

DISTRICT OF COLUMBIA
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ALCOHOLIC BEVERAGE CONTROL BOARD

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MEETING

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IN THE MATTER OF: :
: Agenda
A.B.R.A. Agenda : Hearing
:
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April 10, 2013

The Alcoholic Beverage Control Board met in the Alcoholic Beverage Control Hearing Room, Reeves Building, 2000 14th Street, N.W., Suite 400S, Washington, D.C. 20009, Chairperson Ruthanne Miller, presiding.

PRESENT:

RUTHANNE MILLER, Chairperson

NICK ALBERTI, Member

DONALD BROOKS, Member

HERMAN JONES, Member

MIKE SILVERSTEIN, Member

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P-R-O-C-E-E-D-I-N-G-S

(6:25 p.m.)

CHAIRPERSON MILLER: All right.

We are back on the record for our meeting agenda for April 10, 2013.

The first item on the agenda is a letter dated March 27, 2013 from Chris Romano requesting that the Board terminate BLT Burger DC, LLC's license. BLT Burger located at -- 405.1 located at 1317 Connecticut Avenue, N.W. It's License No. 84096.

This is basically a FYI. We will officially deal with the cancellation when that comes to us.

No. 2 is a letter dated March 22, 2013 from Scott Auslander requesting permission to store records and invoices off-premises at another location in the District. The establishment is Ventnor Sports Cafe located at 2411 18th Street, N.W., License No. 72529.

Okay. So I was just reading No. 2

1 and I'm going to read No. 3. We can vote on
2 them together, because it's a similar request
3 by the same person.

4 No. 3 is a review of a letter
5 dated March 22, 2013 from Scott Auslander
6 requesting permission to store records and
7 invoices off-premises at another location in
8 the District. And that establishment is
9 Libertine located at 2435 18th Street, N.W.,
10 License No. 86298.

11 I move that we approve No. 2 and
12 3, because they are locating the records and
13 invoices within the District.

14 Do I have a second?

15 MEMBER SILVERSTEIN: Second.

16 CHAIRPERSON MILLER: Mr.

17 Silverstein has seconded the motion. Any
18 comments? Okay.

19 All those in favor say aye.

20 ALL: Aye.

21 CHAIRPERSON MILLER: All those

22 opposed? All those abstaining? Then the vote

1 is 5-0-0 to approve both 2 and 3.

2 Okay. No. 4 is a review of the
3 District's response to respondent's Motion to
4 Discharge and Dismiss Show Cause dated March
5 28, 2013 from Louise Phillips. The
6 establishment is Lotus located at 1420 K
7 Street, N.W., License No. 75162.

8 I move that we continue
9 consideration of this motion to April 17th.

10 Do I have a second?

11 MEMBER BROOKS: Second.

12 CHAIRPERSON MILLER: Mr. Brooks
13 has seconded the motion.

14 All those in favor say aye.

15 ALL: Aye.

16 CHAIRPERSON MILLER: All those
17 opposed? All those abstaining? The motion
18 passes 5-0-0.

19 No. 5 is a Third Consent Motion
20 for an extension of time to respond to
21 respondent's Motion to Discharge and Dismiss
22 Show Cause dated March 29, 2013 from Louise

1 Phillips. The establishment is Lotus located
2 at 1420 K Street, N.W., License No. 75162.

3 I move that we grant this motion
4 for a continuance to April 30, 2013.

5 Do I have a second?

6 MEMBER BROOKS: Second.

7 CHAIRPERSON MILLER: All those in
8 favor say aye.

9 ALL: Aye.

10 CHAIRPERSON MILLER: All those
11 opposed? All those abstaining? The motion
12 passes 5-0-0.

13 No. 6 is a review of the District
14 of Columbia's opposition to respondent's
15 Motion for Reconsideration dated March 27,
16 2013 from Fernando Rivero. The establishment
17 is Yegna located at 1920 9th Street, N.W.,
18 License No. 74241.

19 Okay. I move that we deny
20 respondent's Motion for Reconsideration.

21 Do I have a second?

22 MEMBER BROOKS: Second.

1 CHAIRPERSON MILLER: Mr. Brooks
2 has seconded the motion. And I will say
3 that's for the reasons articulated by Mr.
4 Rivero in his opposition including that there
5 is no requirement the respondent be
6 represented by a lawyer. Any other comments?

7 All those in favor then of denying
8 the Motion for Reconsideration say aye.

9 ALL: Aye.

10 CHAIRPERSON MILLER: All those
11 opposed? All those abstaining? Then the
12 motion passes 5-0-0.

13 No. 7 is a letter dated March 27,
14 2013 from Commissioner Jackie Blumenthal of
15 ANC-3B requesting that the Board review the
16 plans proposed by JP's and deem them a
17 substantial change in operation subject to
18 placarding. Commissioner Blumenthal also
19 requests that the Board notify ANC-3B when the
20 license is taken out of safekeeping.

21 Okay. When the license is taken
22 out of safekeeping, it will be placarded and,

1 therefore, ANC will be given notice. I'm not
2 sure whether this requires our response to Ms.
3 Blumenthal or not, so I think we could just
4 refer that to legal in the event that it
5 requires a response is my recommendation.

6 Does anybody have anything other?
7 Okay. So in the meanwhile, it is basically an
8 FYI and we will refer to legal. Okay.

9 No. 8, all right, is a settlement
10 agreement dated March 26, 2013 between James
11 Hoban's and ANC-2B. James Hoban's is located
12 at 1 Dupont Circle, N.W., License No. 77039.

13 Okay. I move that we approve this
14 settlement agreement with modification with
15 respect to paragraph 1(a) that the parties
16 work with legal to make this clearer. Any
17 other comments on that?

18 All right. Then do I have a
19 second?

20 MEMBER SILVERSTEIN: Second.

21 CHAIRPERSON MILLER: Okay. The
22 Motion to Modify, approve with modification to

1 1(a) has been seconded.

2 All those in favor say aye.

3 ALL: Aye.

4 CHAIRPERSON MILLER: All those
5 opposed? All those abstaining? The motion
6 passes 5-0-0.

7 No. 9 is a settlement agreement
8 dated February 20, 2013 between Sammys Liquor
9 and ANC-5C. Sammys Liquor is located at 2725
10 Bladensburg Road, N.E., and it's License No.
11 78174.

12 Okay. I move that we approve this
13 settlement agreement, unless anyone has any
14 comments with any of the provisions that I
15 think this one will assign. Do I have a
16 second?

17 MEMBER SILVERSTEIN: Second.

18 CHAIRPERSON MILLER: Mr.

19 Silverstein seconded the motion.

20 All those in favor say aye.

21 ALL: Aye.

22 CHAIRPERSON MILLER: All those

1 opposed? All those abstaining? The motion
2 passes 5-0-0.

3 No. 10 is a settlement agreement
4 dated March 14, 2013 between RedRocks and ANC-
5 6A. RedRocks is located at 1348 H Street,
6 N.E., License No. 90997.

7 I believe this one has a couple of
8 modifications or at least one. Okay. I think
9 it is paragraph 3(d), I would recommend that
10 the parties confer with legal counsel on
11 paragraph 3(d) to make that clearer.

12 Okay. Not hearing from anyone
13 about any other modifications, I would move
14 that we approve this settlement agreement
15 subject to modifications to paragraph 3(d).

16 Do I have a second?

17 MEMBER BROOKS: Second.

18 CHAIRPERSON MILLER: Mr. Brooks
19 has seconded the motion.

20 All those in favor say aye.

21 ALL: Aye.

22 CHAIRPERSON MILLER: All those

1 opposed? All those abstaining. Is the vote
2 5-0-0?

3 MEMBER ALBERTI: 5-0-0, yes.

4 CHAIRPERSON MILLER: Okay.

5 Modifications to 3(d). Okay.

6 No. 11 is a settlement agreement
7 dated March 11, 2013 between Le Liquors and
8 ANC-1C. Le Liquors is located at 1776
9 Columbia Road, N.W., License No. 90659.

10 I move that we approve this
11 settlement agreement.

12 Do I have a second?

13 MEMBER SILVERSTEIN: Second.

14 CHAIRPERSON MILLER: Mr.

15 Silverstein seconded the motion. Any
16 comments?

17 All those in favor say aye.

18 ALL: Aye.

19 CHAIRPERSON MILLER: All those
20 opposed? All those abstaining? The motion
21 passes 5-0-0.

22 No. 12 is a review of settlement

1 agreement amendment dated March 11, 2013
2 between Ziegfield's/Secrets and ANC-6D.
3 Ziegfield's/Secrets is located at 1824 Half
4 Street, S.W., License No. 78663.

5 I move that we approve this
6 settlement agreement.

7 Do I have a second?

8 MEMBER BROOKS: Second.

9 CHAIRPERSON MILLER: Mr. Brooks
10 has seconded the motion.

11 All those in favor say aye.

12 ALL: Aye.

13 CHAIRPERSON MILLER: All those
14 opposed? All those abstaining? The motion
15 passes 5-0-0.

16 That completes our regular meeting
17 agenda.

18 MEMBER ALBERTI: We are just going
19 to take a moment.

20 CHAIRPERSON MILLER: Okay. I'm
21 good.

22 (Whereupon, at 6:38 p.m. a recess

1 until 6:42 p.m.)

2 CHAIRPERSON MILLER: Okay.

3 MEMBER ALBERTI: Go ahead.

4 CHAIRPERSON MILLER: So we have
5 two items on our supplemental agenda for
6 today.

7 The first is a review of change of
8 hours application to change hours of operation
9 and hours of alcoholic beverage sales. The
10 approved hours of operation and hours of
11 alcoholic beverage sales/service are Sunday
12 through Saturday 11:00 a.m. to 3:00 a.m.
13 Proposed hours of operation are 11:00 a.m. to
14 4:00 a.m. And proposed hours of alcoholic
15 beverage sales/services, there is no change to
16 that.

17 There are no pending investigative
18 matters. No pending enforcement matters, but
19 there are outstanding fines and citations.
20 That being Case No. 12-251-00064, simple
21 assault. On 1/9/13, the Board ordered a two
22 day suspension stayed for one year and a

1 \$2,000 fine. No settlement agreement. It's
2 in ANC-5C. The Single Member District is
3 5C07. The establishment is Lace located at
4 2214 Rhode Island Avenue, N.E., License No.
5 76369.

6 I am going to move to deny this
7 application.

8 Do I have a second?

9 MEMBER ALBERTI: Second.

10 CHAIRPERSON MILLER: Mr. Alberti
11 seconded the motion. I do want to speak to it
12 on the record though. I heard that the
13 applicant wanted this extension for reasons of
14 flexibility, but I think that from what I have
15 learned, that an extension of hours after 3:00
16 is a more rare event, not just for something
17 like flexibility.

18 And I don't think that she showed
19 any real need different from anybody else in
20 that respect, that she could start closing
21 earlier. So for that reason I will vote
22 against it.

1 Does anybody else want to speak to
2 it? Okay. Then there is the motion that I
3 put forward to deny. It has been seconded.

4 All those in favor of denying the
5 application say aye.

6 ALL: Aye.

7 CHAIRPERSON MILLER: All those
8 opposed? All those abstaining? Okay. Then
9 the motion to deny passes by a vote of 5-0-0.

10 Okay. The second and last item on
11 our agenda is a full service grocery
12 definition and emergency and proposed
13 rulemaking. It's a rulemaking that the Board
14 has been working on for a while now in
15 response to the counsel's direction to come up
16 with a definition.

17 So I am going to read the proposed
18 rulemaking now into the record and then open
19 it up for any comments.

20 As such, Title 23 of the D.C.
21 Municipal Regulations is amended as follows:

22 Chapter 1 (Provisions of General

1 Applicability) is amended by adding the
2 definition of a "full-service grocery store"
3 after the definition of "fact-finding hearing"
4 in ^U 199, which shall read as follows:

5 "Full-service grocery store"

6 (A) Means a self-service retail
7 establishment independently owned or
8 part of a corporation operating a chain
9 of retail establishments under the same
10 trade name that:

11 (i) Is licensed as a grocery store
12 under ^U 47-2827; and

13 (ii) Offers for sale a full line of
14 food products that includes at
15 least six of the seven following
16 food categories:

17 a. Fresh fruits & vegetables;

18 b. Fresh & uncooked meats,
19 poultry and seafood;

20 c. Dairy products;

21 d. Canned foods;

22 e. Frozen foods;

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- f. Dry groceries & baked goods;
- and
- g. Non-alcoholic beverages.

(B) The term "full-service grocery store" in subparagraph (A) may include related service departments, such as bakery, pharmacy, or flower shop, as well as departments that offer household products and sundries.

(C) A retail establishment shall meet the primary business and purpose standard described in Title 25 of the D.C. Official Code if (1) a minimum of 50 percent of the store's square feet of selling area is dedicated to the sale of the food categories listed in (A)(ii) above; or (2) a minimum of 6,000 square feet of the store's selling area is dedicated to the sale of the food categories listed in (A)(ii) above.

1 (D) A retail establishment that meets
2 either standard set forth in
3 subparagraph (C) must also dedicate a
4 minimum of 5 percent of the store's
5 selling area set aside for the sale of
6 food items listed in subparagraph (A) to
7 each of six of the seven food categories
8 listed in subparagraph (A)(ii).

9
10 (E) The term "selling area" means the
11 area in a retail establishment that is
12 open to the public. It shall not
13 include storage areas or preparation
14 areas or restrooms.

15
16 (F) The "full-service grocery store"
17 definition contained in this subsection
18 shall apply to license applications
19 being considered by the Board for
20 approval or after January 14, 2013.

21
22 So that is the proposed

1 definition. Does anybody have any comments
2 for the record? Okay. I just want to say I
3 think that we heard comments from the public
4 and this does include canned foods and frozen
5 foods, which were some of the comments I
6 remember. It retains some flexibility by
7 allowing six out of seven categories.

8 So I think that's all I need to
9 say, at this point. Okay. Any other
10 comments? Yes, Mr. Silverstein?

11 MEMBER SILVERSTEIN: I would like
12 to thank my colleagues on this. This has been
13 a very, very difficult thing to work through.
14 We have worked deciduously to do so. We have
15 worked in good faith. We have taken all the
16 comments from the public and considered them.
17 We have done everything we can to make sure
18 that these are not places that give you three
19 bananas and call it -- and say they serve
20 fresh fruits.

21 We have done what we can to
22 hopefully make it possible for areas that are

1 under-served to have food opportunities and
2 also to our box stores to qualify as well.
3 One size no longer fits all and we are trying
4 to do the best we can here to help the
5 District with economic development and to
6 provide customers with market choice.

7 Thank you, Madam Chair.

8 CHAIRPERSON MILLER: Oh, thank
9 you, Mr. Silverstein. Very well said. Okay.
10 Anybody else? All right. Then I move that we
11 approve these regulations.

12 Do I have a second?

13 MEMBER BROOKS: Second.

14 CHAIRPERSON MILLER: Mr. Brooks
15 has seconded the motion.

16 All those in favor say aye.

17 ALL: Aye.

18 CHAIRPERSON MILLER: All those
19 opposed? All those abstaining? Then the
20 motion passes by a vote of 5-0-0.

21 Okay. I think that completes our
22 supplemental agenda.

1 Okay. We now move to the Change
2 of Hours Agenda.

3 MEMBER JONES: Change of Hours.

4 CHAIRPERSON MILLER: Okay. We
5 have two items on the agenda.

- 6 1. Review of change of hours
7 application to change hours of
8 operation: Monday through Saturday
9 8:00 a.m. to 10:00 p.m. Approved
10 hours of alcoholic beverage sales/
11 service: Monday through Saturday
12 9:00 a.m. to 10:00 p.m. Proposed
13 hours of operation: Sunday through
14 Saturday 8:00 a.m. to 10:00 p.m.
15 Proposed hours of alcoholic
16 beverage sales/service: Sunday
17 through Saturday 9:00 a.m. to
18 10:00 p.m. No pending
19 investigative matters. No pending
20 enforcement matters. No
21 outstanding fines/citations. No
22 settlement agreement. It is in

1 ANC-8D, SMD 8D01. Jang & Lee,
2 Inc. t/a Chesapeake Big Market,
3 601 Chesapeake Street, S.E.,
4 Retailer's Class A, License No.
5 091126.

6 I move that we approve the change
7 of hours.

8 Do I have a second?

9 MEMBER BROOKS: Second.

10 CHAIRPERSON MILLER: Mr. Brooks
11 has seconded the motion.

12 All those in favor say aye.

13 ALL: Aye.

14 CHAIRPERSON MILLER: All those
15 opposed? The motion passes 4-0-0.

16 2. Review of change of hours
17 application to change hours of
18 operation and hours of alcoholic
19 beverage sales. Approved hours of
20 operation: Sunday 8:00 a.m. to
21 11:00 p.m.; Monday through Friday
22 7:00 a.m. to 11:00 p.m.; Saturday

1 8:00 a.m. to 11:00 p.m. Approved
2 hours of alcoholic beverage
3 Sales/Service: Sunday through
4 Saturday 9:00 a.m. to 11:00 p.m.
5 Proposed hours of operation and
6 hours of alcoholic beverage sales/
7 service: Sunday through Saturday
8 7:00 a.m. to 11:00 p.m. No
9 pending investigative matters. No
10 outstanding fines/citations. No
11 settlement agreement. It is in
12 ANC-3C, SMD 3C01. Manhattan
13 Market, Inc. t/a Manhattan Market,
14 2647 Connecticut Avenue, N.W.,
15 Retailer's Class B, License No.
16 017772.
17 Okay. I move that we approve this
18 change in hours application.
19 Do I have a second?
20 MEMBER BROOKS: Second.
21 CHAIRPERSON MILLER: Mr. Brooks
22 has seconded the motion.

1 All those in favor say aye.

2 ALL: Aye.

3 CHAIRPERSON MILLER: All those
4 opposed? All those abstaining? The motion
5 passes 4-0-0. Okay.

6 Do we have any cancellations? All
7 right. Not seeing any, then I think that
8 concludes our meeting agenda. Okay. And I
9 will just do the closed meeting instructions.

10 As Chairperson of the Alcoholic
11 Beverage Control Board for the District of
12 Columbia and in accordance with Section 405 of
13 the Open Meetings Amendment Act of 2010, I
14 move that the ABC Board hold a closed meeting
15 for the purpose of seeking legal advice from
16 our counsel on the matters identified on the
17 Board's agenda for April 17, 2013 as published
18 in the DC Register on April 12, 2013.

19 Is there a second?

20 MEMBER BROOKS: Second.

21 CHAIRPERSON MILLER: Okay. I'll
22 take a roll call vote on the motion now that

1 it has been seconded.

2 Mr. Brooks?

3 MEMBER BROOKS: I agree.

4 CHAIRPERSON MILLER: Mr. Alberti?

5 MEMBER ALBERTI: I agree.

6 CHAIRPERSON MILLER: Okay. Mr.
7 Jones?

8 MEMBER JONES: I agree.

9 CHAIRPERSON MILLER: Ms. Miller
10 agrees. The motion is passed by a vote of 4-
11 0-0.

12 I hereby give notice that the ABC
13 Board will hold this aforementioned closed
14 meeting pursuant to the Open Meetings
15 Amendment Act of 2010. Notice will also be
16 posted on the ABC Board hearing room bulletin
17 board, placed on the electronic calendar on
18 ABRA's website and published in the DC
19 Register in as timely a manner as practicable.

20 As Chairperson of the Alcoholic
21 Beverage Control Board for the District of
22 Columbia and in accordance with Section 405 of

1 the Open Meetings Amendment Act of 2010, I
2 move that the ABC Board hold a closed meeting
3 on April 17, 2013 for the purpose of
4 discussing and hearing reports concerning
5 ongoing or planned investigations of alleged
6 criminal or civil misconduct or violations of
7 law or regulations and seeking legal advice
8 from our counsel on the Board's investigative
9 agenda for April 17, 2013 as published in the
10 DC Register on April 12, 2013.

11 Is there a second?

12 MEMBER BROOKS: Second.

13 CHAIRPERSON MILLER: Mr. Brooks
14 has seconded the motion. I'll now take a roll
15 call vote.

16 Mr. Brooks?

17 MEMBER BROOKS: I agree.

18 CHAIRPERSON MILLER: Mr. Alberti?

19 MEMBER ALBERTI: I agree.

20 CHAIRPERSON MILLER: Ms. Miller
21 agrees.

22 Mr. Jones?

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MEMBER JONES: I agree.

CHAIRPERSON MILLER: Okay. It appears that the motion has passed by a vote of 4-0-0.

I hereby give notice that the ABC Board will hold this aforementioned closed meeting pursuant to the Open Meetings Amendment Act of 2010. Notice will also be posted on the ABC Board hearing room bulletin board, placed on the electronic calendar on ABRA's website and published in the DC Register in as timely a manner as practicable.

Okay. And that concludes our business for April 10, 2013. All right.

(Whereupon, the A.B.R.A. Agenda in the above-entitled matter was concluded at 6:54 p.m.)

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