related to school pickup and drop off has no relation to residential parking or indicates a threat to vehicular and pedestrian safety. As such, the Applicant satisfies this criteria.



**c. The Applicant will not have a negative impact on real property values.**

30. In determining the appropriateness of an establishment, the Board shall consider whether the “establishment will not have an adverse impact on real property values in the locality, section, or portion of the District of Columbia where it is to be located, considering such elements as blight, the presence of graffiti, the history of building violations and vacancy status under the applicant, and the physical impact of the property on neighboring properties, including odors and noise.” 22-C DCMR § 5421.5(d). In this case, the property appears to be well-maintained and there is no evidence of on-going building code violations. *Supra*, at ¶ 5. As a result, the applicant satisfies all criteria related to the appropriateness test.

**II. The Application satisfies all remaining requirements imposed by Title 25.**

31. Finally, the Board is only required to produce findings of fact and conclusions of law related to those matters raised by the ANC 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. Accordingly, based on the Board’s review of the Application and the record, the Applicant has satisfied all remaining requirements imposed by Title 7 of the D.C. Official Code and Title 22-C of the D.C. Municipal Regulations.

**ORDER**

Therefore, the Board, on this 1st day of May 2024, hereby **APPROVES** the Application for a New Medical Cannabis Retailer’s License at premises 717 D Street, N.W., filed by UND Necessities , t/a DC Smoke.

**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 omission of any testimony or evidence in the Board’s Order indicates that such testimony or evidence was contravened by the evidence or testimony credited by the Board, had no or minimal weight on the Board’s findings and conclusions, was irrelevant, was not credible, was not truthful, was repetitious, was too speculative, or was otherwise inappropriate for consideration.

The ABCA shall deliver a copy of this order to the Parties.

District of Columbia  
Alcoholic Beverage and Cannabis Board

eSigned via SeamblesDocs.com  
*Donovan Anderson*  
Key: ac430b9b59d5f0e4b730060d1dccc8

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Donovan Anderson, Chairperson

eSigned via SeamblesDocs.com  
*James Short*  
Key: 547ae373820de0ac8d1b332d42048e

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James Short, Member



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Silas Grant, Jr., Member

Pursuant to 22-C DCMR § 9723, 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 and Cannabis 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 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).