

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

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In the Matter of: )  
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Wharf Parcel 8 Hotel TRS Leaseholder LLC ) Case No.: 22-PRO-00087  
t/a Pendry Washington DC - The Wharf ) License No.: ABRA-121347  
) Order No.: 2022-620  
Applicant for a New )  
Retailer’s Class CH License )  
)  
at premises )  
655 Water St., S.W. )  
Washington, D.C. 20024 )  
\_\_\_\_\_ )

**BEFORE:** Donovan Anderson, Chairperson  
James Short, Member  
Bobby Cato, Member  
Rafi Aliya Crockett, Member  
Jeni Hansen, Member  
Edward S. Grandis, Member

**ALSO PRESENT:** Wharf Parcel 8 Hotel TRS Leaseholder LLC, t/a Pendry Washington DC  
- The Wharf, Applicant

Matthew Minora, Counsel, on behalf of the Applicant

Edward Daniels, Chair, on behalf of Advisory Neighborhood Commission  
(ANC) 6D, Protestant

Curtis Sloan, President, Gangplank Slip Holders Association, Non-Party

Martha Jenkins, General Counsel  
Alcoholic Beverage Regulation Administration

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**ORDER GRANTING APPLICANT’S MOTION TO DISMISS**

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Wharf Parcel 8 Hotel TRS Leaseholder LLC, t/a Pendry Washington DC - The Wharf, (Applicant) filed an Application for a New Retailer’s CH License. The license was protested by Advisory Neighborhood Commission (ANC) 6D. The Applicant filed a motion to dismiss arguing that the ANC’s stated grounds for the protest was not approved at the appropriate ANC meeting as required by law; therefore, the ANC failed to state an appropriate objection and

should be dismissed. The ANC filed a late response to the motion and a non-party, Gangplank Slip Holders Association (GSHA), filed an objection to the motion. The Board acknowledges the GSHA's letter, but notes that the GSHA lacks standing to make any filings in this matter, as it is not a protestant. Therefore, the GSHA's letter cannot be considered in adjudicating the motion to dismiss.

The argument raised by the Applicant was previously raised in the matter of *Giant #2379* case. There, the Board noted that ANCs are entitled to protest an application. *In re Giant of Maryland, LLC, t/a Giant #2379*, Case No. 14-PRO-00060, Board Order No. 2014-349, ¶ 2 (D.C.A.B.C.B. Sept. 24, 2014). Yet as a public body, "Under the ANC governing statute, ANCs may only take official actions, such as authorizing protests, during a public meeting." *Id.* at ¶ 4. The Board further noted that ANC representatives at a protest cannot "exceed the scope of the initial protest authorization" because such action would violate the Open Meetings Act, which invalidates actions not taken or enacted at a public meeting. D.C. Code § 1-207.42(a); *Id.* Indeed, the Open Meetings Act states plainly that: "No resolution, rule, act, regulation, or other official action shall be effective unless taken, made, or enacted at such meeting." D.C. Code § 1-207.42(a).

In this matter, the uncontested facts alleged by the Applicant are that ANC 6D never authorized the protest on the grounds of peace, order, and quiet as stated in the protest letter at a public meeting. *Motion*, at 2. Instead, the Applicant notes that the ANC solely voted to protest the Applicant at its July 18, 2022 meeting and solely discussed as grounds of stalling the application for the purpose of negotiating a settlement agreement, which is not listed as a valid protest ground in D.C. Official Code § 25-313. The ANC indicates that it is "customary" for the ANC to object to licenses on the grounds of peace, order, and quiet, and did so in the case of the Applicant. Nevertheless, this is an unsupported assertion. The Board has not been directed to any verbal or written evidence that was produced for or at the meeting (e.g., meeting minutes, draft resolution, etc.) when the vote occurred that negates the Applicant's evidence or interpretation related to these events. As a result, the ANC's after-the-fact justifications, such as noise or excessive light, cannot correct a failure to comply with the Open Meetings Act and does not address the argument made by the Applicant. Therefore, because the ANC only authorized the protest on grounds that are not sufficient to sustain a protest under the appropriateness standards, the ANC's protest must be dismissed.

## ORDER

For these reasons, on this 31st day of August 2022, the Board **DISMISSES** the protest of ANC 6D. Because the sole protestant has been dismissed, the Application shall be treated as uncontested. A copy of this Order shall be provided to the parties.

District of Columbia  
Alcoholic Beverage Control Board

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*Donovan Anderson*  
Key: ac43cb0b69d560e4b73066d1dccc8

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Donovan Anderson, Chairperson

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*James Short*  
Key: 5470e373f820de6ac81b332d22949e

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James Short, Member

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*Bobby Cato*  
Key: 258d3fcad7be148d774b75bd7917d2bd

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Bobby Cato, Member

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*Rafi Aliya Crockett, Member*  
Key: b560e01845e1f9e4016155e5c12f81cc

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Rafi Crockett, Member

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*Jeni Hansen, Member*  
Key: 82172931f509447491b56f6c2a41899

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Jeni Hansen, Member

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*Edward Grandis, Member*  
Key: 5027bda7f9f0040ec14adeb52541ce5

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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, 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. 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 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).