

within the protest period.” D.C. Code § 25-602(a). Section 1602.2 in the regulations further adds that a protestant’s initial protest letter “shall state, as grounds for the protest, why the matter being objected to is inappropriate under one (1) or more of the appropriateness standards set out in D.C. Official Code §§ 25-313 and 25-314 and § 400 of this title.” 23 DCMR § 1602.2 (West Supp. 2018). In *Giant of Maryland*, as referenced by the Applicant, the Board previously explained that while a protestant does not have to state with specificity any of the statutory appropriateness factors in its protest letter, at a minimum, the protestant must “allege negative impacts or harms that fall or may reasonably be interpreted to fall under a specific factor listed in D.C. Official Code §§ 25-313 and 25-314 or 23 DCMR § 400.” *In re Giant of Maryland, LLC, t/a Giant #2379*, Case No. 14-PRO-00060, Board Order No. 2014-349, ¶ 8 (D.C.A.B.C.B. Sept. 24, 2014).

Nevertheless, ANC 1B’s protest letter in this case does not list the specific factors under which it protests or hint at any negative impact that would occur should the Board approve the Applicant’s request. Specifically, ANC 1B’s protest letter solely indicates that it seeks the negotiation of a settlement agreement, and does not list any factor or potential harm, like noise or trash. *Protest Letter*, ANC 1B (Mar. 2, 2018). This absence of factors or harms is particularly notable because the letter contains references to another establishment, Asefu’s Palace, and indicates that the protest in that case is based on concerns such as “real property values” and “peace, order, and quiet.” *Id.*; *see also Mot. to Dismiss*, at 1 n.1.


ANC 1B argues that it raised the appropriate issues in a September 2017 letter and at the Roll Call Hearing. *Response*, at 1-2. Nevertheless, the September 2017 letter was not provided to the Board in the response and appears to relate to a separate case. The ANC cites no authority for bootstrapping a protest filed in one matter, and having it apply to a separate matter. Furthermore, § 25-602(a) requires that the grounds be raised “within the protest period”; as a result, oral or written notice at the later Roll Call hearing, after the protest period has expired, is not sufficient to cure the defect.

The ANC also argues that they did not receive notice of the motion because they were emailed at the wrong address. Nevertheless, this fact does not prevent the Board from acting on the motion when a response from the ANC has been received and considered.

ORDER

Therefore, the Board, on this 2nd day of May 2018, hereby **DISMISSES** ANC 1B for the reasons stated above. A copy of this Order shall be provided to the parties.

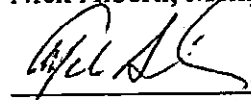
District of Columbia
Alcoholic Beverage Control Board



Donovan Anderson, Chairperson

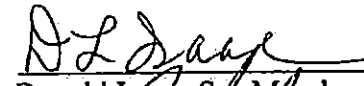


Nick Alberti, Member

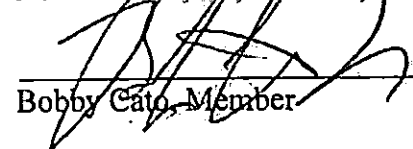


Mike Silverstein, Member

James Short, Member



Donald Isaac, Sr., Member



Bobby Cato, Member

Rema Wahabzadah, 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).