

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

In the Matter of:)	
)	
Greenstein, DeLorme, & Luchs, P.C.)	License No. N/A
)	Order No. 2010-607
<i>Request for an Advisory Opinion</i>)	
at premises)	
1620 L Street, N.W.)	
Washington, D.C. 20036)	

BEFORE: Charles Brodsky, Chairperson
Mital M. Gandhi, Member
Nick Alberti, Member
Donald Brooks, Member
Herman Jones, Member
Calvin Nophlin, Member
Mike Silverstein, Member

ADVISORY OPINION AND ORDER

Mr. Lyle M. Blanchard of the firm, Greenstein, DeLorme, & Luchs, P.C., filed a written request with the Board regarding whether D.C. Official Code § 25-336(a) (2001), allows the Board to issue a Retailer's Class liquor license in the Southeast Federal Center (SEFC) Overlay District where the overlay district overlaps a R-5-D, a R-5-E, and a W-0 zone. The Alcoholic Beverage Regulation Administration (ABRA) received Mr. Blanchard's request by letter, dated September 9, 2010, and received further information regarding the request in a November 30, 2010, letter. In response, the Board offers the following advisory opinion:

FINDINGS OF FACT

1. The sole question under review is whether the Board can issue a Retailer's Class liquor license to an applicant for a business located in either a SEFC/R-5-D, SEFC/R-5-E, or SEFC/W-0 zone in light of D.C. Official Code § 25-336(a).

CONCLUSIONS OF LAW

2. The Board finds that D.C. Official Code § 25-336(a) does not prevent the Board from issuing a Retailer's Class liquor license to an applicant for a business located in either a SEFC/R-5-D, SEFC/R-5-E, or SEFC/W-0 zone.

3. D.C. Official Code § 25-336(a) states that “No retailer's license shall be issued for, or transferred to, a business operated in a residential-use district as defined in the zoning regulations and shown in the official atlases of the Zoning Commission for the District. . . .” D.C. Code § 25-336(a) (2001).

4. R-5-D, R-5-E, and W-0 zones and the SEFC District Overlay are defined in the District of Columbia’s zoning regulations. R-5 Districts permit “all types of urban residential development” and is subdivided into R-5-A, R-5-B, R-5-C, R-5-D, and R-5-E Districts.” 11 DCMR §§ 350.1-350.3 (2008). The W-0 District “provide[s] waterfront recreation areas with related waterfront-oriented or waterfront-enhancing uses, to serve local and regional open space recreation needs.” 11 DCMR § 900.6 (2008). Finally, “The Southeast Federal Center (SEFC) Overlay District is applied to an approximately 42-acre portion of the SEFC site that is designated for ‘federal use’ and ‘parks, recreation, and open space’ in the Comprehensive Plan for the National Capital.” 11 DCMR § 1800.1 (2008).

5. D.C. Official Code § 25-336(a) states that “No retailer's license shall be issued for, or transferred to, a business operated in a residential-use district as defined in the zoning regulations. . . .” § 25-336(a). The zoning regulations state that “[w]here there are conflicts between [the SEFC Overlay District regulations] and the underlying zoning, the provisions of the SEFC Overlay District shall govern.” 11 DCMR § 1800.2 (2004). The District of Columbia’s zoning rules do not provide for the building of retail ABC establishments, such as restaurants or nightclubs, in R-5 Districts and require that buildings are for “urban residential development.” 11 DCMR §§ 350.1, 350.3; *see generally* 11 DCMR §§ 350-361 (2008). Nevertheless, the purpose of the SEFC Overlay District is to “[e]ncourage a variety of support and visitor-related uses, such as retail, service, entertainment, cultural, and hotel or inn uses.” 11 DCMR § 1802.4 (2008). The SEFC Overlay District specifically states that bars and cocktail lounges, catering establishments, and restaurants are preferred uses in the overlay district. 11 DCMR §§ 1807.1-1807.2 (2008). As such, the Board concludes that the SEFC Overlay District is intended to permit commercial uses, including establishments that sell and serve alcohol, and that D.C. Official Code § 25-336(a) allows the Board to issue a Retailer’s Class license in the SEFC/R-5-D and SEFC/R-5-E zones.

6. In reviewing the zoning regulations, the Board finds that a conflict exists between the regulations controlling R-5 Districts, which are limited to urban residential development, and the SEFC Overlay District, which, among other things, encourages the property in the district to be used for retail and entertainment purposes. The Board made its decision based upon § 1800.2, which indicates that where the preferred uses in the SEFC Overlay District conflict with the R-5 District’s purpose of encouraging “urban

residential development,” the SEFC Overlay District’s preferred uses should control. *Compare* 11 DCMR §§ 1807.1-1807.2 with 11 DCMR § 350.1; 11 DCMR §§ 350-361. Defining the SEFC/R-5-D or SEFC/R-5-E zone as a residential-use zone under § 25-336(a) would undermine the plain language of the zoning regulations, which states that the SEFC Overlay District should take precedence over any underlying zoning. As such, the Board finds that D.C. Official Code § 25-336(a) does not prevent the Board from issuing a Retailer’s Class liquor license in a SEFC/R-5-D or SEFC/R-5-E zone.


7. Lastly, it is clear that § 25-336(a) does not apply to SEFC/W-0 zones. A waterfront zone is not a residential-use district. As such, D.C. Official Code § 25-336(a) does not prevent an individual or entity from applying for a Retailer’s Class liquor license in a SEFC/W-0 zone.

ORDER


Accordingly, it is this 5th day of January 2011, **ORDERED** that:

Based on the foregoing reasons, as well as all of the information submitted to the Board with respect to this matter, it is the **ADVISORY OPINION** of the Board, that it may issue a Retailer’s Class liquor license to an applicant for a business located in an SEFC/R-5-D, SEFC/R-5-E, or SEFC/W-0 zone.

District of Columbia
Alcoholic Beverage Control Board



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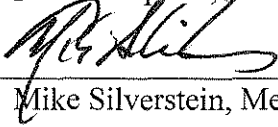
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