THE DISTRICT OF COLUMBIA
ALCOHOLIC BEVERAGE CONTROL BOARD

In the Matter of:	)		
	)		
The Blagden Alley Entertainment, LLC	)	Case Number:	14-PRO-00019
t/a The American	)	License Number:	92766
	)	Order Number:	2014-238
Application for a New	)		
Retailer's Class CR License	)		
	)		
at premises	)		
1209-1213 10th Street, N.W.	)		
Washington, D.C. 20001	)		
	)		

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

ALSO PRESENT: The Blagden Alley Entertainment, LLC, t/a The American, Applicant

Risa Hirao, Pascal & Weiss P.C., on behalf of the Applicant

Barbara A. Schauer, on behalf of A Group of Five or More Individuals, Protestants

Matt Raymond, on behalf of Advisory Neighborhood Commission (ANC) 2F, Protestant

Martha Jenkins, General Counsel
Alcoholic Beverage Regulation Administration

ORDER AFFIRMING THE STANDING DETERMINATION OF THE BOARD'S AGENT

INTRODUCTION

The Application for a New Retailer's Class CR License (Application) was filed by The Blagden Alley Entertainment, LLC, t/a The American (hereinafter "Applicant" or

"American"). The Application was protested by A Group of Five or More Individuals (Schauer Group) and Advisory Neighborhood Commission (ANC) 2F. The Roll Call Hearing in this matter occurred on March 17, 2014. At the hearing, the Board's Agent designated the Schauer Group as having standing under § 25-601(2), or in other words, as a group of five or more individuals or property owners. D.C. Official Code § 25-601(2).

On May 6, 2014, the Schauer Group requested that the Board clarify its standing, as well as affirm that some members of the group have standing as abutting property owners under § 25-601(1). D.C. Official Code § 25-601(1). According to the Schauer Group, twelve members of the group constitute abutting property owners. The American objects to this request, because the Schauer Group did not raise the matter at the Roll Call Hearing and, because the addition of abutting property owner protestants is untimely. On May 20, 2014, the Schauer Group replied that granting its request would not result in the addition of a new group, because the abutting property owners have already been identified as part of the group.

The question before the Board is whether all, or a portion, of abutting property owners that have been identified as having standing as part of a group under § 25-601(2) may splinter off from the group after the roll call hearing, when those abutting property owners did not file a separate protest, or object to their initial designation as a group. The records of the Alcoholic Beverage Regulation Administration show, as far as the Board can tell, that this issue has never been addressed in a formal order. Nevertheless, the issue is not a trivial one based on the newly enacted § 25-609(b), which provides that all protests brought under § 25-601(2) shall be dismissed if an affected ANC enters into a settlement agreement with the applicant. D.C. Official Code § 25-609(b). As a result, the Board is aware that if the Board finds in favor of the Schauer Group, this will protect the group from dismissal under § 25-609(b).

Yet, as a matter of law, the Board is compelled to find in favor of the American. Under § 25-601, only certain categories of "persons" may file a protest against an application. D.C. Official Code § 25-601. Two of those "persons" identified by §25-601 include "abutting property owners" and groups of at least five residents and property owners. § 25-601(1), (2). According to § 25-602, each person objecting ". . . to the approval of an application" must file an ". . . objection within the protest period." D.C. Official Code § 25-602(a).

Section § 1601.8 further adds that the Board's Agent shall schedule an additional roll call hearing when "a dispute exists regarding the legal standing of a party. . . ." 23 DCMR § 1601.8 (West Supp. 2014).

Under Title 25 of the D.C. Official Code groups and abutting property owners are considered legally separate persons under § 25-601. In this case, allowing the abutting property owners to splinter off from the Schauer Group would create new protestants with legally separate interests. Had the abutting owners sought standing as both a group of five or more residents and property owners and as separate abutting property owners with their initial protest letter, the Board would have permitted the twelve abutting property owners to have standing.

Nevertheless, in this case, the Schauer Group did not object to their standing designation as a group under § 25-601(2) at the Roll Call Hearing, and the group's initial protest letter did not notify the Board, or the American, that the group sought standing under § 25-601(1). Under these facts, permitting the abutting property owners to seek standing under a new ground would allow them to evade the protest filing requirements of § 25-602(a). Furthermore, the Board finds that it must deem the standing issue raised by the Schauer Group as waived, because raising it after the completion of the Roll Call Hearing is untimely under § 1601.8. Consequently, the Board must affirm the standing ruling of the Board's Agent as a matter of law.

ORDER

Therefore, the Board, on this 28th day of May 2014, hereby **AFFIRMS** the standing determination made by the Board's Agent in Case Number 14-PRO-00019 on March 17, 2014.

District of Columbia
Alcoholic Beverage Control Board

Nick Alberti, Member

Donald Brooks, Member

Herman Jones, Member

Mike Silverstein, Member

Hector Rodriguez, Member

James Short, Member

I dissent from the position taken by the majority of the Board.

Ruthanne Miller, Chairperson

Under 23 DCMR § 1719.1 (2008), 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, under 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, 500 Indiana Avenue, N.W., Washington, D.C. 20001. However, the timely filing of a Motion for Reconsideration under 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).