

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

In the Matter of:)	
)	
MAHK Meetings, LLC)	Case No.: 20-PRO-00009
t/a TBD)	License No.: ABRA-115363
)	Order No.: 2020-186
Application for a New)	
Retailer's Class CT License)	
)	
at premises)	
1807 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
Edward S. Grandis, Member

ALSO PRESENT: MAHK Meetings, LLC, t/a TBD, Applicant

Sidon Yohannes, Counsel, on behalf of the Applicant

Alan J. Roth, Designated Representative, on behalf of a Group of Five or More Residents and Property Owners, Protestant

Suzanne Farmer, Abutting Property Owner, Protestant

Piper Hendricks, Abutting Property Owner, Protestant

Denis James, President, Kalorama Citizens Association, Protestant

Amir Irani, Chair, Advisory Neighborhood Commission (ANC) 1C, Protestant

Martha Jenkins, General Counsel
Alcoholic Beverage Regulation Administration

**ORDER DENYING PROTESTANT’S MOTION TO DISMISS, NOTICE TO SUBMIT
ADDITIONAL DOCUMENTS, IMPOSING CONDITIONS, AND STAY OF
APPLICATION**

MAHK Meetings, LLC, t/a TBD, (hereinafter “Applicant” or “MAHK”) has filed an Application for a New Retailer’s Class CT License at 1807 Florida Avenue, N.W., Washington, D.C., which is opposed by a Group of Five or More Residents and Property Owners, Abutting Property Owners Suzanne Farmer and Piper Hendricks, the Kalorama Citizens Association, and Advisory Neighborhood Commission (ANC) 1C. The Protestants, through a motion filed by ANC 1C Chair Amir Irani, move to dismiss the Application for being located within the Adams Morgan Moratorium Zone. *Mot. to Dismiss the Application, or in the Alternative for Summary Denial of the Application*, at 1 [*Mot. to Dismiss*].

Board Order 2020-129 initially granted the Protestants’ motion for oral argument and scheduled the arguments for March 25, 2020. However, in light of the current public health emergency regarding the spread of the coronavirus, the Board has postponed all of its hearings through April 8, 2020. Therefore, upon further review of the pleadings filed in this case, the Board is satisfied that its decision can be made based on the written record and cancels the motion hearing.

The Board is satisfied that Title 25 of the D.C. Official Code and Title 23 of the D.C. Municipal Regulations are sufficiently clear that 1807 Florida Avenue, N.W., falls within the Adams Morgan Moratorium Zone because the property touches Vernon Street, N.W. Nevertheless, the Board will not summarily deny the Application so long as conditions are placed on the license requiring the licensee to not operate in any property directly touching Vernon Street, N.W. This means that if the Applicant ensures that the lot is legally subdivided and only obtains a license for a property whose lines do not touch Vernon Street, N.W., and does not operate in any property touching Vernon Street, N.W., then the Board will refrain from denying the Application and permit the Application to proceed.

At this time, the Application will be stayed and all future hearings cancelled pending the submission of additional documents by the Applicant in accordance with 23 DCMR § 500 *et al.* (West Supp. 2020). The Board’s reasoning and the specific conditions and information required by the Board are discussed in greater detail below.

Arguments of the Parties

The relevant arguments of the parties that merit discussion by the Board are as follows. In pertinent part, the Protestants assert various reasons to dismiss the Application. First, the Protestants raise various procedural objections. Second, the Protestants argue that the current Certificate of Occupancy (COO) presented by the Applicant for 1807 Florida Avenue, N.W., is defective and does not permit a tavern at the premises. *Id.* at 7. Third, the Protestants argue that the Board should not rely on the address of the property and find that the establishment is

actually located in the Adams Morgan Moratorium Zone based on the building's location on Vernon Street, N.W. *Id.* at 8.

In opposition to the motion, the Applicant indicates that its chosen location should not be deemed in the moratorium zone because it will maintain its entrance and activity on Florida Avenue, N.W. *Opposition to Motion to Dismiss or Summarily Deny the Application*, at 6 [*Opp.*]. Moreover, the Applicant notes that it intends to apply for the license under 23 DCMR § 405.1, which is dependent on obtaining a Certificate of Occupancy after the approval of the license.

FINDINGS OF FACT

The facts relevant to the motion are as follows:

1. The Applicant has applied for a Retailer's Class CT License at 1807 Florida Avenue, N.W. *ABRA Licensing File No. 115363*. The Applicant has also stated the intent to apply for its license under 23 DCMR § 405.1, which permits the approval of the license "prior to the issuance of a certificate of occupancy for the building in which the licensed premises shall be located" so long as certain conditions are met. 23 DCMR § 405.1 (West Supp. 2020). *Letter from Sidon Yohannes, Esq., to the Alcoholic Beverage Control Board* (Feb. 3, 2020).
2. The Geographic Information System (GIS) map produced on June 5, 2019, states that 1807 Florida Avenue, N.W., is not located in a moratorium zone. *Opp.*, at Exhibit B. It further shows that the proposed location rests on a triangle shaped block surrounded by Vernon Street, N.W., and Florida Avenue, N.W., on two sides of the triangle. *Id.* The map shows that the property's lot is located near the tip of the triangle where the distance between the two streets is not that great. *Id.* This short distance between the two streets allows the property lines of 1807 Florida Avenue, N.W., to face both Vernon Street, N.W., and Florida Avenue, N.W., similar to a property located on a corner lot. *Id.* The map further shows that there are no intervening properties that separate the property lines of 1807 Florida Avenue, N.W., from Vernon Street, N.W. *Id.*
3. One of the borders of the Adams Morgan Moratorium Zone proceeds through Vernon Street, N.W. 23 DCMR § 304.2 (West Supp. 2020). It does not proceed through the portion of Florida Avenue, N.W., on the other side of the triangle block. *See id.*

CONCLUSIONS OF LAW

I. The Procedural Issues Raised by the Applicant Do Not Prevent Consideration of the Application.

4. The Applicant argues that a number of procedural violations occurred in the Board's consideration of the Application. *Id.* at 8-9. These procedural arguments are not persuasive or relevant to these proceedings.
5. First, the Protestants argue that there are various violations of the Open Meetings Amendment Act of 2010 (Open Meetings Act) related to the closure of meetings and agenda

items related to the Board's consideration of the Applicant's compliance with the moratorium and decision to provide public notice and placard the Application in accordance with D.C. Official Code § 25-421. The Board rejects this argument because the parties lack standing to raise any Open Meetings Act issues in accordance with D.C. Official Code § 2-579(a)(1) and (a)(2). Moreover, as the decision to provide public notice of the Application does not constitute a final order on the moratorium issue or Application and the matter is presently under consideration with the participation of the parties, the Board has effectively granted the parties all reasonable remedies provided by § 2-579(d) of the Open Meetings Act. Therefore, even if the parties had the right to raise Open Meetings Act issues, those issues are moot.

6. Second, the Protestants have raised the issue of compliance with § 1-309.10(c)(1) by failing to provide notice of Board consideration of the same items objected to under the Open Meetings Act. *Id.* at 9. Nevertheless, this argument ignores the fact that the Protestants lacked the right to personal notice of the Board's action, and lacked the right to participate in the decision to provide public notice of the Application, which occurs before any party may be granted standing to protest the Application. 23 DCMR § 1603.1 (West Supp. 2020) (saying standing to protest is granted at the Roll Call Hearing). Furthermore, the decision to provide notice or conduct other pre-notice reviews of the Application are not final agency actions requiring notice described by § 1-309.10(c)(1). *See also Opp*, at 3. Finally, the provision of public notice and posting of placards in accordance with § 25-421, which was done in this case, satisfies § 1-309.10(c)(1) because it complies with D.C. Official Code § 1-309(c)(2)(A). Therefore, the Protestant's procedural arguments have no bearing or otherwise interfere with further consideration of the Application, issuance of the license if warranted, the resolution of the moratorium issue on the merits, or any other matters related to the Application.

II. MAHK's Premises is Located in the Adams Morgan Moratorium Zone.

7. Turning to the merits, the Board agrees with the Protestants that the location sought by the Application is located in the Adams Morgan Moratorium Zone. D.C. Official Code § 25-351(a) grants the Board the authority to enact regulations that "Limit the number of licenses of any class to be issued." D.C. Code § 25-351(a), (a)(1). In accordance with D.C. Official Code § 25-351, the Board created the Adams Morgan Moratorium Zone, which prevents the issuance of Retailer's CT, among other licenses, in the Adams Morgan Moratorium Zone. 23 DCMR § 304 *et al.* (West Supp. 2020).

8. The Adams Morgan Moratorium Zone, which was expanded by regulations that went into effect on February 12, 2020, "extends approximately eighteen hundred (1800) feet in all directions from 2459 18th St., N.W., Washington, D.C. 20009." 23 DCMR § 304.1 *et al.* (West Supp. 2020). The moratorium zone created by § 304.2 "is more specifically described as beginning at 18th Street and Vernon Street, NW; and proceeding on both sides of all streets . . . West on Vernon Street to 19th Street . . ." 23 DCMR § 304.2 (West Supp. 2020). The moratorium zone then creates an enclosed area that ends at the point where U Street, N.W., 18th Street, N.W., and Vernon Street, N.W., meet. *Id.* The moratorium zone does not include the portion of Florida Avenue, N.W., located across from Vernon Street, N.W., that is relevant to this matter.

9. Section 25-312(d) indicates that “If a boundary line measured by the Board touches upon any portion of a parcel or lot, the parcel or lot shall be within the area being identified by the Board.” D.C. Code § 25-312(d); 23 DCMR § 101.3 (West Supp. 2020). This is also repeated in § 101.3. *Id.*

10. In this case, there is no dispute that the property lines and lot of 1807 Florida Avenue, N.W., border Vernon Street, N.W. *Supra*, at ¶ 2. There is no dispute that “both sides” of Vernon Street, N.W., are located in the Adams Morgan Moratorium Zone created by § 304.2. *Id.* There is no dispute that 1807 Florida Avenue, N.W., faces Vernon Street, N.W. *Id.* There is also no dispute that no intervening properties divide the Applicant’s sought after property from Vernon Street, N.W. *Id.* Under these circumstances, 1807 Florida Avenue, N.W. clearly “touches upon” the Adams Morgan Moratorium Zone and must be considered within that zone in accordance with D.C. Official Code § 25-312(d) and 23 DCMR § 101.3. Therefore, the Board cannot issue a tavern license at that location under present circumstances.

11. The Board recognizes that the parties disagree about the legal impact of the current Certificate of Occupancy issued to 1807 Florida Avenue, N.W., and the location of the main entrance. Nevertheless, the COO does not change the orientation of the lot, the property lines, or otherwise impact the analysis under §§ 25-312 and 101.3. Likewise, the location of the main entrance does not impact the analysis under §§ 25-312 and 101.3. The Board notes that the GIS map indicated that the property does not fall within the moratorium zone; however, it is clear that the statement produced by the map is wrong in this case in light of the language provided by §§ 25-312 and 101.3. Finally, the Protestants’ claims regarding the current COO are also not relevant or ripe for consideration at this time because this Applicant, applying under § 405.1, will likely present a new COO at a later date. Therefore, the issue of the COO and the location of the main entrance are irrelevant to the determination of whether the property is located in the Adams Morgan Moratorium Zone.

III. Denial of the Application is Unwarranted Where Board Conditions and Additional Steps by the Applicant May Avoid the Moratorium Issue.

12. Despite the Board’s finding that the 1807 Florida Avenue, N.W., is located in the Adams Morgan Moratorium Zone, the Board does not believe dismissal is warranted at this time. Specifically, it is appropriate to permit the Applicant to continue with the application process so long as steps are taken to remove the selected location from the Adams Morgan Moratorium Zone. *Supra*, at ¶ 1.

13. The Board’s authority to impose conditions is conferred by D.C. Official Code § 25-104(e), which states that “[t]he Board, in issuing licenses, may require that certain conditions be met if it determines that the inclusion of the conditions will be in the best interest of the [neighborhood] . . . where the licensed establishment is to be located. D.C. Official Code § 25-104(e). The Board notes that the imposition of a moratorium zone amounts to a legislative or regulatory finding that activity by a specific class or type of license holder in the moratorium zone is *per se* inappropriate. Moreover, conditions that ensure compliance with the law are always in the best interest of the community.

14. Therefore, in order to ensure that the property is not located in the Adams Morgan Moratorium Zone, and does not operate in the moratorium zone, the Board will condition licensure on subdividing the lot and refraining from operating in any lot that touches Vernon Street, N.W.

ORDER

The Alcoholic Beverage Control Board (Board), on this 25th day of March 2020, hereby **DENIES** the motion to dismiss. The Board further imposes the following **CONDITIONS** on the license, which shall be in effect if issued:

1. The Applicant shall not operate in any lot or property whose lines touch or border Vernon Street, N.W. The Board does not consider the use of an off-site storage permit in a lot that touches the Adams Morgan Moratorium Zone or otherwise located in the moratorium zone to constitute a violation of this condition. This includes the storage of alcohol, records, supplies, and other inventory used by the business.
2. The Applicant or another party with authority shall apply for, obtain, and maintain a subdivision of the lots so that the license may be located in a property that does not touch Vernon Street, N.W.
3. The Applicant may apply for the modification or removal of these conditions as a substantial change should the Adams Morgan Moratorium Zone be amended or rescinded in such a manner so as to not apply to the location sought by the Applicant.
4. The Applicant is advised that the failure to comply or maintain the conditions outlined in this Order will likely be grounds for non-renewal or revocation of the license.

IT IS FURTHER ORDERED that the Applicant shall provide additional documents in accordance with 23 DCMR § 500. The Applicant shall provide sufficient documentary proof that (1) it or a third party has applied for a subdivision of the lot sought by the Applicant; (2) that the subdivision removes the location sought by the Applicant from the Adams Morgan Moratorium Zone; and (3) that the subdivision of the lot has been granted and officially recognized by the Government of the District of Columbia.

In accordance with this Order, the Applicant has **thirty (30) days** from the date of receipt of this Order to provide the required documents or the Application will be deemed withdrawn and abandoned. The Board notes that the Applicant may apply for extensions of the time period as needed in accordance with § 500.4.

IT IS FURTHER ORDERED that the Application is **STAYED** pending the submission of the documents indicated above. All future hearings are cancelled and the parties are not required to make appearances before the Board at this time. The parties will be notified if additional hearings are required or the Application is dismissed.

IT IS FURTHER ORDERED that the oral arguments previously scheduled in Board Order No. 2020-129 are hereby **CANCELLED**. The motion for continuance filed by the parties is deemed **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 Hansen, Member

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, 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).