

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

In the Matter of:)	
)	
Moby Dick of Capitol Hill, Inc.)	License No. 85584
t/a Moby Dick Grill)	Order No. 2011-150
)	
Application for a New)	
Retailer's Class CR License)	
at premises)	
524 8th Street, S.E. (First Floor))	
Washington, D.C. 20003)	
)	

Moby Dick of Capitol Hill, Inc., t/a Moby Dick Grill, Applicant

David F. Garrison, Commissioner, Advisory Neighborhood Commission (ANC) 6B,
Protestant

Neil Glick, Chairperson, ANC 6B, Protestant

Helen Quick, on behalf of A Group of Five or More Individuals, Protestant

BEFORE: Charles Brodsky, Chairperson
Mital M. Gandhi, Member
Nick Alberti, Member
Donald Brooks, Member
Herman Jones, Member
Calvin Nophlin, Member
Mike Silverstein, Member

ORDER ON VOLUNTARY AGREEMENT AND WITHDRAWAL OF PROTEST

The official records of the Alcoholic Control Board (Board) reflect that Moby Dick of Capitol Hill, Inc., t/a Moby Dick Grill (Applicant), filed an Application for a new Retailer's Class CR License located at 524 8th Street, S.E. (First Floor), Washington, D.C. The Application was timely protested by ANC 6B, represented by Commissioner David F. Garrison and Chairperson Neil Glick, and A Group of Five or More Individuals, represented by Helen Quick. The Applicant, ANC 6B, and the Group of Five or More Individuals, have entered into a Voluntary Agreement (Agreement) dated February 8, 2011, setting forth the terms and conditions that govern the operation of the Applicant's establishment. This Agreement also constitutes a withdrawal of the Protest filed by ANC 2B and the Group of Five or More Individuals.

The Agreement has been reduced to writing and has been properly executed and filed with the Board. Vanessa Lim, on behalf of the Applicant, Neil Glick, on behalf of ANC 6B, and Helen Quick, on behalf of the Group of Five or More Individuals, are signatories to the Agreement.

Accordingly, it is this 2nd day of March 2011, **ORDERED** that:

1. The Application filed by Moby Dick of Capitol Hill, Inc., t/a Moby Dick Grill, for a new Retailer's Class CR License located at 524 8th Street, S.E., Washington, D.C., is **GRANTED**;
2. The above-referenced Voluntary Agreement submitted by the Parties to govern the operations of the Applicant's establishment is **APPROVED** and **INCORPORATED** as part of this Order, except for the following modifications agreed to by the parties:
 - (a) The last sentence in Section 8, "Applicant will also provide food delivery service as another means of alleviating parking problems in the neighborhood," shall be struck;
 - (b) The last sentence in Section 11, "This Agreement shall remain effective through subsequent renewals and transfers of Applicant's ABC License," shall be struck;
 - (c) The last sentence in Section 10 shall be amended as follows:
 - i. Upon seven days advance notice, Applicant agrees to appear at any meeting of the ANC at which the Applicant's business is on the agenda.
3. The Protest submitted by ANC 6B and the Group of Five or More Individuals is **WITHDRAWN**;
4. Copies of this Order shall be sent to the Applicant, ANC 6B, and Helen Quick.

District of Columbia
Alcoholic Beverage Control Board

Charles Brodsky, Chairperson



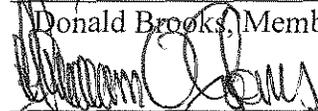
Mital M. Gandhi, Member



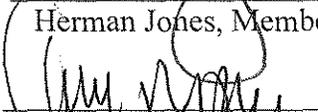
Nick Alberti, Member



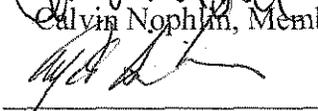
Donald Brooks, Member



Herman Jones, Member



Calvin Nophin, Member



Mike Silverstein, Member

Pursuant to 23 DCMR § 1719.1 (2008), 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, 1250 U Street, N.W., 3rd Floor, 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, 500 Indiana Avenue, N.W., Washington, D.C. 20001.

However, the timely filing of a Motion for Reconsideration pursuant to 23 DCMR § 1719.1 (2008) 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).

VOLUNTARY AGREEMENT

THIS VOLUNTARY AGREEMENT is made on this 8th day of February, 2011 by and between Moby Dick of Capitol Hill, Inc., t/a Moby Dick Grill, Applicant, and Advisory Neighborhood Commission 6B and a group of Neighborhood Residents.

WITNESSETH

WHEREAS, Applicant's license application (ABRA – 085584) for premises, 524 8th Street, SE, 1st floor, Washington, DC, 20003, is now pending before the District of Columbia Alcoholic Beverage Control Board (ABC); and,

WHEREAS, the ANC and the undersigned neighborhood residents (together Protestants") are protesting this license; and

WHEREAS, the premises is within the boundaries of the ANC, and,

WHEREAS, the Parties desire to enter into an agreement governing certain understandings regarding the issue of a Retailers' Class "CR" Restaurant Liquor License at the subject premises; and,

WHEREAS, the Parties are desirous of entering into a Voluntary Agreement pursuant to D.C. Official Code § 25-446 for the operation and maintenance of the Establishment in such a manner as to promote the peace, order and quiet of the neighborhood upon which the Protestants will withdraw their protests of the license application. Both parties recognize the importance of business neighborhoods that are safe, clean, and "pedestrian friendly".

NOW, THEREFORE, the parties agree as follows:

1. ***Recitals Incorporated.*** The recitals set forth above are incorporated herein by reference.
2. ***Nature of the Business.*** Applicant shall manage and operate a Middle Eastern cuisine and grilled kabob restaurant, as the term "restaurant" is defined in 11 DCMR 199.1, with at CR license at the listed address. No entertainment will be provided. Interior seating capacity is 69. The sidewalk café will seat no more than 24 (additional) patrons.
3. ***Hours of Operation and Sales.*** The Applicant's hours of operation and sales of alcohol shall be as follows:

Hours of Operation

Sunday through Thursday 9:00 a.m. – 11:00 p.m.

Friday and Saturday 9:00 a.m. – 12:00 a.m.

Sidewalk Cafe

Sunday through Saturday 9:00 a.m. – 11:00 p.m.

Hours of Sale/Service and consumption of Alcohol
 Sunday through Thursday 10:00 a.m. – 11:00 p.m.
 Friday and Saturday 10:00 a.m. – 12:00 a.m.

Consistent with ABC Board interpretations, upon cessation of “hours of operation,” no patrons will remain on the premises.

Provided that: (a) on days designated by the ABC Board as “Extended Hours for ABC Establishments” Applicant may operate (including sale and consumption) for one hour later than the hour designated; (b) in the event that the Council of the District of Columbia or the ABC Board grants licensees in general extended operating hours (such as for Inauguration), Applicant may avail itself of such extended hours; and (c) on January 1 of each year Applicant may operate (including sale and consumption) until 2:00a.m.

4. **Sidewalk Café.** Applicant will provide a sidewalk café with seating for no more than 24. The sidewalk café must maintain proper spacing (10 feet from the curb and 6 feet from the treebox) to allow for adequate pedestrian passage on the sidewalk. The sidewalk café will close at 11:00 pm Sundays – Saturday. Consistent with ABC Board interpretations, no patrons will remain on the sidewalk café beyond specified closing hours and the Applicant will “stack” its outdoor furniture so as to preclude unauthorized occupancy of its outdoor seating.
5. **Noise and Privacy.** Applicant will strictly comply with D.C. Official Code § 25-725 and to that end shall make architectural improvements to the property and take all necessary actions to ensure that noise and vibration from the Establishment are not audible outside the establishment at any time.
6. **Public Space and Trash.** Applicant shall keep the sidewalk (up to and including the curb), tree box(es), curb, and alley clean and free of litter, bottles, and other debris in compliance with D.C. Code and Municipal Regulations. Applicant shall police these areas sufficiently to assure that refuse and other materials are promptly removed. Applicant shall ensure that the area around the dumpster is kept clean at all times and the dumpster is placed such that it does not encroach on the abutting property owners and that no garbage is placed on the abutting property. Commercial trash pick up in residential areas will only take place between 7 a.m.- 9 p.m. Any deviation from said hours shall constitute grounds for the Protestants, or any of them, to seek redress as provided in Section 12, below
7. **Rats and Vermin Control.** The Applicant shall provide rat and vermin control for the property. Applicant shall provide proof of its rat and vermin control contract upon the request of the Board. Applicant shall have the Establishment and the area around the Premises properly cleaned at the end of each night to ensure no garbage and odors are present the following morning.
8. **Customer Parking.** Applicant understands that parking in this area is problematic and that nearby residents frequently are unable to find parking spaces near their homes because all parking spaces in their immediate area are filled with customers of the bars

and restaurants on Barracks Row. Applicant will respect the residents living nearby and provide Moby Dick Grill customers with alternatives to, and incentives to avoid, parking on neighboring streets. To that end, the applicant will:

- (a) participate in the "pool" valet parking arrangement on Barracks Row; and,
- (b) encourage its employees to utilize public transportation, or, alternatively, require its employees to park in the nearby public parking lot at 8th and I Street SE, and,
- (c) encourage customers to utilize the 8th and I Streets lot by means of advertisement of its availability on: (i) Applicant's website; (ii) its menus; and (iii) by posting of signage on the interior of the restaurant.

In the event that applicant is advised that any of its employees is parking on residential streets, applicant will impose such discipline, up to and including termination, as may be required to compel any such employee from parking on residential streets. Applicant will post signs in the establishment, clearly visible to departing customers encouraging customers to respect nearby residents by returning to their cars quietly.

Applicant will also provide food delivery service as another means of alleviating parking problems in the neighborhood..

9. ***Security Cooperation in Stemming Illegal Drugs and Public Drinking.*** Applicant agrees that it shall take all necessary steps to minimize such problems, including, without limitation, designating a sufficient number of employees to assure adequate security and to control unruly patrons, whether inside or in the immediate outside area; monitoring for and prohibiting sales or use of illegal drugs within or about the Premises, maintaining contact and cooperating with MPD and other enforcement officials when known or suspected drug activities occur. Applicant shall to the full extent permissible by law discourage loitering in the vicinity of the Premises.
10. ***Communication with Protestants.*** Applicant agrees to meet, as reasonably requested, with the Protestants (or any of them) to address any perceived issues arising from operation of the subject business. Upon reasonable advance notice, Applicant agrees to appear at any meeting of the ANC at which Applicant's business is on the agenda.
11. ***Withdrawal of Protest.*** Protestants agree to withdrawal of their protests of Applicant's license application upon execution of this Agreement and entry of an order by the ABC Board incorporating the terms of this Agreement into the Board's approval of said application. This Agreement shall remain effective through subsequent renewals and transfers of Applicant's ABC license.
12. ***Right to Seek Redress.*** The parties agree that Applicant shall be given notice of any alleged violations of this Agreement and be afforded a reasonable time (not to exceed 10 days) in which to investigate, respond and rectify. In the event that Protestants (or any of them) are not satisfied with the manner in which any such complaint may be resolved, Protestants (or any of them) may petition the ABC Board for issuance of an Order to Show Cause pursuant to DC Official Code 25-446(e).

IN WITNESS WHEREOF, the parties have affixed hereunto their signatures.

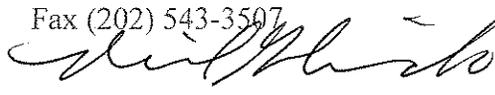
Applicant:

Moby Dick of Capitol Hill
524 8th Street SE, 1st Floor
Washington, DC 20003
Nariman Modanlou, President
202-488-0888

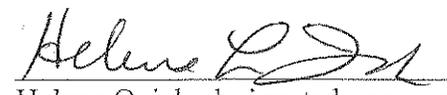
 (Signature)

ANC:

Advisory Neighborhood Commission
703 D Street, SE
Washington, DC 20003
Neil Glick, Chairperson
(202) 543-3344
Fax (202) 543-3507

 (Signature)

Individual Protestants:

 (Signature)
Helene Quick, designated representative

ANC 6B

Capitol Hill / Southeast

703 D Street, SE
Washington, DC 20003
202.543.3344
FAX 202.543.3507

February 9, 2011

OFFICERS

Chairperson
Neil Glick

Vice Chairperson
Ivan Frishberg

Secretary
Jared Critchfield

Treasurer
Carol Green

Parliamentarian
Brian Flahaven

Charles Brodsky, Chair
ABC Board
C/o Martha Jenkins
1250 U Street, NW, 3rd Floor
Washington, DC 20009

RE: Moby Dick Grill
Application # ABRA-085584
524 8th Street, SE
Cooperative (Voluntary) Agreement

Dear Mr. Brodsky:

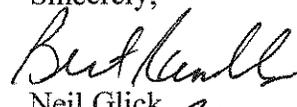
COMMISSIONERS

SMD 1 *David Garrison*
SMD 2 *Ivan Frishberg*
SMD 3 *Norman Metzger*
SMD 4 *Kirsten Oldenburg*
SMD 5 *Brian Pate*
SMD 6 *Jared Critchfield*
SMD 7 *Carol Green*
SMD 8 *Neil Glick*
SMD 9 *Brian Flahaven*
SMD 10 *Francis Campbell*
SMD 11 *Vacant*

At its regularly scheduled and properly noticed meeting on February 8, 2011, with a quorum present, ANC 6B voted (9 to 1) to approve the negotiated Cooperative (Voluntary) Agreement between ANC 6B and Moby Dick Grill. To this end, enclosed is the Cooperative (Voluntary) Agreement that has been fully executed by Moby Dick Grill and ANC 6B for your review and approval. With this executed Agreement ANC 6B withdraws its opposition to the new license application.

Please contact me should you have any questions regarding this matter.

Sincerely,


Neil Glick
Chair, ANC 6B

Enclosure: