

Dismiss, 1. The Board’s agent initially granted CSNA standing to protest the application at the Roll Call Hearing pursuant to the District of Columbia (D.C.) Official Code § 25-601(3). Section 25-601(3) provides standing to community associations to protest liquor license applications. D.C. Official Code § 25-601(3). Specifically, the statute states that

The following persons may protest the issuance or renewal of a license, the approval of a substantial change in the nature of operation as determined by the Board under § 25-404, or the transfer of a license to a new location: . . .

(3) A citizens association incorporated under the laws of the District of Columbia located within the affected area; provided, that the following conditions are met:

(A) Membership in the citizens association is open to all residents of the area represented by the association; and

(B) A resolution concerning the license application has been duly approved in accordance with the association’s articles of incorporation or bylaws at a duly called meeting, with notice of the meeting given to the voting body and the applicant at least 7 days before the date of the meeting;

D.C. Official Code §25-601(3)(A)-(B).

ARGUMENTS OF THE PARTIES

The motion filed by the Applicant challenges CSNA’s compliance with part (3)(A); namely, CSNA does not qualify as a community association “open to all residents of the area.” *Appl. Mot. to Dismiss*, 1-2. The Applicant notes that the CSNA’s articles of incorporation require that new members be approved by an affirmative vote of at least two-thirds of the CSNA’s membership at a scheduled meeting and that members may be expelled by a similar vote. *Id.* Under these circumstances, the Applicant argues that the CSNA cannot be considered an association open to all residents of the area in compliance with § 25-601(3)(A). *Id.* at 2.

The CSNA urges the Board to deny the motion for the following reasons: (1) there is no evidence that the CSNA has excluded any residents of the area from joining the organization; (2) the CSNA is open to all residents and businesses; and (3) the Applicant’s interpretation is unreasonable. *CSNA Resp.*, 1. Pertinent to the issue of standing, CSNA notes that its bylaws provide for open membership to all residents, and that the organization does not follow the membership provision in its articles of incorporation. *Id.* at 5.

In reply, the Applicant notes the following: (1) CSNA has not presented evidence that no one has ever been denied membership and nothing prevents CSNA from denying membership to residents in the future and (2) the law of the District of Columbia governing the incorporation of nonprofit corporations requires that a nonprofits articles of incorporation take precedence over an organization’s bylaws.

DISCUSSION

After reviewing the arguments of the parties, the Board agrees with the Applicant that the CSNA is not an open to all residents of the area in compliance with § 25-601(3)(A).

“It is . . . well-settled that the issue of standing may be raised at any time during the protest process, and that the Board may reevaluate the standing of parties *sua sponte*.” *In re S&A Deli, Inc., t/a Good Hope Deli & Market*, Case No. 14-PRO-00018, Board Order No. 2014-222 (D.C.A.B.C.B. May 15, 2014) *citing In re Watergate Hotel Lessee, LLC, t/a Watergate Hotel*, Case No. 13-PRO-00005, Board Order No. 2013-417, 17 (D.C.A.B.C.B. Oct. 2, 2013) (Order Denying the Motion for Reconsideration).

In this case, the question is whether the CSNA is “open to all residents of the area” under § 25-601(3)(A) when its articles of incorporation require a two-thirds vote to approve new members. The Board answers this question in the negative, because the membership requirement in the CSNA’s articles of incorporation cannot be overridden by its bylaws as a matter of law and that the two-thirds requirement does not comply with § 25-601(3)(A); therefore, the Board must deny CSNA standing as a matter of law.

1. CSNA’s articles of incorporation cannot be overridden by its bylaws as a matter of law.

CSNA’s argument that it can override its articles of incorporation through its bylaws is incorrect as matter of law. Under § 29-403.02(3), a nonprofit organization is only empowered to “[m]ake and amend bylaws, not inconsistent with its articles of incorporation or with the laws of the District, for managing and regulating the affairs of the corporation.” D.C. Official Code § 29-403.02(3). The nonprofit corporation law then essentially repeats this requirement in § 29-402.06 when it states that “[t]he bylaws of a nonprofit corporation may contain any provision for managing the activities and regulating the affairs of the corporation that is not inconsistent with law or the articles of incorporation.” D.C. Official Code § 29-402.06(b). Consequently, CSNA cannot argue that its bylaws override its articles of incorporation.

2. CSNA’s requirement that members be approved by a two-thirds vote render the organization not open to all residents of the area in accordance with § 25-601(3)(A).

The “open to all” requirement found in § 25-601(3)(A) first appeared in the Omnibus Alcoholic Beverage Regulation Amendment Act of 2014. *D.C. Council*, Report on Bill 15-516, the “Omnibus Alcoholic Beverage Amendment Act of 2004 at 36 (Mar. 9 2004). The D.C. Council recognized that “. . . it would be important and helpful to have citizen associations be more defined.” *Id.* The Council further stated that “[i]t is the Committee’s intent by passing this amendment to ensure that those associations which are protesting license applications are truly speaking for their membership.” *Id.* at 36-37. The Board further notes that the term “open” is commonly understood to mean “[a]ffording unobstructed entrance or exit.” WEBSTER’S II NEW COLLEGE DICTIONARY, at 766 (2001) (“open”).

In this case, the CSNA's articles of incorporation require members to be approved by a two-thirds vote. This requirement creates an obstacle to membership that could potentially allow CSNA to block residents within its boundaries from joining the organization. The Board recognizes that there is no evidence in the record that CSNA has ever denied membership to a resident within its boundaries; however, the fact that its founding documents creates a barrier to membership is sufficient on its face to deem CSNA noncompliant with § 25-601(3)(A).¹ Consequently, CSNA cannot demonstrate that is entitled to standing under § 25-601(3).

The Board notes that the parties identified other issues and facts in their pleadings; however, there is no need for the Board to address these ancillary matters based on the resolution of the threshold standing issue.

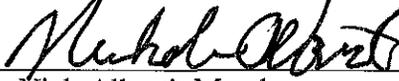
ORDER

Therefore, on this 10th day of September 2015, the Board hereby **GRANTS** the motion to dismiss filed by the Applicant. The protest filed by CSNA is hereby **DISMISSED** for lack of standing under § 25-601(3). ABRA shall deliver this order to the designated representatives of the parties.

¹ The Board notes that CSNA's position—that it cannot be denied standing until it actually blocks a qualified resident from joining—is untenable because it would require the Board to scrutinize every membership vote ever taken by CSNA, which would be much more difficult than simply examining its articles of incorporation and bylaws.

District of Columbia
Alcoholic Beverage Control Board

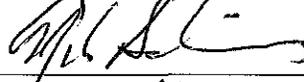
Ruthanne Miller, Chairperson



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, N.W., 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, District of Columbia 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, 500 Indiana Avenue, 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).