THE DISTRICT OF COLUMBIA
ALCOHOLIC BEVERAGE CONTROL BOARD

In the Matter of:	)		
	)		
The Blagden Alley Entertainment, LLC	)	Case Number:	14-PRO-00019
t/a The American	)	License Number:	92766
	)	Order Number:	2014-270
Application for a New	)		
Retailer's Class CR License	)		
	)		
at premises	)		
1209-1213 10th Street, N.W.	)		
Washington, D.C. 20001	)		
	)		

BEFORE: Ruthanne Miller, Chairperson
Nick Alberti, Member
Donald Brooks, Member
Herman Jones, Member
Mike Silverstein, Member
Hector Rodriguez, Member
James Short, Member

ALSO PRESENT: The Blagden Alley Entertainment, LLC, t/a The American, Applicant

Risa Hirao, Pascal & Weiss P.C., on behalf of the Applicant

Barbara A. Schauer, on behalf of A Group of Five or More Individuals, Protestants

Matt Raymond, on behalf of Advisory Neighborhood Commission (ANC) 2F, Protestant

Martha Jenkins, General Counsel
Alcoholic Beverage Regulation Administration

ORDER APPROVING SETTLEMENT AGREEMENT, DISMISSING PROTEST, AND DENYING MOTION FOR RECONSIDERATION OF BOARD ORDER NO. 2014-238

INTRODUCTION

The Application for a New Retailer's Class CR License (Application) was filed by The Blagden Alley Entertainment, LLC, t/a The American (hereinafter "Applicant" or "American"). The Application was protested by A Group of Five or More Individuals (Schauer Group) and Advisory Neighborhood Commission (ANC) 2F. The Roll Call Hearing in this matter occurred on March 24, 2014.[1] At the hearing, the Board's Agent designated the Schauer Group as having standing under § 25-601(2), or in other words, as a group of five or more individuals or property owners. D.C. Official Code § 25-601(2).

On May 6, 2014, the Schauer Group requested that the Board clarify its standing, as well as affirm that some members of the group have standing as abutting property owners under § 25-601(1). D.C. Official Code § 25-601(1). In Board Order No. 2014-238, the Board affirmed that the Schauer Group only had standing as a Group of Five or More Individuals, and not abutting property owners, pursuant to D.C. Official Code §§ 25-601 and 25-602, as well § 1601.8 of Title 23 of the D.C. Municipal Regulations. In re The Blagden Alley Entertainment, LLC, t/a The American, Case No. 14-PRO-00019, Board Order No. 2014-238, 1-3 (D.C.A.B.C.B. May 28, 2014).

The Board has received two separate motions from the parties. The American has submitted a settlement agreement between the Applicant and ANC 2F and asks the Board to approve the agreement. Letter from Paul L. Pascal, Pascal & Weiss, P.C., to Ruthanne Miller, Chairperson, Alcoholic Beverage Control (ABC) Board, 1 (Jun. 6, 2014). The American further requests that the Board dismiss the Schauer Group under § 25-609(b), which requires the Board to dismiss all groups protesting the Application when an ANC enters into a settlement agreement with an applicant. Id.; D.C. Official Code § 25-609(b). The Board grants this request.

The Schauer Group's motion asks the Board to reconsider Board Order No. 2014-238. In brief, the Schauer Group argues the Board's Agent did not indicate that the Schauer Group had standing under D.C. Official Code § 25-601(2), and did not state whether the group had standing as a group or as abutting property owners during the hearing. Letter from Barbara A. Schauer and Carolyn S. Beebe, to Ruthanne Miller, Chairperson, ABC Board, 4-5 (Jun. 6, 2014). The Schauer Group also complains generally that ABRA did not provide sufficient information regarding the protest process.

The Board finds the arguments raised by the Schauer Group unpersuasive. First, the protest petition submitted by the Schauer Group contains the signatures of both abutting property owners and nearby residents. *Schauer Group Protest Petition*, 1-7. There is no indication in the petition that the twelve abutting property owners sought standing in their individual capacities as abutting property owners. Id. Second, the transcript of the Roll Call Hearing indicates that the Schauer Group was solely granted standing as a group under § 25-601(2). At the beginning of the hearing, the Board's agent asked, if Ms. Schauer was ". . . the designated representative on behalf of the group of 34." *Transcript* (*Tr.*), March 24, 2014 at 4. The Board's Agent then determined whether the group had five or more members present. Id. at 4-6; see also D.C. Official Code § 25-601(2); 23 DCMR § 1605.4 (West Supp. 2014). At no time during the hearing, did the

[1] Board Order No. 2014-238 incorrectly stated the day of the Roll Call Hearing.

Schauer Group request standing as an abutting property owner, or even mention the word "abut" or "abutting." As a result, the record shows that the Schauer Group gave no indication that it sought standing as an abutting property owner and that the Board's Agent solely determined that the group had standing under § 25-601(2).

Furthermore, the Schauer Group's request to give the abutting property owners in the group standing separate from the group during or after the conclusion of the Roll Call Hearing was untimely as a matter of law. As noted in D.C. Official Code, "[a]ny person objecting, under § 25-601, to the approval of an application shall notify the Board in writing of his or her intention to object and the grounds for the objection within the protest period." D.C. Official Code § 25-602(a). Consequently, if the individual abutting property owners desired standing separate from the Schauer Group, they had a duty to indicate this in their initial protest letter. As a result, as of the Roll Call Hearing, the Schauer Group had missed their opportunity to enlarge the protest to include other parties. To allow otherwise, would simply deny the American due process of law.

Finally, the Board is not persuaded by the Schauer Group's complaints that their failure to apply for standing as abutting property owners is somehow the fault of ABRA. While ABRA can provide information regarding the protest process, only the parties can advocate for their positions and decide on a legal strategy. The time for the group to choose how it would obtain standing when it submitted its protest petition, not afterwards.[2] As a result, ABRA has no responsibility for the Schauer Group's failure to obtain standing as abutting property owners.

ORDER

Therefore, the Board, on this 25th day of June 2014, hereby **APPROVES** the settlement agreement entered into by the The Blagden Alley Entertainment, LLC, t/a The American, and ANC 2F. The agreement attached to this Order shall be **INCORPORATED** into the terms and conditions of the American's license and shall govern the operations of the establishment under D.C. Official Code § 25-446.

IT IS FURTHER ORDERED that the protest filed by the Schauer Group is dismissed pursuant to D.C. Official Code § 25-609(b).

IT IS FURTHER ORDERED that the Board approves the withdrawal of the protest filed by ANC 2F.

IT IS FURTHER ORDERED that the Application for a New Retailer's Class CR License filed by the American is hereby **GRANTED.**

IT IS FURTHER ORDERED that the motion for reconsideration filed by the Schauer Group is denied.

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[2] The Schauer Group also complains that it was somehow entitled to have a community resource officer assigned to the group under D.C. Official Code § 25-209. This is incorrect. As noted in the statute, a community resource officer's job is merely to serve as a "primary contact" for both businesses and residents—nothing more. D.C. Official Code § 25-209.

District of Columbia
Alcoholic Beverage Control Board

Nick Alberti, Member

Donald Brooks, Member

Herman Jones, Member

Mike Silverstein, Member

Hector Rodriguez, Member

James Short, Member

I concur with the Board's determination to approve the settlement agreement. Nevertheless, I dissent from the position taken by the majority of the Board regarding the motion for reconsideration.

Ruthanne Miller, Chairperson

Under 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, Reeves Center, 2000 14th Street, NW, 400S, Washington, D.C. 20009.

Also, under 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 under 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).

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT (Agreement) is made on this 13 day of Nov 2014, by and between Blagden Alley Entertainment, LLC t/a The American ABRA No. 092766, (Applicant) and Advisory Neighborhood Commission ANC 2F (ANC) (Collectively, the 'Parties")

WHEREAS, the Applicant's application for a license for the premises, 1209-1213 10th Street, N.W. is pending before the District of Columbia Alcoholic Beverage Control Board (ABC) and,

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

WHEREAS, no protest was timely filed by the petition date September 9, 2013, and

WHEREAS, the parties hereto have met to discuss the ongoing relationship between the Applicant, the ANC and the nearby neighbors,

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. The Applicant will manage and operate a Class C license at the listed address as a Classic American Bistro with recorded music and Summer Garden
3. Hours of Operation, Sales and Consumption. The Applicant's hours of operation shall be as follows:

   Inside Operation:

   Sunday-Thursday 7 a.m. to 1 a.m. Sales, Service and Consumption

   Friday-Saturday 7 a.m. to 2 a.m. Sales, Service and Consumption

   Outside Operation:

   Sunday-Thursday Sales and Service 8 a.m. to 10:30 .p.m., Consumption to 11 p.m

   Friday-Saturday Sales and Service 8 a.m. to 12:30a.m., Consumption to 1 a.m.

4. Noise and exhaust: The Applicant will comply with all applicable noise laws and regulations. To facilitate compliance applicant will use reasonable methods of acoustic sound isolation for the construction of the site and materials to facilitate acoustic sound proofing in the fence and walls surrounding the outside patio, consistent with weather proofing needs, as well as for the HVAC unit. The exhaust duct will be placed in a location to minimize the impact of the exhaust on the surrounding residents

5. Music: Outside music will cease at 11 p.m.

6. Deliveries: Deliveries will be made by hand truck from the nearby streets.

7. Trash pick ups and dumpster: There will be no trash pickups prior to 7 a.m. and the dumpster(s) shall be located on the Applicant's property.

8. Outdoor Smoking: The Applicant will attempt as much as practical to eliminate any smokers standing in the alley and to achieve that goal will establish a smoking area in the outside portion of the site which will be located to minimize impact on the local residents.

9. Parking: None of the Applicant's employees shall park in the alley; and the Applicant will post signs advising patrons not to park in the alley. Menus, and signs at the exit will include statements for the patrons to respect the peace and quiet for the neighbors upon entering and exiting the site.

10. Entrance to site: The entrance for patrons shall be into the same door that presently exists for the boxing gym and patron ingress and egress will not be allowed from the outside area into any party of Blagden Alley.

11. Windows and doors; The windows and the doors (except for ingress and egress) will remain closed whenever the outside area is closed.

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

Applicant: Blagden Alley Entertainment, LLC
1209-1213 10th Street, N.W.
Washington, D.C.

By _____
XAVIER CARRERA

Advisory Neighborhood Commission 2F

By _____