

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

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In the Matter of:	)		
	)		
Tae Kwang, Inc.	)	Case No.:	15-PRO-00037
t/a Sylvia's Liquors	)	License No:	077726
	)	Order No:	2015-298
	)		
Application to Renew a	)		
Retailer's Class A License	)		
	)		
at premises	)		
1818 Benning Road, N.E.	)		
Washington, D.C. 20002	)		

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**BEFORE:** Ruthanne Miller, Chairperson  
Nick Alberti, Member  
Donald Brooks, Member  
Herman Jones, Member  
Mike Silverstein, Member  
Hector Rodriguez, Member  
James Short, Member

**ALSO PRESENT:** Tae Kwang, Inc., t/a Sylvia's Liquors, Applicant

Michael Fonseca, Counsel, of the law firm Mallios & O'Brien, on behalf of the Applicant

Kathy Henderson, Designated Representative, on behalf of a Group of Five or More Residents or Property Owners, Protestants

Martha Jenkins, General Counsel  
Alcoholic Beverage Regulation Administration

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**ORDER DISMISSING PROTEST**

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**INTRODUCTION**

The Alcoholic Beverage Control Board (Board) dismisses the protest filed by the Group of Five or More Residents and Property Owners (Henderson Group) against the renewal application filed by Tae Kwang, Inc., t/a Sylvia's Liquors, (Applicant), because less than five

members live within sufficient geographic proximity to the establishment to satisfy the standing requirement provided by D.C. Official Code § 25-601(2).

### ***Procedural Background and Arguments of the Parties***

1. The Applicant filed a motion seeking the dismissal of the Henderson Group, because the group cannot establish standing under the “common grounds” requirement provided by D.C. Official Code § 25-601(2). D.C. Official Code § 25-601(2); *Mot. to Dismiss Protest*, 1 [*Mot.*]. The Applicant argued that under the Board’s precedent the “. . . Protestants reside well beyond any immediate geographic proximity to the Applicant to qualify for standing.” *Id.* The Applicant noted that, by law, a circle extending 1,800 feet from the establishment is the maximum area the Board may consider when determining the appropriateness of the establishment; yet, only three members of the Henderson Group live within 1,800 feet of this Applicant’s establishment. *Id.* at 1-2, Exhibit A.

2. In reply, the Henderson Group argues that the members targeted by the Applicant’s motion are actively involved in the community; therefore, they have a vested interest in the community and should not be dismissed. *Opp. to Applicant’s Mot. to Dismiss*, 1.<sup>1</sup>

3. In response, the Applicant argues that the Henderson Group cannot use community involvement to overcome the lack the geographic proximity to the Applicant’s establishment. *Reply to Opp. to Applicant’s Mot. to Dismiss*, 2.

### **FINDINGS OF FACT**

4. In resolving this motion, the Board relies on the following facts:

5. The Henderson Group is comprised of seven individuals. *Protest Letter (Henderson Group)*, 1-2 (May 11, 2015). The following members of the Henderson Group live more than 1,800 feet away from the establishment: Darline Miles-Harrison; Patricia Johnson; Robert Johnson; and Brian Camus. *Protest Letter*, 1; *Mot.* 1-2, Exhibit A. There is no evidence that these four people own property in the protest area.

### **CONCLUSIONS OF LAW**

6. The Board agrees with the Applicant that the Henderson Group lacks standing to protest the Application based on the failure to establish “common grounds” under § 25-601(2). § 25-601(2).

7. “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*

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<sup>1</sup> The Henderson Group also argued that the Board should not apply a geographical limit on ANC’s. *Opp. to Applicant’s Mot.*, 1. This argument is based on a faulty factual assumption that the standing of an ANC is based on geographical proximity, which is not the case under § 25-601(4).

*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). Section 25-601(2) gives standing to protest the issuance, renewal, transfer to a new location, or substantial change of a liquor license to “[a] group of no fewer than 5 residents or property owners of the District sharing common grounds for their protest . . . .” D.C. Official Code § 25-601(2). The phrase “common grounds” found in § 25-601(2) requires the members of a group to “. . . share the same issues and act as a single unit . . . .” *In re Watergate Hotel Lessee, LLC*, Board Order No. 2013-417 at 17. In 2006, the Board also found that the phrase “common grounds” in § 25-601(2) also requires group members to establish “geographic proximity.” *In re Wami, LLC, t/a Be Bar*, Case No. 61087-06/005P, Board Order No. 2006-030, 13 (D.C.A.B.C.B. Aug. 16, 2006).

8. In *Be Bar*, members of the Scripture Cathedral Church attempted to obtain standing under § 25-601(2) based on their “. . . long-term involvement in the Shaw community,” their membership in the church, and the church’s operation of a day care center in the neighborhood. *Id.* at ¶ 6. Nevertheless, none of the individuals resided or owned property in the neighborhood. *Id.* Therefore, the Board concluded that the group members lacked common grounds and lacked standing to protest the application. *Id.* at ¶ 13.

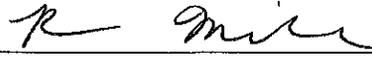
9. In evaluating the “appropriateness” of an establishment, the maximum area the Board may consider is a “portion,” which is defined as the area within 1,800 feet of the establishment. 23 DCMR § 1607.7, (c) (West Supp. 2015). For the purposes of determining geographic proximity under the common grounds requirement, a person that does not live or own property within 1,800 feet of the establishment cannot establish sufficient geographic proximity to satisfy the requirements of § 25-601(2). Indeed, a person living farther than 1,800 feet from the establishment cannot allege “any actual or imminent injuries.” *See Padou v. D.C. Alcoholic Beverage Control Bd.*, 70 A.3d 208, 212 (D.C. 2013).

10. Only three members of the Henderson Group live within 1,800 feet of the establishment, which is less than the five needed to sustain a protest under § 25-601(2). *Supra*, at ¶ 1. The Board is not persuaded by the Henderson Group’s argument that the other members have sufficient ties to the community through community involvement to establish common grounds. As the Board concluded in *Be Bar*, these types of ties do not satisfy the geographic proximity requirement.

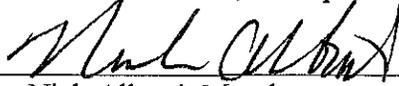
## ORDER

Therefore, for the reasons stated above, the Board, on this 10th day of June 2015, **DISMISSES** the protest of the Henderson Group. The ABRA shall deliver a copy of this order to the Applicant and the Henderson Group.

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, 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).