



granted there was no evidence in the record disputing their claim to be abutting property owners.<sup>1</sup>

Subsequently, the Board has received a motion to dismiss the Abutting Property Owners. *Mot. to Dismiss*, 1-2. Dacha provides evidence that the two Protestants are merely tenants of their respective properties and that the actual owners of the property are the entities Riverfront Holdings I, LLC, and Florida Rock Properties, Inc. *Id.* at 1-2. The Board notes that neither of these entities have filed protest letters in this matter. Dacha further directs the Board to its recent decision in *Rito Loco*, where it was said that “rental occupants cannot obtain standing as abutting property owners, because they do not qualify as property owners.” *In re Rito Loco, LLC, t/a Rito Loco*, Case No. 17-PRO-00025, Board Order No. 2017-365, 2 (D.C.A.B.C.B. Jun. 21, 2017).

The Protestants do not dispute the facts provided by Dacha. *Response*, at 1. Nevertheless, the Protestants indicate that ABRA officials provided information contrary to the Board’s recent Order in *Rito Loco*. The Protestants further challenge the policy of giving standing to abutting property owners, and not leasees.

The Board is in agreement with Dacha. Someone whose sole connection to a property derives from the fact that they have a tenant, rental, or leasee relationship with the owner cannot qualify as “abutting property owners” under § 25-601. Under § 25-601(1), “An abutting property owner” is granted standing to file a protest against a new license application. D.C. Code § 25-601(1) (emphasis added). Black’s Law Dictionary defines an “owner” as “Someone who has the right to possess, use, and convey something,” while a “legal owner” is defined as “One recognized by law as the owner of something.” OWNER, Black’s Law Dictionary (10th ed. 2014). Furthermore, the District of Columbia Court of Appeals has indicated that administrative agencies should “favor a policy of *stare decisis* unless unusual circumstances intervene.” *Reichley v. D.C. Dep’t of Employment Servs.*, 531 A.2d 244, 247 (D.C. 1987). In light of the common understanding of the term “owner,” the Board’s precedent in *Rito Loco*, and a lack of compelling reasons to change the Board’s prior interpretation, the Board is satisfied that *Rito Loco* remains the controlling precedent. Consequently, people that merely rent or lease an abutting property cannot qualify as an owner under § 25-601, because they do not possess legal title and do not have the legal right to convey the property.

While ABRA may have provided different information, this does not change the result. As noted in *Watergate*, “standing is jurisdictional and cannot be waived.” *In re Watergate Hotel Lessee, LLC, t/a Watergate Hotel*, Case No. 16-PRO-00085, Board Order No. 2016-706, 2 (D.C.A.B.C.B. Dec. 14, 2016). Furthermore, an administrative agency, such as the Board, cannot contravene the direct language of a statute; therefore, the Protestants’ legal and policy arguments to do so are unavailing in this forum. *D.C. Metro. Police Dep’t v. Pinkard*, 801 A.2d 86, 90 (D.C. 2002) (“we will not defer to an agency’s interpretation if it is inconsistent with the plain language of the statute itself.”) Consequently, the Board is obligated to deny the Protestants standing as abutting property owners because they are not, in fact, the abutting property owners.

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<sup>1</sup> It should also be noted that the local Advisory Neighborhood Commission has entered into a settlement agreement with Dacha. It also appears that the actual abutting property owner is currently leasing the property to Dacha for their establishment.

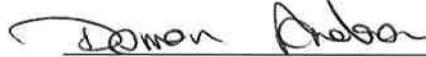
Furthermore, the Board finds no prejudice to the Protestants based on any information provided by ABRA staff. First, laws and legal interpretation are subject to clarification and change all of the time. *Rito Loco* was issued approximately a month before this Order, on June 21, 2017; as a result, it is understandable that ABRA staff may not have been aware of this recent holding by the Board based on how recently it was issued. Second, the actual entity-owners in this case were on notice through the posting of the placards that they had an opportunity to protest the application or join the current protests, but did not do so. Third, the Protestants, in their initial protest letter already attempted to get standing on multiple grounds; as a result, their failure to name additional potential grounds for standing amounts to a waiver of the right to do so. *Protest Letter*, at 1; *see also In re The Bladgen Alley Entertainment, LLC, t/a The American*, Case No. 14-PRO-00019, Board Order No. 2014-270 (D.C.A.B.C.B. Jun. 24, 2014) (“While ABRA can provide information regarding the protest process, only the parties can advocate for their positions and decide on a legal strategy. The time for the group to choose how it would obtain standing [was] when it submitted its protest petition, not afterwards.”)

### **ORDER**

Therefore, for the above stated reasons, on this 26th day of July 2017, the Board **GRANTS** the motion to dismiss filed by Dacha. A copy of this Order shall be provided to the parties by ABRA.

**IT IS FURTHER ORDERED** that Kristof Grina is further **DISMISSED** for failing to appear at the Protest Status Hearing either in person or through a designated representative.

District of Columbia  
Alcoholic Beverage Control Board



Donovan Anderson, Chairperson



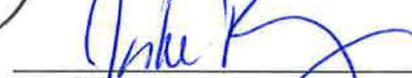
Nick Alberti, Member



Mike Silverstein, Member



James Short, Member



Jake Perry, Member



Donald Isaac, Sr., 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, 2000 14<sup>th</sup> Street, N.W., Suite 400S, Washington, DC 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 (2008) 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).