

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

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|---|---|--------------------------|
| In the Matter of: |) | |
| |) | |
| AAB, LLC |) | License Number: 078091 |
| t/a Black Squirrel |) | Case Number: 09-SC-00491 |
| |) | Order Number: 2012-383 |
| |) | |
| Application for Substantial Change to a |) | |
| Retailer's Class CR License |) | |
| at premises |) | |
| 3201 New Mexico Avenue, N.W. |) | |
| Washington, D.C. 20016 |) | |

BEFORE: Ruthanne Miller, Chairperson
Nick Alberti, Member
Donald Brooks, Member
Herman Jones, Member
Calvin Nophlin, Member
Mike Silverstein, Member

ALSO PRESENT: AAB, LLC, t/a Black Squirrel, Applicant

Bryan Weaver, Chair, on behalf of Advisory Neighborhood Commission (ANC) 1C, Protestant

Denis James, President, on behalf of the Kalorama Citizens Association (KCA), Protestant

Maureen Gallagher, President, on behalf of the Reed-Cooke Neighborhood Association, Protestant

Martha Jenkins, General Counsel
Alcoholic Beverage Regulation Administration

ORDER ON VOLUNTARY AGREEMENT

The official records of the Alcoholic Beverage Control Board (Board) reflect that the Board approved the Voluntary Agreement executed by AAB, LLC, t/a Black Squirrel, (Applicant), Advisory Neighborhood Commission (ANC) 1C, the Kalorama Citizens Association, and the Reed-Cooke Neighborhood Association on July 15, 2009. See Agenda, Item 14 (Jul. 15, 2009). We note that no written order was issued related to this

agenda item in 2009; therefore, this Order serves as written notice to the parties that the 2009 Voluntary Agreement is in effect.¹

We further note that clause 13 of the 2009 Voluntary Agreement replaces all prior voluntary agreements attached to the license that were executed by the parties. Voluntary Agreement, § 13 (Jul. 1, 2009). Therefore, the Voluntary Agreement executed between the parties regarding T.S. Muttly's is no longer in effect under the terms of the 2009 Voluntary Agreement. See Hammer Entertainment, LLC, t/a T.S.Muttly's, Board Order No. 2005-172 (Sept. 7, 2005).

ORDER

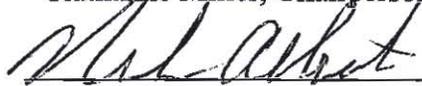
Therefore, based on the foregoing, the Board, on this 10th day of October 2012, **REAFFIRMS** its approval of the Voluntary Agreement on July 15, 2009, and finds that this agreement **REPLACES** the Voluntary Agreement authorized by Board Order No. 2005-172. ABRA shall deliver copies of this Order to the Applicant, Advisory Neighborhood Commission 1C, the Kalorama Citizens Association, and the Reed-Cooke Neighborhood Association.

¹ The 2009 Voluntary Agreement is attached to this Order.

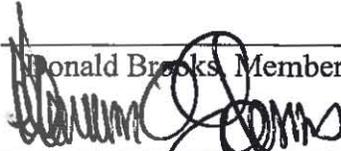
District of Columbia
Alcoholic Beverage Control Board



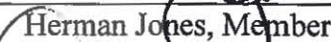
Ruthanne Miller, Chairperson



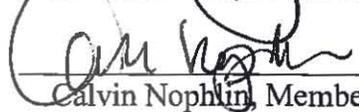
Nick Alberti, Member



Donald Brooks, Member



Herman Jones, Member



Calvin Nophlin, Member

Mike Silverstein, Member

Pursuant to 23 DCMR § 1719.1 (April 2004), 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, N.W., 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, 500 Indiana Avenue, N.W., Washington, D.C. 20001. However, the timely filing of a Motion for Reconsideration pursuant to 23 DCMR § 1719.1 (April 2004) 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).

**COOPERATIVE AGREEMENT CONCERNING SUBSTANTIAL CHANGE OF
ABC LICENSE FOR THE SALE OF ALCOHOLIC BEVERAGES**

THIS AGREEMENT, made and entered into this 1st day of July, 2009, by and between AAB, LLC, trading as the Black Squirrel (hereinafter the "Applicant"), Advisory Neighborhood Commission 1C (hereinafter "ANC 1C"), the Kalorama Citizens Association (hereinafter "KCA"), and the Reed-Cooke Neighborhood Association (hereinafter "RCNA"), witnesses:

Whereas, Applicant has filed an application with the District of Columbia Alcoholic Beverage Control Board (hereinafter the "Board") for the substantial change of CR-01 License Number 78091 for the premises known as the Black Squirrel, 2427 18th Street, NW, Washington, DC 20009, to add the basement level to the establishment, and

Whereas, the establishment is located within the boundaries of ANC 1C, and

Whereas, this agreement, upon approval by the Board, shall replace in its entirety the previous Cooperative Agreement for this address, as the predecessor establishment is no longer in operation, and

Whereas, in recognition of the Board's policy of encouraging parties to settle their differences by reaching Cooperative Agreements, the Parties hereto desire to enter into a Cooperative Agreement whereby (1) Applicant will agree to adopt certain measures to address the concerns of ANC 1C, the KCA and the RCNA, and to include this Agreement as a formal condition of its Application, and (2) ANC 1C, the KCA, and the RCNA will agree to the issuance of the substantial change of the license provided that such Agreement is incorporated into the Board's order approving such issuance, which order is thereby conditioned upon compliance with such Agreement.

Whereas, Applicant has recently taken or intends to take certain measures designed to ameliorate the protestant's concerns,

Now, therefore, in consideration of the mutual covenants and undertakings memorialized herein, the Parties hereby agree as follows:

1. Operation.

At all times, Applicant agrees to operate with the primary purpose of food preparation and consumption. The kitchen shall be staffed and maintained at its current size and operation. A full menu shall be available until two hours before closing, and Applicant shall have food available until closing. Food menus shall be offered to all patrons. Applicant shall maintain a CR license at this location.

2. Hours. The hours of operation shall be:

| | | |
|---------|---------------------------|-------------------|
| Inside: | Sunday* through Thursday: | 8:00 am - 2:00 am |
| | Friday and Saturday: | 8:00 am - 3:00 am |

Sidewalk Café/Summer Garden:

Sunday* through Thursday: 8:00 am - 12:00 midnight

Friday and Saturday: 8:00 am - 1:00 am

*The parties understand that the legal starting hour for sale, service and consumption of alcoholic beverages is 10:00 am on Sundays.

Last call will be announced ½ hour before closing, and all alcohol will be removed from the tables and bar at the closing times reflected above.

3. Occupancy.

The interior seating capacity will not exceed:

Interior tables and bar of First Floor (up stairs from sidewalk): 28.

Interior tables and bar of Basement (down from sidewalk): 25.

Sidewalk Café/Summer Garden: 10 Applicant agrees to insure that all public space requirements are in good order.

Upon issuance of a Certificate of Occupancy by DCRA, the parties agree to amend this agreement as it applies only to the question of the second floor.

4. Noise and Music.

Applicant acknowledges familiarity with and will comply with all applicable noise-control provisions of District of Columbia law and regulations, including, but not limited to:

- a) Preventing emissions of sound, capable of being heard outside the premises, by any musical instrument or amplification device or other device or source of sound or noise, in accordance with D.C. Official Code § 25-725 (2001). Further, the Applicant agrees to abide by all relevant provisions of the D.C. Noise Control Act of 1977 (D.C. Law 2-53), including 20DCMR, Chapters 27 and 28, as amended.
 - b) The doors and windows of the premises will be kept closed at all times during business hours when music is being played or a sound amplification device is being employed in the premises, except when persons are in the act of using the door for ingress to or egress from the premises. There shall be no music played on the roof.
 - c) Music from inside will not be audible at surrounding residential housing areas.
 - d) Applicant agrees not to place outside in the public space any loudspeaker, tape player, CD player or other similar device, or to place any inside speaker in such a way that it projects sound into the public space.
 - e) The Parties agree that in the routine operation of the establishment the regular presentation of live music performances will end no later than 12:30 a.m. This section does not apply to New Year's Eve, on which date any live music performance shall end ONE HOUR before closing time. In the case of special events or private parties, any live music performances will end no later than 1:30 a.m.
- Live music performances at the establishment will take place only in the basement. Applicant agrees to use a professional sound designer for installation of any loudspeakers in a manner to transmit the least amount of noise and vibration to neighboring buildings as possible.
- f) Applicant may feature a DJ for special events such as private parties, up to 13 times per year, only in the basement level. Applicant shall keep a log of such events and make it available to

ABRA and MPD upon request.

g) There shall be no designated dance area.

h) Applicant may charge a cover for musical performances, stand-up comedians or spoken word performances in the basement level only.

5. Trash/Garbage/Rodents.

a) Applicant shall maintain regular trash/garbage removal service, regularly remove trash from the trash and dumpster area, and see that the trash and dumpster area remain clean. Applicant shall deposit trash and garbage only in rodent-proof dumpsters, and shall see that dumpster covers fit properly and remain fully closed except when trash or garbage is being added or removed. Applicant will make every reasonable effort to eliminate food sources for rodents to help eliminate the rat population. Applicant will recycle the following items as required by DC law : cardboard, glass, plastic food and drink containers and cans.

b) Applicant agrees to segregate and recycle bottles and cans apart from trash and agrees not to dispose of bottles and cans in the outside trash dumpsters or recycling containers between the hours of 12:00 midnight and 8:00 am.

c) Applicant shall provide for the proper removal of grease and fatty oils from the establishment and will not deposit grease or fatty oils in the dumpster. Applicant agrees to provide ANC IC with a copy of the contract to remove grease/fatty oils from the establishment.

6. Exterior, including Public Space, and Alley Issues.

a) Applicant shall assist in the maintenance of the alleyway and the space in front of the establishment to at least 18 inches outward from the curb as needed to keep them free of trash and to remove snow and ice from the sidewalk and comply with all applicable DC laws and regulations in these respects.

b) Applicant shall make every reasonable effort to prevent or disperse loitering or any other source of noise or disturbance in the areas in front or to the rear of the premises during business hours and at closing, and to encourage patrons to leave those areas at closing.

c) Applicant will not allow vehicles driven by, or belonging to owners, staff or patrons to park in the alley behind the premises.

d) Applicant will refuse deliveries from commercial vehicles parked in the alley.

e) In an effort to minimize the establishment's effect upon: residential parking needs and vehicular and pedestrian safety, and the peace, order and quiet of the surrounding community, Applicant will abide by Title 18 of the DC Municipal Regulations with regard to commercial deliveries and will direct commercial vehicles making deliveries to the Applicant's premises to park in designated commercial parking zones.

7. Bar/Pub Crawls. Applicant agrees not to promote or participate in bar or pub "crawls" or "tours", or any other similar event.

8. Consideration. Applicant will encourage employees and patrons to be considerate of residential neighbors at all times. Applicant will encourage employees leaving the establishment to keep conversations and noise to a minimum from 11:00 PM to 8:00 AM.

9. **Modification.** This agreement can be modified only by the ABC Board, or, by the mutual agreement of all the parties, with the approval of the ABC Board. In the case of ANC-1C, should Applicant desire to modify the terms of this agreement, prior to implementing the changes, Applicant shall receive written agreement from ANC-1C after a majority of the commissioners present, constituting a quorum shall have voted in favor of the changes at a full public meeting.

10. **Regulations.** In addition to the foregoing, Applicant will operate in compliance with all applicable laws and regulations.

11. **Availability of Cooperative Agreement.** Applicant agrees to keep available at all times a copy of this agreement at the establishment and to familiarize employees with its conditions.

12. **Incorporation into Board Order.**

ANC 1C, KCA, and RCNA agree to the substantial change of the license, *provided that this Cooperative Agreement is incorporated into the Board's Order granting the aforesaid Application, which order is conditioned upon compliance with this Cooperative Agreement.*

13. **Replacement.** This agreement replaces any interest that the parties may have had in any previous cooperative/voluntary agreement associated with this license.

APPLICANT:

For AAB, LLC, t/a the Black Squirrel

[Signature] 7/1/09
Date

Bonnie Kraft Pres
Print Name and Title

Date

Print Name and Title

OTHER PARTIES:

For Advisory Neighborhood Commission 1C

[Signature] 7-1-09
Signature Date

CHAIR ANC 1C
Print Name and Title

For Kalorama Citizens Association

[Signature] 7-1-2009
Date

Denis James, President

For Reed-Cooke Neighborhood Association

[Signature] 7/1/2009
Date

Maureen Gallagher, President