THE DISTRICT OF COLUMBIA
ALCOHOLIC BEVERAGE AND CANNABIS BOARD

In the Matter of:	)	
	)	
Sequential, LLC	)	Case No.: 24-PRO-00033
t/a Green Theory	)	License No.: ABRA-126813
	)	Board Order: 2024-177
Applicant for a New	)	
Medical Cannabis Retailer License	)	
	)	
at premises	)	
4828 Macarthur Boulevard, N.W., First Floor	)	
Washington, D.C. 20007	)	
	)	

BEFORE: Donovan Anderson, Chairperson
James Short, Member
Silas Grant, Jr., Member

ALSO PRESENT: Sequential, LLC, t/a Green Theory, Applicant

Caroline Wolverton, Designated Representative, Non-Party[1]

ORDER GRANTING APPLICANT'S MOTION TO DISMISS

The Application filed by Sequential, LLC, t/a Green Theory (Applicant), for a New Medical Cannabis Retailer License (hereinafter "Application"), resulted in a protest letter being filed with the Alcoholic Beverage and Cannabis Board (Board) by a group of individuals represented by Caroline Wolverton (Wolverton Group). The Applicant subsequently filed a motion to dismiss for lack of standing, as Title 7 of the D.C. Official Code only grants standing to protest medical cannabis businesses to elected advisory neighborhood commissions. The motion is opposed by the Wolverton Group. The Board grants the motion and dismisses the attempted protest for the reasons stated below. This order also affirms the dismissal of the Wolverton Group at the Roll Call Hearing held on April 8, 2024.

[1] The identified members of the group are Caroline Wolverton, Rev. Andy Gonzalo, Sheila Martinez, Maya Salameh, Lucy Martinez Sullivan, Sarah Shaw, Christina Muedeking, J.P. Szymkowicz, Michelle Fagan, and John Fagan. The Board does not recognize any other persons as part of the group as these persons have not been adequately identified in this forum. *See Protest Letter*, at 1 n. 1 (stating that there is a "broader group of concerned parents" that are not individually identified in the letter).

I. THE WOLVERTON GROUP PROTEST IS DISMISSED FOR LACK OF STANDING.

The question of standing of all parties, except for advisory neighborhood commissions, was recently and definitively settled by the Board in *Powerhouse Cultivation Center*. In that case, a community association, homeowners association, multiple groups of residents and property owners, and an abutting property owner attempted to protest two applications for medical cannabis business licenses. *In re ABT, LLC, t/a Powerhouse Cultivation Center*, Case Nos. 24-PRO-0003, 24-PRO-0005, Board Order No. 2024-043, at 1 (D.C.A.B.C.B. Jan. 31, 2024). In response to the protest, the Board noted the following:

> In reviewing the motion, the Board *sua sponte* moves to dismiss all of the protestants, as none of the present parties have legal standing to protest the Application under Title 7 . . . .
>
> The legal basis for dismissing all protestants in this matter is § 7-1671.06a, which only opens protests to advisory neighborhood commissions. D.C. Official Code § 7-1671.06a(h)(1)-(2), (i). *Therefore, no group, abutting property owner, or community association may obtain legal standing to challenge a medical cannabis application.*

Id. at 2 *aff'd* Board Order No. 2024-078, at 2 (Feb. 28, 2024) (Order Denying Motion for Reconsideration) (emphasis added). As a result, in accordance with D.C. Official Code § 7-1671.06a(h)(1) and (2), § 7-1671.06a(i), and *Powerhouse Cultivation Center*, the Wolverton Group cannot be granted standing as a matter of law. D.C. Code §§ 7-1671.06a(h)(1)-(2), (i) (saying in (h)(2) that "An affected ANC may protest the issuance of the license" and listing no other parties).

a. Statutory standing only exists for advisory neighborhood commissions as stated in D.C. Official Code § 7-1671.06a.

In its protest letter, the Wolverton Group argues that the group should be entitled to standing. In particular, the group argues that the present protest process is legally deficient for various constitutional reasons and that the Board's dismissal of the Group is arbitrary and capricious. *Letter of Protest*, at 6 (Mar. 18, 2024).[2] Nevertheless, the group is incorrect and fails to cite sufficient authority in support of its argument.

As a matter of law, the Board cannot grant the group's requested remedy of standing to protest in this matter where the Council, in enacting D.C. Official Code § 7-1671.06a(h)(1)-(2) and § 7-1671.06a(i), did not provide statutory standing to anyone except advisory neighborhood commissions. It is well settled that the Board has no authority to invalidate, overturn, or deem unconstitutional any portion of Title 7 of the D.C. Official Code. *Rhema Christian Ctr. v. Dist. of Columbia Bd. of Zoning Adjustment*, 515 A.2d 189, 197 (D.C. 1986); *16A Am. Jur. 2d Constitutional Law § 255* ("Administrative agencies cannot exercise legislative authority by creating law or changing the laws enacted by the legislature; they do not have the authority to alter or amend a

[2] The Wolverton Group also discussed appropriateness; however, the Board will not take up that issue in this Order because it is not relevant to the issue of standing in this case, which is a threshold issue.

statute or enlarge or impair its scope") (footnotes removed). Likewise, as "an administrative agency[, the Board] has no authority to declare invalid legislation enacted by the parent legislature." *Archer v. Dist. Of Columbia Dept. of Human Res.*, 375 A.2d 523, 526 (D.C. 1977). Instead, the Board must "administer the legislation and . . . apply its provisions according to its best lights." *Id*. In that vein, on the constitutional and administrative law questions raised by the Wolverton Group, the Board will simply "establish a record and then grant or deny the relief" requested based on its limited authority. *Debruhl v. Dist. of Columbia Hackers' License Appeal Bd.*, 384 A.2d 421, 425 (D.C. 1978).

Nevertheless, even if the Board was authorized to overrule or void a duly enacted statute, there is no indication that the Wolverton Group has made a compelling argument that it is entitled to standing or otherwise entitled to any relief in this case.

The Wolverton Group's claims that denying standing violates constitutional rights cites broad legal principles without making any effort to apply them this matter in a legally meaningful way. *Protest Letter*, at 6-7. For example, the protest letter cites no specific case, treatise, or other persuasive authority that shows that constitutional due process demands that the Council or a similar legislative body must create statutory standing in this or any other circumstance.[3] As a result, the Council has the legal right to expand, restrict, take away, or not offer standing to protest at all.[4]

b. Applying the plain meaning of a statute is not arbitrary and capricious.

Likewise, it is not arbitrary and capricious to apply the plain meaning of a statute and to follow current Board administrative judicial precedent. *Carpenter v. Dist. of Columbia Rental Hous. Comm'n*, 119 A.3d 683, 685 (D.C. 2014) ("Regarding questions of law, this court will uphold an agency's decision unless it is unreasonable considering the prevailing law or conflicts with the statute's plain meaning or legislative history . . . Where the agency's construction of the statute at issue adheres to that standard, the agency's decision will be upheld even if petitioner asserts another reasonable interpretation of the statute") (citations removed). Indeed, it cannot be seriously argued that the statute in this case is ambiguous when it says in D.C. Official Code § 7-1671.06a(h)(2) that "An affected ANC may protest the issuance of the license" and lists no other parties. Simply put, considering this authority, it would be arbitrary and capricious for the Board to grant the Wolverton Group's request for standing and subject the Applicant to an unlawful hearing.

The Wolverton Group further argues that it should be granted standing to protest the license based on a comparison with the District's alcohol laws; yet, this comparison is inapt. *Letter of Protest*, at 6 (Mar. 18, 2024). It is true that the District's alcohol laws in

[3] The Board notes that the ramifications of the Wolverton Group's position would be that, if adopted, anyone could protest anyone's driver's license, business license, or any other license or permit issued by the District of Columbia.

[4] For example, in the wrong hands a motor vehicle can threaten, maim, and kill more people at one time than cannabis ever could but there is no similar public notice and comment process when someone applies for a driver's license.

Title 25 of the D.C. Official Code, which are separate from the District's medical cannabis laws, provide standing to groups of five or more residents or property owners in D.C. Official Code § 25-601(a)(2).[5] Yet, this argument fails to acknowledge that D.C. Official Code § 25-609(b) requires the automatic dismissal of all group protests upon the execution of a settlement agreement between an affected advisory neighborhood commission and the applicant. Notably, in this case the Board approved a settlement agreement between the Applicant and Advisory Neighborhood Commission (ANC) 3D on March 13, 2024. *In re Sequential, LLC, t/a Green Theory*, ABRA License No. 126813, Board Order No. 2024-126, at 1-2 (D.C.A.B.C.B. Mar. 13, 2024) (Order on Settlement Agreement). As a result, even if the District adopted the alcohol protest rules, the present protest would be subject to automatic dismissal due to the Board's approval of the settlement agreement. Thus, even in this hypothetical case, the present protest and the remedy sought by the Wolverton Group would remain futile.

c. The Wolverton Group lacks standing to raise compliance with federal drug laws as a legal objection.

The Wolverton Group's reference to any violation of the federal drug law as it relates to cannabis or schools (e.g., 21 U.S.C. § 860) is unavailing, as the group lacks standing to seek the enforcement of federal criminal law. *Jean-Baptiste v. United States Dep't of Justice*, 2024 WL 519600, at *2 (D.D.C. Feb. 9, 2024) ("private parties lack both standing and a cause of action to enforce the criminal law"); *Protest Letter*, at 3-4.[6]

ORDER

Therefore, the Board does hereby, on this 11th day of April 2024, **DENY** standing to the Wolverton Group and the protest is **DISMISSED**. All remaining issues not addressed in this Order are deemed moot in light of the Board's holding regarding standing.[7]

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[5] In light of this section of the alcohol laws, it is clear the Council knew how to grant standing to parties besides ANCs but chose not it when it enacted this portion of Title 7. *See Washington Teachers' Union, Local No. 6, Am. Fed'n of Teachers, AFL-CIO v. Dist. of Columbia Pub. Sch.*, 77 A.3d 441, 450 (D.C. 2013); *see also CBS Inc. v. PrimeTime 24 Joint Venture*, 245 F.3d 1217, 1226 (11th Cir. 2001) ("[w]here Congress knows how to say something but chooses not to, its silence is controlling").

[6] Even if it were entitled to raise such a claim, the group, in its Supremacy Clause argument, also fails to cite specific legal authority demonstrating that the District is obligated to enforce federal law or that the mere issuance of a license by the District interferes with the operation of federal law.

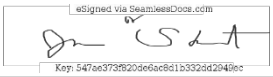
[7] While not subject to challenge by the group, the Board is not persuaded that there exist any valid issues regarding the legality of the present Application. First, the Board, in approving the license, is satisfied that Little Ivies, located at 4820 Macarthur Blvd., N.W., is merely a child centered business or daycare, and does not qualify or operate as a public or private preschool under Chapter 16B of Title 7 of the D.C. Official Code. Indeed, a business that primarily or merely provides day camp and after school activities to children, as claimed by the group, is not sufficient to constitute a school under the law administered by the Board. *Protest Letter*, at 5. Second, the group's assertion that the Applicant made any misrepresentation in its application regarding its prior trade name or organizational history is wholly speculative, as the group failed to identify an obligation to register the trade name at issue or that a failure to do so renders any statements made by the applicant untrue. As a result, the group has not alleged any facts that merit the denial of this application under the law.

IT IS FURTHER ORDERED that the dismissal of the Wolverton Group by the Board's Agent on April 8, 2024, is **AFFIRMED**.

Copies of this Order shall be sent to the Parties.

District of Columbia
Alcoholic Beverage and Cannabis Board

Donovan Anderson, Chairperson



James Short, Member

Silas Grant, Jr., Member

Pursuant to D.C. Official Code § 25-433(d)(1) (applicable to alcohol matters) or 22-C DCMR § 9720 (applicable to medical cannabis matters), 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 and Cannabis Administration, 2000 14th Street, N.W., Suite 400S, Washington, DC 20009.

Also, pursuant to section II 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 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 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).