

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

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**In the Matter of:**

Handle 19, Inc.  
t/a Handle 19

Applicant for a New  
Retailer's Class CR License

at premises  
319 Pennsylvania Avenue, S.E.  
Washington, D.C. 20003

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Case No.: 20-PRO-00047

License No.: ABRA-117027

Order No.: 2021-081

**BEFORE:**

Donovan Anderson, Chairperson  
James Short, Member  
Bobby Cato, Member  
Rema Wahabzadah, Member  
Rafi Aliya Crockett, Member  
Jeni Hansen, Member  
Edward S. Grandis, Member

**ALSO PRESENT:** Handle 19, Inc., t/a Handle 19, Applicant

Ian Thomas, Counsel, of the law firm Offit Kurman, on behalf of the  
Applicant

A.J. Bhadelia, Abutting Property Owner, Protestant

Walter B. Quetsch, Abutting Property Owner, Protestant

Elizabeth Morin Burns, Designated Representative, on behalf of A  
Group of Residents and Property Owners, Protestant

Kerry Brainard Verdi, Counsel, on behalf of Advisory  
Neighborhood Commission (ANC) 6B, Protestant

Martha Jenkins, General Counsel  
Alcoholic Beverage Regulation Administration

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**ORDER DENYING MOTION TO DISMISS AND GRANTING CONTINUANCE**

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The Alcoholic Beverage Control Board received an application filed by Handle 19, Inc., t/a Handle 19, (Applicant) that requests approval of a new Retailer's Class CR

License with a sports betting operation. *Mot. to Dismiss*, at 5. The application was duly protested by Advisory Neighborhood Commission (ANC) 6B and other parties.

Subsequently, ANC 6B has filed a motion to dismiss on the grounds that Handle 19 does not qualify as a restaurant pursuant to D.C. Official Code § 25-101(43)(A)-(B). The ANC alleges that the Applicant cannot meet the 45 percent (45%) gross annual receipt food requirement based on the restaurant's large occupancy and the large area of standing room. *Id.* at 5.

The Applicant objects to the motion by arguing that the ANC lacks standing to raise the issue where the ANC failed to notice the issue in its filings. *Applicant's Opposition*, at 2. The Applicant also argues that the ANC's position is not supported by the record where the Applicant intends to provide food service throughout the establishment and has contracted with a food and beverage vendor that operates other restaurants in the District of Columbia. *Id.* at 3-5.

There is also a request to continue the protest hearing for no more than one week, which the Board grants to accommodate the travel schedule for ANC 6B's counsel.

In reviewing a motion for summary judgment, the Board must determine "whether genuine issues of material fact exist and whether the movant is entitled to judgment as a matter of law." *Stevens v. United Gen. Title Ins. Co.*, 801 A.2d 61, 65-66 (D.C. 2002). Furthermore, the Board must "review[] the record in the light most favorable to the non-movant, and any doubt regarding the existence of a factual dispute is to be resolved against the movant."

A "restaurant" is defined under Title 25 of the D.C. Official Code as

... a space in a building which shall:

- (A)(i) Be regularly ready, willing, and able to prepare and serve food, have a kitchen which shall be regularly open, have a menu in use, have sufficient food on hand to serve the patrons from the menu, and have proper staff present to prepare and serve the food;
- (ii) Be held out to and known by the public as primarily a food-service establishment;
- (iii) Have all advertising and signs emphasize food rather than alcoholic beverages or entertainment;
- (iv) Be open regular hours that are clearly marked with no unusual barriers to entry (such as cover charges or membership requirements);
- (v) Have its kitchen facilities open until at least 2 hours before closing;
- (vi) Obtain an entertainment endorsement prior to offering entertainment, charging a cover, or offering facilities for dancing;
- (vii) If possessing an entertainment endorsement, be permitted to charge a cover and advertise entertainment, but shall not primarily advertise drink specials;
- (viii) Be permitted to have recorded and background music without obtaining an entertainment endorsement;
- (ix) Not have nude performances; and

(x) Have annual gross food sales of \$1500 or \$2000 per occupant (as determined by the establishment's Board-approved certificate of occupancy), depending on license class; *or*<sup>1</sup>

- (B)(i) Have adequate kitchen and dining facilities;
- (ii) Keep its kitchen facilities open until 2 hours before closing;
- (iii) Obtain an entertainment endorsement prior to offering entertainment, charging a cover, or having facilities for dancing;
- (iv) Be permitted to have recorded and background music without obtaining an entertainment endorsement;
- (v) Not have nude performances; and
- (vi) Have the sale of food account for at least 45% of the establishment's gross annual receipts.

D.C. Code § 25-101(43) (emphasis added).

The Board denies the motion because the question of whether the establishment qualifies as a restaurant is a question of genuine material fact that can only be resolved at hearing, not through pre-hearing speculation. In particular, the Board must consider various factual matters such as the nature of the operations, the intent of the owners, the kitchen facilities, relationships with food and beverage vendors, the experience of the food and beverage staff, and a host of other potential things that could be introduced into evidence. Moreover, § 25-101(43) provides multiple ways to comply with the requirements and the food sale requirement regulations provide some flexibility for licensees to make corrections to their operations if they are found deficient in food sales. 23 DCMR §§ 2101.3, 2101.4 (West Supp. 2021). Therefore, dismissing the application as a matter of law would be highly inappropriate.

Based on the Board's determination above, the remaining issues raised by the parties are moot and will not be addressed at this time.

### **ORDER**

Therefore, the Board, on this 10th day of February 2021, hereby **DENIES** the motion to dismiss, and **GRANTS** the motion for continuance. The protest hearing is scheduled for April 8, 2020 at 10:00 a.m. Copies of this Order shall be sent to the Parties.

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<sup>1</sup> The Board notes that the ANC's motion appears to quote the statute in its entirety but inexplicably leaves out the word "or"—a word that has important significance on the legal effect of the statute. *Mot. to Dismiss*, at 4 (see section (A)(x) in the motion).

District of Columbia  
Alcoholic Beverage Control Board

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*Donovan Anderson*  
Key: 43009606050740730093010009

Donovan Anderson, Chairperson

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*James Short*  
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James Short, Member

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Bobby Cato, Member

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Rema Wahabzadah, Member

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Rafi Crockett, Member

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Jeni Hansen, Member

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*Edward Grandis, Member*  
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Edward S. Grandis, 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, 2000 14<sup>th</sup> Street, N.W., Suite 400S, Washington, DC 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 (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).