

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

In the Matter of:)	
)	
DeLorean 88, LLC)	Case No.: N/A
t/a DeLorean)	License No.: ABCA-126807
)	Order No.: 2024-021
Applicant for a New)	
Medical Cannabis Retailer License)	
)	
at premises)	
1432 Wisconsin Avenue, N.W.)	
Washington, D.C. 20007)	

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

ALSO PRESENT: DeLorean 88, LLC, t/a TBD, Petitioner

Philip Musolino, Counsel, on behalf of the Petitioner

Martha Jenkins, General Counsel
Alcoholic Beverage and Cannabis Administration

ORDER DENYING MOTION FOR RECONSIDERATION

INTRODUCTION

The Alcoholic Beverage and Cannabis Board (Board) received a motion for reconsideration and supplemental motion from DeLorean 88, LLC, t/a DeLorean, related to the rejection of its Application for a New Retail Medical Cannabis License based on its proximity to Hyde-Addison Elementary School. The Board affirms its determination that the Application must be rejected because the chosen location does not qualify for the commercial zone exception to the 300-foot distance rule.

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. Application and Denial

1. DeLorean 88, LLC, t/a DeLorean, (Applicant) has applied for a Medical Cannabis Retailer License at 1432 Wisconsin Avenue, N.W., Washington, D.C. *ABCA License No. 126807*.
2. On December 13, 2023, the Applicant received a notice of denial. *Letter from Emoni Boone, Licensing Specialist*, 1 (Dec. 1, 2023). The letter indicated that the basis of the denial was its location within 300 feet of Hyde-Addison Elementary School under D.C. Official Code § 7-1671.06A. *Id.*¹

II. Information Related to Zoning

3. The Board takes administrative notice that Hyde Addison Elementary School indicates that the school is located at 3219 O Street, N.W., Washington, D.C. 20007. District of Columbia Public Schools, Hyde Addison Elementary School, *available at <https://hydeaddisondc.org/>* (last visited January 22, 2024).
4. A printout from the Official Zoning Map, dated October 31, 2023, included in the motion, provides that Hyde-Addison is zoned MU-4 and R3/GT. *DeLorean 88, LLC Notice of Appeal and Request for Reconsideration*, at Appendix B-3 (Oct. 31, 2024). The document further indicates that the premises of the school are located at 3246 P Street N.W. *Id.* Nevertheless, this discrepancy in the address of the school provided on its website and in the zoning map does not appear to be in error as the school’s property touches both streets; therefore, it is understandable that the map would redirect searches of 3219 O Street, N.W., to 3246 P Street, N.W., as they are functionally the same for the purposes of the zoning map. *Id.* (See Square 1244 0854 on the map touching both O Street, N.W., and P Street, N.W.).
5. It is undisputed that in the October 31, 2023 document, there appeared an odd sliver on the map where the school’s zoning lines veers into the MU-4 zone. *Id.* Moreover, it is undisputed that after an inquiry from an Advisory Neighborhood Commission (ANC), the Office of Zoning determined that the sliver was a digitization error that caused the misidentification of the school’s zone. *Email from Sara Bardin, Director, District of Columbia Department of Zoning to Christopher Matthews, Commissioner, Advisory Neighborhood Commission 2E* at 1. In explaining its reasoning, the Director of the Department of Zoning stated:

¹ The Board did not consider a February 11, 2021, report by ABCA Investigator Kevin Puente relevant where it concluded that Hyde-Addison elementary school was located in a MU-4 zone based on the same faulty map relied upon by the Applicant. *Memorandum on Towne Wine & Liquor*, ABCA Investigator Kevin Puente, 2 (Feb. 11, 2021). The Board notes that the report only shows that the error has existed since 2021 and that the investigator made no effort to investigate whether the underlying information shown by websites was correct. *Id.* at 2. Moreover, the issuance of prior liquor licenses in a specific location has no bearing on the present matter, which were separate proceedings made before zoning’s present determination that an error existed in the map.

Yes, this appears to be a digitization error. The first screenshot below is from the 1966 map, and there is a clear 78' line from the edge of the alley ROW on this square. This measurement is shown on every map up to 2003 (subsequent maps don't show measurements). The pink line on the second screenshot is a 78-foot line we made in GIS to simulate where the line should be, juxtaposed to the red existing zone boundary.

Id. As a result, as of November 9, 2023, the Department of Zoning has officially confirmed that the zoning for Hyde-Addison Elementary School is listed as R3/GT only.²

6. Finally, it is important to note that the online official 2D zoning map and 3D zoning map contains the following similar disclaimers:

Disclaimer

While DCOZ is committed to providing accurate and timely zoning information via the . . . Zoning App, DCOZ *cannot guarantee* the quality, *content, accuracy*, or completeness of the information, text, graphics, links, and other items contained therein. All data visualizations on the . . . Zoning App *should be considered approximate*. Information provided in the zoning map should not be used as a substitute for legal . . . or other professional advice. *DCOZ assumes no liability for any errors, omissions, or inaccuracies in the information provided* regardless of the cause of such or for any upon any decision made, action taken, or action not taken by the user in reliance upon any maps or information provided herein. *DCOZ retains the right to change any content on its zoning map without prior notice.*

District of Columbia Department of Zoning, 3D Zoning Map, *available at <https://maps.dcoz.dc.gov/3d/>* (last visited January 22, 2024) (see the Disclaimer tab after clicking the HELP button) (emphasis added); District of Columbia Department of Zoning, Official Zoning Map, *available at <https://maps.dcoz.dc.gov/zr16/>* (last visited January 22, 2024) (see the Disclaimer tab after clicking the HELP button) (emphasis added).

7. The Applicant asserts that that the school's P Street building is closed. *DeLorean 88, LLC's Supplemental Memorandum*, at 4. However, pictures shown by the Applicant show that the P Street property is enclosed by a fence and has signs that read "Reserved Parking" and signs directing the public that the main entrance is located at 3219 O Street, N.W.

CONCLUSIONS OF LAW

8. The argument of the Applicant in favor of reconsideration are as follows: (1) the Board should rely on the zoning map at the time of application, which should be deemed MU-4 and R3/GT; (2) the District of Columbia Department of Zoning changed the zoning without an appropriate rulemaking; and (3) a remeasurement of the distance shows the business satisfies the

² The Board is aware of claims that not all zoning maps or documents may reflect this determination, but such documents are not relevant where they do not represent controlling authority, have likely just not been corrected, and the Department of Zoning has spoken conclusively upon a matter under its jurisdiction.

distance requirement under the Department of Zoning's 78 foot test. *DeLorean 88, LLC's Supplemental Memorandum*, at 10-19.³

9. The Board is not persuaded by the motion for several reasons. In particular, the motion for reconsideration cannot be granted because it requires the Board to overrule the District of Columbia Department of Zoning's determination that Hyde-Addison Elementary School is not zoned MU-4 but rather only R3/GT. As noted in *Craig*, the Board has "no authority to review the validity of the coordinate agency's action." *Craig v. D.C. Alcoholic Beverage Control Bd.*, 721 A.2d 584, 588 (D.C. 1998) citing *Kopff v. District of Columbia Alcoholic Beverage Control Bd.*, 413 A.2d 152, 154 (D.C.1980); see also *John G. Uhar v. D.C. Alcoholic Beverage Control Board*, 20-AA-021, 8 (D.C. 2023) citing *Barry Farm Tenants & Allies Ass'n v. D.C. Zoning Comm'n*, 182 A.3d 1214, 1228-29 (D.C. 2018) (" . . . [T]he Board certainly would lack authority to explicitly invalidate a decision of another agency."). The record in this case shows that the Department of Zoning has determined that the relevant property is not zoned MU-4. *Supra*, at ¶ 5. Moreover, none of the documents provided by the Applicant, including the 3D zoning map and the other documents are sufficiently authoritative to overrule this decision, as the disclaimer indicates that these documents are not controlling or definitive.⁴ *Supra*, at ¶ 6. Therefore, the Board has no authority to establish the zoning of Hyde-Addison Elementary School as an MU-4 zone and must respect the decision of the zoning department. Likewise, in accordance with *Craig*, the Board has no authority to declare that the Department of Zoning should have engaged in rulemaking or improperly followed its regulations. Moreover, in further accordance with *Craig*, to the extent that the Department of Zoning should change its determination based on a remeasurement, such a matter cannot be resolved by the Board, as the Board cannot make the Department of Zoning take any action or determine that it is wrong for not taking consideration of any fact related to a decision under its jurisdiction. As a result, the Applicant's request to overrule the Department of Zoning is in the wrong forum and must be made the Department of Zoning or to the courts to resolve.

10. Finally, although not clearly argued,⁵ the Board rejects the argument that the measurement for 300-foot purposes should be taken at 3219 O Street, N.W., and not take into consideration the P Street, N.W., location of the school that may encompass multiple separate lots when looking at the GIS map. *DeLorean 88, LLC's Supplemental Memorandum*, at 15, Appendix B-1.

³ The Board need not consider the second supplemental motion filed by the Applicant where no leave to file additional motions were requested or granted pursuant to 22-C DCMR § 9717.7. *DeLorean 88, LLC's Second Supplemental Memorandum*, at 1. Nevertheless, even if it the motion were appropriately filed, the Board would not grant the requested relief because the Board cannot waive statutory requirements or overrule any determinations made by the Department of Zoning, even if incorrect, in accordance *Craig v. D.C. Alcoholic Beverage Control Bd.*, 721 A.2d 584, 588 (D.C. 1998). As a result, nothing in the second supplemental changes the need for the Applicant to get the Department of Zoning or the courts to overrule the determination made by the Department of Zoning to achieve its desired result.

⁴ It would also seem that the Applicant would have to provide a comprehensive zoning history of the relevant locations showing how the present zoning determination is or is not supported by records going back to the creation of the zoning system to argue that its initial map is in fact correct.

⁵ The Board did not find this point clearly argued but addresses what it believes the Applicant's argument to be.

11. In accordance with D.C. Official Code § 7-1671.06A(c):

(c) . . . the 300-foot restrictions shall not apply where the main entrance to the preschool, primary or secondary school, or recreation center, or the nearest property line of the school or recreation center, is actually on or occupies ground zoned commercial or industrial according to the official atlases of the Zoning Commission of the District of Columbia.

D.C. Code § 7-1671.06A(c).⁶ The regulations further provide in § 5000 that

5000.1 In establishing the distance between one (1) or more places, (such as the actual distance of a medical cannabis business from a school or recreation center, as defined in the Act), the distance shall be measured linearly by the Board and shall be the shortest distance between the property lines of the places.

5000.2 If a boundary line measured by the Board touches upon any portion of a parcel or lot, the parcel or lot shall be within the area being identified by the Board.

22-C DCMR § 5000.1-.2 (West Supp. 2024).

12. In its motion, the Applicant provides no clear basis for excluding property located on P Street, N.W., to the extent those lots may actually be closer to the business. The mere fact that the school does not occupy or use any buildings is not sufficient to render the property not part of a school, as the usage of specific property is not relevant under § 7-1671.06A(c). *Supra*, at ¶ 7. Moreover, even if this were not the case, from the signage presented, the property appears to still be used for parking, and nothing presented by the Applicant excludes the likelihood that the school uses the property for other purposes such as rear vehicle access to the school grounds, storage, green space, outdoor activities, or even as large curb setback for the school grounds—all such uses still render the property part of the school.⁷

13. Therefore, the Board finds that the Applicant’s selected location is prohibited based on its proximity to the Hyde-Addison Elementary School.

⁶ The Applicant cites *Heyert v. D.C. Alcoholic Beverage Control Board*, 399 A.2d 1309 (D.C. 1979) in its motion; however, fails to include sufficient explanation as to why the case is relevant. The Board notes that *Heyert* involves a somewhat similar statute in the alcohol law that does not include the “nearest property line” language found in D.C. Official Code § 7-1671.06A(c) and the “main entrance” clause does not appear applicable to the present matter. *Heyert v. D.C. Alcoholic Beverage Control Board*, 399 A.2d 1309, 1312 (D.C. 1979) (“(b) Said distance shall be measured between the nearest street main entrance to said place of business and the nearest street main entrance to said school, college, university, church, or recreation area by the shortest line between such entrances on, over, or across any public traveled way or public park or parking. This subsection shall not apply where the main entrance to said school, college, university, church or recreation area itself is actually on or occupies ground zoned commercial or industrial according to the official atlases of the Zoning Commission of the District of Columbia.”)

⁷ The Board further notes that the record in this case is not sufficient to determine the current usage of the P Street, N.W., lots, if such a factor was relevant.

ORDER

Therefore, the Board, on this 31st day of January 2024, hereby **DENIES** the motion for reconsideration filed by the Applicant.

IT IS FURTHER ORDERED that, as a courtesy, a copy of this decision shall be provided to the District of Columbia Department of Zoning.

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 copies of this Order to the Government and the Respondent.

District of Columbia
Alcoholic Beverage and Cannabis Board

esigned via SeamblesDocs.com
Donovan Anderson
Key: ac43cb09b69d5f09e4b730663d1dccc8

Donovan Anderson, Chairperson

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James Short
Key: 547ea373f620de6ac8c1b3325d2d48ec

James Short, Member



Silas Grant, Jr., 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 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. 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).