

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

In the Matter of:)	
)	
Young Hwa Corporation)	License Number: ABRA-079255
t/a Pennsylvania Avenue Market)	Case Number: 11-PRO-00083
)	Order Number: 2012-084
Application to Renew a)	
Retailer's Class B License)	
)	
at premises)	
1501 Pennsylvania Avenue, S.E.)	
Washington, D.C. 20003)	

BEFORE: Ruthanne Miller, Chairperson
Nick Alberti, Member
Donald Brooks, Member
Herman Jones, Member
Calvin Nophlin, Member
Mike Silverstein, Member
Jeannette Mobley, Member

ALSO PRESENT: Young Hwa Corporation, t/a Pennsylvania Avenue Market, Applicant

Kevin Lee, Esq., on behalf of the Applicant

T. Carlton Richardson

Commissioner Jared Critchfield, Chairperson, Advisory Neighborhood
Commission (ANC) 6B, Protestant

Commissioner Carol Green, ANC 6B, Protestant

Martha Jenkins, General Counsel
Alcoholic Beverage Regulation Administration

**ORDER DENYING T. CARLTON RICHARDSON'S MOTION FOR
RECONSIDERATION**

Young Hwa Corporation, t/a Pennsylvania Avenue Market, (Applicant) submitted an Application to Renew its Retailer's Class B License (Application) at premises 1501

Pennsylvania Avenue, S.E., Washington, D.C. The Application was protested by Advisory Neighborhood Commission 6B and T. Carlton Richardson.

The Board dismissed Mr. Richardson from the protest on January 11, 2012, because he is not an abutting property owner under District of Columbia Official Code § 25-601(1), and thus, lacked standing to protest the Application. Young Hwa Corporation, t/a Pennsylvania Avenue Market, Board Order No. 2012-007, 1-3 (D.C.A.B.C.B. Jan 11, 2012). At the Roll Call Hearing, the Board's Agent granted standing to Mr. Richardson under the condition that he qualified as an abutting property owner. *Transcript (Tr.)*, December 5, 2011 at 11-12. Nevertheless, on December 22, 2011, the Board's Agent generated a map using the District of Columbia's Geographic Information System that demonstrated that Mr. Richardson's property, located at 1505 Pennsylvania Avenue, S.E., does not abut the Applicant's property, located at 1501 Pennsylvania Avenue, S.E. Young Hwa Corporation, Board Order No. 2012-007 at 1; see also *ABRA Protest File No. 11-PRO-00083, GIS Map*. Under these circumstances, the Board had sufficient evidence to dismiss Mr. Richardson's protest.

Subsequently, Mr. Richardson has filed a Motion for Reconsideration that requests that we reinstate his protest. Mr. Richardson argues that he should be reinstated for the following reasons:

- (1) The Board failed to consider that even though his property is geographically separated from 1501 Pennsylvania Avenue, S.E., by 1503 Pennsylvania Avenue, S.E., a tattoo parlor, the fact that the Applicant owns both properties results in "constructive abutment";
- (2) The Board has the discretion to allow protests by parties not listed in District of Columbia Official Code § 25-601;
- (3) The Board failed to provide Mr. Richardson notice that his protest was dismissed and an opportunity to be heard; and
- (4) The Board violated the District of Columbia Administrative Procedure Act (District of Columbia Official Code § 2-501, *et. seq.*), which overrides Title 25 of the District of Columbia Official Code, by failing to make him a party to the protest.

First, Mr. Richardson's property does not abut the licensed establishment. Under § 25-601, an abutting property owner has standing to protest the renewal of a license. D.C. Code § 25-601(1). The term "abut" is defined as "to share a common boundary with" by Black's Law Dictionary. Black's Law Dictionary (9th ed. 2009) (abut). The presence of intervening properties between the licensed establishment and the owner's property prevents the properties from sharing a common boundary. As such, Mr. Richardson's property cannot abut the Applicant's establishment, because 1503 Pennsylvania Avenue, S.E., divides 1501 Pennsylvania Avenue, S.E., from 1505 Pennsylvania Avenue, S.E. The Board will not expand the definition of abutting property to include separate non-ABC commercial establishments owned by the Applicant, because such an interpretation would imply that the Board somehow has the power to regulate such entities, when in fact we have no such power. See D.C. Code § 25-201(c) (West Supp. 2011).

Second, we reject Mr. Richardson's argument that § 25-601 allows anyone to protest the Application. Section 25-601 states "The following persons may protest the . . . renewal of a license . . . : (1) An abutting property owner; (2) [a group of five or more individuals]; (3) A citizens association . . . (4) An affected ANC; (5) . . . the Mayor; (6) . . . the United States . . . ; or (7) The Metropolitan Police Department District Commander" D.C. Code § 25-601 (West Supp. 2011). Clearly, the statute, by saying "may," is leaving the decision to protest an application to each listed party's discretion, and does not silently authorize individuals to protest any licensee they so choose.

Section 25-601's legislative history further supports such an interpretation. The Committee on Consumer and Regulatory Affairs noted specifically in its report on Title 25 of the District of Columbia Official Code that it disfavors "lone protestants." Council of the District of Columbia Committee on Consumer Regulatory Affairs, Report on Bill 13-449, the "Title 25, D.C. Code Enactment and Related Amendments Act of 2000," 135 (Nov. 20, 2000) ("The Committee does feel there are some grounds for limiting 'lone protestants'")

Third, Mr. Richardson had adequate notice that the Board dismissed his protest and an opportunity to be heard. The Board's Agent told Mr. Richardson at the protest hearing that his standing was conditional on the Agent's finding that his property abutted the Applicant's property. *Tr.*, 12/5/11 at 11-12. Thus, Mr. Richardson cannot claim surprise that the Board denied him standing after reviewing the map produced by the Board's Agent that showed that his property does not abut the licensed establishment. Furthermore, as our discussion above indicates, the Board has considered the arguments presented in his Motion for Reconsideration, and has determined, on the merits, that Mr. Richardson has no grounds under which to obtain standing. See also 23 DCMR § 1719.5 (the determination as to whether to hold a hearing regarding a motion rests solely within the Board's discretion). As such, the Board has accorded Mr. Richardson due process under the law.

Fourth, Mr. Richardson is simply wrong that the general provisions of the District of Columbia Administrative Procedure Act override Title 25 of the District of Columbia Official Code, and give him standing in this protest. Both statutory schemes are contained in the District of Columbia Official Code, and are of equal standing in the hierarchy of laws. Thus, the District of Columbia Administrative Procedure Act cannot create standing in an ABC proceeding that is not authorized by Title 25.

Finally, although not necessary to our decision, we note that Mr. Richardson's contention that the Board's actions amount to a regulatory taking is simply wrong. We note that the Board's ruling solely impacts the use of the premises located at 1505 Pennsylvania Avenue, S.E., not Mr. Richardson's property. In addition, even if this was not the case, we note that granting a liquor license to a non-abutting property does not result in a physical invasion of Mr. Richardson's property, or deprive Mr. Richardson of all of the beneficial uses of his property. Lingle v. Chevron USA, Inc., 544 U.S. 528, 538 (2005) (citations omitted). Furthermore, we highly doubt that the District of Columbia's alcoholic beverage control laws raise a takings issue, because the

Supreme Court has specifically stated that a regulatory taking will not be “readily . . . found when the interference with property . . . arises from some public program adjusting the benefits and burdens of economic life to promote the common good.” Penn Central Transp. Co. v. City of New York, 438 U.S. 104, 124 (1978). As such, Mr. Richardson has no cause to claim that the Board’s actions amount to a regulatory taking.

For the foregoing reasons, we deny the Motion for Reconsideration.

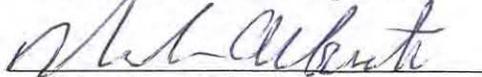
ORDER

Therefore, the Board, on this 7th day of March 2012, hereby **DENIES** the Motion to Reconsider filed by Mr. Richardson. The Alcoholic Beverage Regulation Administration shall deliver copies of this Order to the Applicant, ANC 6B, and Mr. Richardson.

District of Columbia
Alcoholic Beverage Control Board



Ruthanne Miller, Chairperson



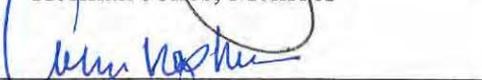
Nick Alberti, Member



Donald Brooks, Member



Herman Jones, Member



Calvin Nophlin, Member



Mike Silverstein, Member



Jeannette Mobley, Member

Pursuant to 23 DCMR § 1719.1 (April 2004), 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 (April 2004) 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).