

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

In the Matter of:)		
)		
Wal-Mart Stores East, LLC)	Case Number:	N/A
t/a Wal-Mart #3035)	License Number:	109874
)	Order Number:	2020-070
Application for a New)		
Retailer’s Class B License)		
)		
at premises)		
310 Riggs Rd., N.E.)		
Washington, D.C. 20011)		

BEFORE: Donovan Anderson, Chairperson
 James Short, Member
 Bobby Cato, Member
 Rema Wahabzadah, Member
 Rafi Aliya Crockett, Member

ALSO PRESENT: Wal-Mart Stores East, LLC, t/a Wal-Mart #3035, Applicant

Thomas C. Kleine, Counsel, on behalf of the Applicant

William H. Smith, Designated Representative, Group of Five or More Residents and Property Owners, Protestant

Martha Jenkins, General Counsel
 Alcoholic Beverage Regulation Administration

ORDER DENYING REINSTATEMENT OF THE PROTEST

In Board Order No. 2020-023, Wal-Mart Stores East, LLC, t/a Wal-Mart #3035, (Applicant) filed an Application for a New Retailer’s Class B License (Application) with the Alcoholic Beverage Control Board (Board). The Application was protested by a Group of Five or More Residents and Property Owners. The Group was dismissed for failing to state the grounds on which the protest was based in its protest letter.

The Group filed a motion for reconsideration and raised several reasons to reinstate their protest. *Mot. for Recon.*, 1-4. First, they raised the issue of failing to notify other parties; nevertheless, this issue may be dismissed out of hand because the Group lacks standing to raise notice issues on behalf of third parties, such as Advisory Neighborhood Commissions and their members. *Id.* at 1; *Riverside Hosp. v. Dist. of Columbia Dept. of*

Health, 944 A.2d 1098, 1105 (D.C. 2008) (saying third party standing requires a showing of injury, a close relationship with the third party, and the existence of something preventing the third party from protecting its own rights). Second, the Group notes that it is self-represented; nevertheless, this is not sufficient to waive a mandatory legal requirement. *Id.* at 2.

The Group also argues that the Board should waive the requirement to state an appropriateness ground or assume that the Group stated them. This is not permitted.

Section 25-602(a) requires parties to “notify the Board in writing of his or her intention to object and the grounds for the objection within the protest period.” D.C. Code § 25-602(a). Section 1602.2 states that “All protests shall be in writing, shall be received by the Board prior to the end of the protest period, and 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. 2020).

Section 25-602(a) requires protestants to identify themselves, state their intention to object and their “grounds” for protesting “within the protest period.” § 25-602(a). Adding new grounds after the expiration of the protest cannot be deemed filed within the protest period, and cannot be accepted, because to do so would violate the statute. The Board further notes that the statute provides no means for the Board to waive the requirement; therefore, the Board lacks the authority to grant the relief requested by the Group.

The Group indicates that it was not adequately informed of the requirement. *Mot. for Recon.*, at 3. Nevertheless, this requirement is clearly stated in both the statute and regulation described above. It is also clearly stated on ABRA’s website. For example, on the “File a Protest” webpage it tells readers that the protest letter must “Include at least one appropriateness standard (outlined in § 25-313),” and lists real “property values”; “peace, order, and quiet”; “residential parking needs and vehicular and pedestrian safety” as proper grounds.¹ The webpage then warns readers that “Failure to follow any of the petition procedures may result in the dismissal of the protest.”² As a result, the motion for reconsideration is without merit.


ORDER

Therefore, the Board, on this 29th day of January 2020, hereby **DENIES** the Motion for Reinstatement filed by the Group. The ABRA shall distribute copies of this Order to the parties.

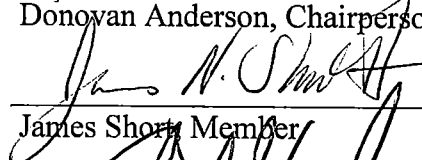
¹ Alcoholic Beverage Regulation Administration, “File a Protest,” <https://abra.dc.gov/service/file-protest> (last visited Jan. 29, 2020).

² *Id.*

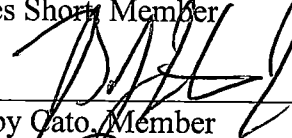
District of Columbia
Alcoholic Beverage Control Board



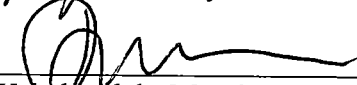
Donovan Anderson, Chairperson



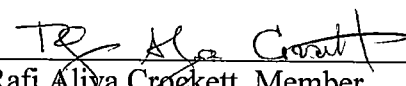
James Short, Member



Bobby Cato, Member



Rema Wahabzadah, Member



Rafi Aliya Crockett, 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).