

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

In the Matter of:)	
)	
801 Restaurant, LLC)	Case No.: 19-PRO-00137
t/a 801 Restaurant & Bar)	License No.: ABRA-103120
)	Order No.: 2020-119
Application to Renew a)	
Retailer's Class CT License)	
)	
at premises)	
801 Florida Avenue, N.W.)	
Washington, D.C. 20001)	

BEFORE: Donovan Anderson, Chairperson
James Short, Member
Bobby Cato, Member
Rema Wahabzadah, Member
Rafi Aliya Crockett, Member
Jeni Hansen, Member

ALSO PRESENT: 801 Restaurant, LLC, t/a 801 Restaurant & Bar, Applicant

Sidon Yohannes, Counsel, on behalf of the Applicant

Dan Orlaskey, Commissioner, on behalf of Advisory Neighborhood Commission (ANC) 1B, Protestant

Martha Jenkins, General Counsel
Alcoholic Beverage Regulation Administration

ORDER DENYING APPLICANT'S MOTION TO DISMISS

The Alcoholic Beverage Control Board (Board) received an Application to Renew a Retailer's Class CT License (Application) held by 801 Restaurant, LLC, t/a 801 Restaurant & Bar (hereinafter, "Applicant" or "801"). The Application was timely protested by Advisory Neighborhood Commission (ANC) 1B through the submission of a protest letter. The protest letter indicates that the ANC's objection is "based on the effect on real property values; the effect on peace, order, and quiet, including the noise and litter provisions; and the effect upon residential parking needs and vehicular and pedestrian safety[.]" *Letter from James A. Turner,*

Chair, ANC 1B, to the Alcoholic Beverage Regulation Administration (Nov. 7, 2019). No other basis for the protest is provided in the letter. *Id.*

On January 31, 2020, the Applicant filed a motion arguing that ANC 1B's protest letter fails to provide specific and sufficient notice of the basis of the protest under 23 DCMR § 1602.2 because it merely recites the appropriateness standard described by D.C. Official Code § 25-313 and 23 DCMR § 400. *Mot. to Dismiss*, at 3. The Applicant avers that no other basis for the protest has been provided through other channels. *Id.* at 2. The Applicant further argues, based on the alleged lack of notice, that continuing the protest violates its constitutional right to Due Process and notice under the District of Columbia Administrative Procedure Act. *Id.* at 4-5.

The ANC opposes the motion for various reasons. *Opposition*, at 1-12. In particular, the ANC has argued that the Applicant has no property interest in the license; therefore, constitutional due process protections do not apply and the ANC's protest letter followed all related laws, regulations, and related guidance provided by ABRA. *Id.* at 9. Finally, the ANC further argues that the Applicant's position is unreasonable and too burdensome. *Id.* at 10-11.

In reply, among other arguments, the Applicant argues that the position taken by the ANC is incorrect because a protest is a contested case, which under District law incorporates due process protections. *Applicant's Reply*, at 2.

In light of the arguments presented by the parties, this matter has substantially similar facts and legal issues to the ones raised in *Flash*. In *Flash*, the Board addressed a similar motion by finding that

The Applicant's argument is plainly wrong on all counts; therefore, the motion is denied. First, the protest letter filed by ANC 1B meets the minimum standards provided by D.C. Official Code § 25-602(a) and 23 DCMR § 1602.2 as a matter of law, interpretation, and agency practice. Second, the claim that ANC 1B failed to provide notice of its issues and concerns is not ripe for consideration as this can only be determined after the submission of the protest information form and protest report in accordance with 23 DCMR §§ 1612.4 and 1722 (West Supp. 2020). Third, Board precedent does not prohibit the submission of additional information linked to the appropriateness ground stated in the initial protest letter. As a result, dismissing the ANC is unwarranted at this time.

In re Brilliant, LLC, t/a Flash, 19-PRO-00126, Board Order No. 2020-098, ¶ 2 (D.C.A.B.C.B. Feb. 12, 2020). As both ANC 1B and the Applicant's current counsel participated in that matter, and are familiar with the Board's reasoning stated in that case no further elaboration is required. Therefore, in light of the precedent of this forum, and based on the same reasoning stated in *Flash*, the motion to dismiss is denied.

ORDER

Therefore, the Board, on this 26th day of February 2020, hereby **DENIES** the motion to dismiss.

IT IS FURTHER ORDERED, as in *Flash*, that the motion is **DENIED WITHOUT PREJUDICE** on the specific issue as to whether the ANC properly provided notice of its objections in this proceeding where additional documents providing notice may be filed, including the protest information form. The Board has not determined whether when looking at all of these documents as a whole (e.g., the protest information form), on the eve of the Protest Hearing, that a mere restatement of the appropriateness grounds, as provided in the District's alcohol laws, is sufficient to constitute adequate notice. Therefore, the Board warns the ANC that the failure to state its issues and concerns with particularity or specificity in its future filings in this matter may result in its protest being dismissed if an appropriate objection is raised by the Applicant after the deadline for serving the protest information form has passed.

IT IS FURTHER ORDERED that all remaining issues raised by the parties and unaddressed by the Board are **MOOT**.

The ABRA shall deliver a copy of this order to the Parties.

District of Columbia
Alcoholic Beverage Control Board



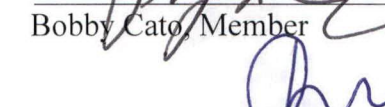
Donovan Anderson, Chairperson



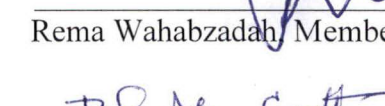
James Short, Member



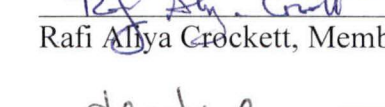
Bobby Cato, Member



Rema Wahabzadah, Member



Rafi Aliya Crockett, Member



Jeni Hanson, 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, 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. 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. 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).