

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

In the Matter of:)	
)	
WAMI, LLC.)	
t/a Be Bar)	
)	
Application for Renewal of a)	License No. 74696
Retailer's Class "CT" License)	Case No. 61087-08/039P
at premises)	Order No. 2008-187
)	
1318 9 th Street, N.W.)	
Washington, D.C.)	
)	

WAMI, LLC. t/a Be Bar, Applicant

Charles D. Reed, Chairperson, on behalf of Advisory Neighborhood Commission, 2F,
Protestants

BEFORE: Peter B. Feather, Chairperson
Judy A. Moy, Member
Mital M. Gandhi, Member

ORDER ON VOLUNTARY AGREEMENT AND WITHDRAWN PROTEST

The Application filed by WAMI, LLC. t/a Be Bar, to renew its Retailer's Class "CT" license, having been protested, came before the Alcoholic Beverage Control Board (Board) for a Roll Call hearing on January 16, 2008, in accordance with D.C. Official Code § 25-601 (2001). Charles D. Reed, Chairperson, on behalf of Advisory Neighborhood Commission (ANC) 2F, filed a timely letter of opposition dated December 23, 2007.

The official records of the Board reflect that the Parties have reached an Agreement which has been reduced to writing and has been properly executed and filed with the Board. Pursuant to the Agreement, dated March 10, 2008, the Protestants have agreed to withdraw the protest, provided, however, the Board's approval of the pending Application is conditioned upon the licensee's continuing compliance with the terms of the Agreement.

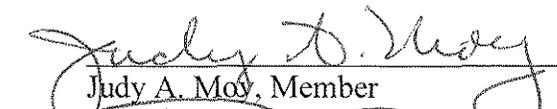
WAMI, LLC
t/a Be Bar
License No. 74696
Case No. 61087-08/039P
Page Two

Accordingly, it is this 23rd day of April 2008, **ORDERED** that:

1. The protest of ANC 2F is **WITHDRAWN**;
2. The Application filed by WAMI, LLC, t/a Be Bar, to renew its Retailer's Class "CT" license, at 1318 9th Street, N.W., Washington, D.C., is **GRANTED**;
3. The above-referenced agreement is **INCORPORATED** as part of this Order;
and
4. Copies of this Order shall be sent to the Applicant and to ANC 2F.

District of Columbia
Alcoholic Beverage Control Board


Peter B. Feather, Chairperson


Judy A. Moy, Member


Mital M. Gandhi, 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, 941 North Capitol Street, N.E., Suite 7200, Washington, D.C. 20002.

AMENDED AND RESTATED VOLUNTARY AGREEMENT

THIS AMENDED AND RESTATED VOLUNTARY AGREEMENT ("Agreement") is made on this 10th day of MARCH 2008, by and between WAMI, LLC t/a BE BAR ("Applicant"), Advisory Neighborhood Commission 2F ("ANC 2F").

WITNESSETH

WHEREAS, Applicant has applied for renewal of its retailers license Class C Tavern license for the premises at 1318 9th Street; and

WHEREAS, the parties having originally entered into a Voluntary Agreement, June 1206, approved by the Alcoholic Beverage Control Board ("ABC Board") but now wish to amend the original agreement to reflect mutually agreed provisions to deal with certain problems perceived by the community;

WHEREAS, ANC2F desires to advise the ABC Board to grant the pending renewal application, subject to acceptance by the ABC Board to approve the amended agreement and further subject to Applicant's continued compliance with the amended agreement as approved;

NOW THEREFORE, in consideration of the recitals set forth above and the mutual covenants and conditions set forth below, the parties agree as follows:

1. **Recitals Incorporated.** The recitals set forth above are incorporated herein by reference.
2. **Nature of Business.** The Applicant shall manage and operate a tavern. Any substantial change shall be of great concern to residents and shall require approval by the ABC Board.

3. **Hours of Operation.** The Applicant's hours of operation shall be as follows:

Sunday-Thursday: 5:00 P.M.-2:00 A.M.

Friday and Saturday: 5:00 P.M.-3:00 A.M.

In addition, Applicant may open as early as 11:30 A.M. daily for private functions, luncheons and/or lunch service. Applicant may not extend its hours without amendment of this Agreement.

4. **Square Footage and Occupancy** The square footage of the establishment is 25 feet by 120 feet for a total of 3,000 feet for patrons. The current authorized maximum occupancy of the establishment is 150 patrons. Applicant shall post the certificate of occupancy in a prominent location in the entryway.

5. **Parking.** Applicant shall advertise the availability of public transportation. Protestants recognize that 9th Street from the convention center north to "O" Street, is presently not well traveled during the evening hours. Any increase in patronage to Applicant's establishment will aid in fostering a safer and more accessible environment along this corridor for patrons and residents alike.

6. **Noise and Privacy.** Applicant will comply with Title 25, Section 725 of the D.C. code, make architectural improvements to the property, and take all necessary actions to ensure that music, noise and vibrations from the establishment are not audible within any adjacent residential properties. Applicant will also take all necessary steps to ensure that the music, noise, and vibrations are not disruptive to the adjacent residential property occupants' reasonable use of outdoor areas of their property. Should any sound, noise, or music be heard in any residential premises, Applicant will take immediate remedial action. If necessary, Applicant will take

reasonable steps to reduce noise emanating from the establishment from the opening of the entry and exit doors.

7. **Sidewalk Café.** Given that the width of Ninth Street, NW does not allow enough public space to be used as a sidewalk café, no alcoholic beverages will be served or allowed on the sidewalk.

8. **Public Space and Trash.** The Applicant shall keep the sidewalk (up to and including the curb), tree box(es), curb, and alley free of litter, bottles, and other debris in compliance with D.C. Code and Municipal Regulations. Applicant shall not deposit trash or recyclable material into the outside dumpster or other exterior holding facilities after 11:00 P.M. or before 8:30 A.M. Applicant shall make reasonable efforts to require its trash and recycling contractors to pick up trash and materials, and schedule its deliveries, after 8:00 A.M.

9. **Rats and Vermin Control.** The Applicant shall provide rat and vermin control surrounding the dumpster area by providing outside traps and baiting. Applicant agrees to maintain the cleanliness of the dumpster/bins and surrounding area so as to prevent pugnacious odors and the attraction of vermin. Applicant shall enter into a pest control contract with a licensed pest control company containing commercially reasonable terms. Applicant shall provide proof of its rat and vermin control contract upon request of the Protestants.

10. **Music and Dancing.** Applicant intends to offer recorded as well as live, music and provide a space for dancing.

11. **Security.** Applicant shall designate sufficient resources, including hiring additional security staff as necessary, to control unruly patrons, whether inside, or in the immediate outside areas. Further, security staff will be aided by signage at the entrance and audible announcements throughout the venue at closing to instruct patrons that they are within a residential neighborhood

and ask them upon leaving to leave quietly. Further, Applicant shall (1) maintain a telephone number and (2) provide a means on its web site for any person who may perceive that Applicant or its patrons are disturbing the peace, quiet and order within the community to register complaints. Applicant will annually inform the Logan Circle Community Association, ANC2F and Blagden Alley Association of such number. Applicant shall during all hours of operation designate an employee to whom any such complaint will be directed. Applicant shall (1) immediately investigate such complaint to determine whether the source of the problem, if any, relates to Applicant's operations or involves a patron of Applicant and, if so, (2) take reasonable action to abate such problem, and (3) unless requested otherwise by the complainant advise what determination Applicant has made and what action it has been taken. Applicant shall maintain a log of all such telephone calls, results and actions, and permit access to such record by the ANC for a period of 3 years.

12. **Drugs.** The Licensee shall prohibit sales of illegal drugs within or in front of the Establishment, and shall contact the police when known or suspected drug transactions occur. Licensee shall cooperate with the police in prosecuting all violations.

13. **License Ownership.** Applicant agrees to abide by all Alcoholic Beverage Regulations Administration (ABRA) regulations regarding the ownership of the license. Applicant also agrees to be the sole owner of the ABC licensee and agrees not to transfer or sell to any other entity before obtaining approval from the ABC Board. Applicant agrees to notify any prospective transferee, assignee, or contractee of the existence of the Agreement and to provide them with a copy.

14. **Binding Effect.** This Voluntary Agreement shall be binding upon and enforceable against the successors and assigns of Applicant.

15. **Informal Dispute Resolution.** In the event the Protestants, or any of them have a concern regarding the operation of the business, the concerned individual shall first contact the Applicant's Manager prior to involving the ANC, District of Columbia agencies or officials, or law enforcement agencies, or instituting proceedings under this Agreement.

16. **Notices and Enforcement Before ABC Board.** In the event of a violation of the provisions of this Voluntary Agreement, Applicant shall be notified in writing by the person alleging such violation and given an opportunity to cure such violation within thirty (30) days thereafter before action against Applicant on the basis of such violation may be undertaken, unless the violation be of such a nature that more immediate action is required, in which case, the period for opportunity to cure shall be reduced to a reasonable time commensurate with the violation (such 30-day or shorter period is hereinafter referred to as the "cure period"). A material violation of this Agreement or its ABC license by Applicant, which has not been cured within the cure period, shall constitute cause for seeking a Show Cause Order from the ABC Board. Any notices required to be made under this Agreement shall be in writing and mailed by certified mail, return receipt requested, postage prepaid, or hand-delivered, to the other parties to this Agreement.

17. **Notice.** Notice under this Agreement shall be in writing, and may be given by mail or by hand delivery. Mail notice shall be deemed effective as of three days after mailing and hand delivery upon actual delivery. Notices may be addressed:

If to Applicant, to:

WAMI LLC
1318 9th Street, NW
Washington, DC 20001

With a Copy to:

Andrew J. Kline, Esq.
1225 19th Street, NW
Suite 320
Washington, DC 20036

If to ANC 2F, to:

Advisory Neighborhood Commission 2F
5 Thomas Circle
Washington, D.C. 20005
anc2f@starpower.net

With a copy to:

ANCommissioner 2F06, Chairman ANC2F, at the addresses indicated for
the then incumbent as posted on the website,
www.anc2f.org

Applicant and other signatories may change the notice address listed above by written notice to the other signatories at the addresses provided in this Agreement. Failure to give notice shall not constitute waiver or acquiescence to the violation, but notice shall be a prerequisite to the filing of a complaint with the Alcoholic Beverage Control Board.

18. **Counterparts.** This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed as original, but all of which together shall constitute one and the same instrument.

19. **Withdrawal of Protest** Upon execution of this Agreement and its acceptance by the ABC Board, any protest of the Applicant's application for license filed by any of the parties hereto, shall be deemed withdrawn.

WAMI, LLC

Advisory Neighborhood Commission 2F

By: Michael G. Watson date: 3/10/2008 By: Michael Benardo date: 3/10/08
Michael G. Watson, Managing Member Michael Benardo

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

<hr/>)	
In the Matter of:)	
)	
Wami, LLC)	
t/a Be Bar)	
New Application for a Retailer's)	
Class "CT" License –)	Case no.: 61087-06/005P
at premises)	License no.: 74696
1839 9 th Street, N.W.)	Order no.: 2006-030
Washington, D.C.)	
)	
Applicant)	
<hr/>)	

Andrew J. Kline, Esq., on behalf of the Applicant

Charles D. Reed, Chairman, on behalf of Advisory Neighborhood Commission 2F, Leroy J. Thorpe, Chairman, on behalf of Advisory Neighborhood Commission 2C, Harold Davitt, President, on behalf of the Blagden Alley Association, Reverend Anthony Evans, on behalf of the DC Black Church Initiative, and Devarieste Curry, Esq., on behalf of a group of five (5) or more individuals, Protestants

BEFORE: Charles A. Burger, Chairperson
Vera M. Abbott, Member
Judy A. Moy, Member
Audrey E. Thompson, Member
Peter B. Feather, Member
Albert G. Lauber, Member
Eartha Isaac, Member

**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER ON
WITHDRAWN PROTEST, DISMISSAL, AND VOLUNTARY AGREEMENT**

The application, filed by Wami, LLC, t/a Be Bar ("Applicant"), for a new Retailer's Class "CT" License at premises 1318 9th Street, N.W., having been protested, initially came before the Alcoholic Beverage Control Board ("Board") for a roll call hearing on April 19, 2006, in accordance with D.C. Official Code § 25-601 (2001). Charles D. Reed, Chairman, on behalf of Advisory Neighborhood Commission ("ANC") 2F, Leroy J. Thorpe, Chairman, on behalf of ANC 2C, Harold Davitt, President, on behalf of the Blagden Alley Association ("BAA"), Reverend Anthony Evans, on behalf of the DC Black Church Initiative, and Devarieste Curry, Esq., on behalf of a group of five (5) or more individuals ("Group of 5"), filed timely protest letters. A status hearing was also held before the Board on May 3, 2006. The Board, having considered the arguments of

Wami, LLC
t/a Be Bar
Case no. 61087-06/005P
License no. 74696
Page two

counsel and the various protestants, and the documents comprising the Board's official file, makes the following:

FINDINGS OF FACT

1. On March 13, 2006, Charles D. Reed, Chairman, on behalf of ANC 2F, filed a timely written protest opposing the Applicant's new Retailer's Class "CT" License application. (Alcoholic Beverage Regulation Administration ("ABRA") Protest File No. 61087-06/005P.) Devarieste Curry, on behalf of the Group of 5, filed a timely written protest opposing the Applicant's new application on March 24, 2006. (ABRA Protest File No. 61087-06/005P.) On March 27, 2006, Leroy J. Thorpe, Chairman, on behalf of ANC 2C, and Reverend Anthony Evans, on behalf of the DC Black Church Initiative, filed timely written protests opposing the Applicant's new application. (ABRA Protest File No. 61087-06/005P.) Finally, on April 3, 2006, Harold Davitt, President, on behalf of the BAA, filed a timely written protest opposing the Applicant's new application. (ABRA Protest File No. 61087-06/005P.) The basis for each protest filed was whether the establishment adversely affects the peace, order, and quiet of the neighborhood. (ABRA Protest File No. 61087-06/005P.) The Group of 5 also opposed the Applicant's new application based on their contention that the proposed location for the establishment is within four hundred (400) feet of the Scripture Cathedral Day Care Center and the Immaculate Conception School. (ABRA Protest File No. 61087-06/005P; Tr. 4/19/06 at 41-42.) On April 19, 2006, a roll call hearing was held by the Board, which was attended by the Applicant, Andrew J. Kline, the Applicant's attorney, ANC Commissioner Dyer, on behalf of ANC 2F, ANC Commissioner Thorpe, on behalf of ANC 2C, Mr. Davitt, on behalf of BAA, and Ms. Curry, on behalf of the Group of 5, at which time the Board determined pursuant to D.C. Official Code § 25-601 (2001) whether each of the aforementioned groups had standing to file a protest against the new application. (ABRA Protest File No. 61087-06/005P; Tr. 4/19/06 at 2-6.)

2. At the April 19, 2006 roll call hearing, the Board seated ANC 2F as a protestant in this matter. (ABRA Protest File No. 61087-06/005P; Tr. 4/19/06 at 5.) Conversely, the Board dismissed the protests of: 1) Mr. Davitt, on behalf of BAA, because BAA was not incorporated under the laws of the District of Columbia as required by D.C. Official Code § 25-601(3) (2001); and, 2) Reverend Evans, on behalf of the DC Black Church Initiative, for failure to state, as grounds for the protest, why the matter being objected to is inappropriate under one or more of the appropriateness standards set out in D.C. Official Code §§ 25-313 and 25-314 (2001) and 23 DCMR § 400 (2004). (ABRA Protest File No. 61087-06/005P; Tr. 4/19/06 at 8-11.)

Wami, LLC
t/a Be Bar
Case no. 61087-06/005P
License no. 74696
Page three

3. With regard to the remaining groups, Mr. Kline, on behalf of the Applicant, made a motion to dismiss the protests of: 1) ANC 2C because ANC 2C failed to give proper notice of the meeting in which the matter was considered as required by D.C. Official Code § 1-309.11 (2001); and, 2) the Group of 5 because the individuals do not share common grounds for their protests as required by D.C. Official Code § 25-601(2) (2001). (ABRA Protest File No. 61087-06/005P; Tr. 4/19/06 at 12-18, 44-48.) At the conclusion of the April 19, 2006 hearing, the Board took Mr. Kline's motion under advisement and ordered ANC Commissioner Thorpe and Ms. Curry to submit additional documentation, within ten (10) days, to clarify for the Board whether each party has standing to file a protest in accordance with D.C. Official Code § 25-601 (2001). (ABRA Protest File No. 61087-06/005P; Tr. 4/19/06 at 5, 24.) The Board also ordered ABRA's Enforcement Division to conduct a measurement to verify whether or not the establishment's proposed location is within four hundred (400) feet of a school. (ABRA Protest File No. 61087-06/005P; Tr. 4/19/06 at 53.)

4. On May 3, 2006, the Board held a continued roll call hearing, during which Mr. Kline, Ms. Curry, and ANC Commissioner Thorpe made oral arguments in support of their written submissions discussed below. (Tr. 5/3/06 at 9-97.) The Board notes that in response to its April 19, 2006 order, it received timely written submissions from ANC Commissioner Thorpe, Ms. Curry, and Mr. Kline on April 21, 2006 and May 3, 2006, respectively. (ABRA Protest File No. 61087-06/005P.)

5. With regard to the standing of ANC 2C, on May 3, 2006, the Board heard oral arguments from ANC Commissioner Thorpe in opposition to the Applicant's April 19, 2006 oral motion to dismiss ANC 2C. (Tr. 5/3/06 at 9-12.) ANC Commissioner Thorpe indicated that ANC 2C satisfied the notice requirements contained in D.C. Official Code § 1-309.11 (2001) by providing two (2) forms of notice of ANC 2C's March 8, 2006 meeting in which the protest of the Applicant's license was considered. (ANC 2C's April 21, 2006 Letter Supporting Standing; Tr. 5/3/06 at 9-12.) Specifically, ANC Commissioner Thorpe stated that the two (2) forms of notice used by ANC 2C included: 1) providing five (5) copies of the dates and times of ANC 2C meetings to the ANC 2C commissioners for posting in four (4) areas within their single member districts; and, 2) the use of e-mails, phone calls, and ANC Handbook requirements, which were each approved by ANC 2C as a second form of notice during a March 5, 2003 meeting. (ANC 2C's April 21, 2006 Letter Supporting Standing; Tr. 5/3/06 at 9-12.) The Board notes that ANC Commissioner Thorpe's April 21, 2006 letter also contained a copy of the agenda of the ANC 2C March 8, 2006 meeting during which the motion to oppose the Applicant's license was approved by a majority vote of the commission and that the agenda makes reference to the fact that five (5) copies of the agenda were hand delivered to each ANC 2C single member district commissioner on March 1, 2006 for posting.

Wami, LLC
t/a Be Bar
Case no. 61087-06/005P
License no. 74696
Page four

(ANC 2C's April 21, 2006 Letter Supporting Standing.) During his oral arguments, ANC Commissioner Thorpe also referred to a copy of an e-mail contained in his April 21, 2006 letter, which he received from Lynard Barnum, Financial Auditor/ANC Program Manager, dated April 19, 2006, in which Mr. Barnum opines that a greeting used on ANC Commissioner Thorpe's personal telephone constitutes a second form of notice of ANC 2C public meetings if previously approved by ANC 2C as a method of notice. (ANC 2C's April 21, 2006 Letter Supporting Standing; Tr. 5/3/06 at 64-67.)

6. With regard to the standing of the Group of 5, on May 3, 2006, the Board heard oral arguments from Ms. Curry in opposition to the Applicant's April 19, 2006 oral motion to dismiss the protest of the Group of 5. (Tr. 5/3/06 at 14-20; ABRA Protest File No. 9276-06/019P.) Ms. Curry reiterated the position expressed in her May 3, 2006 memorandum that the members of the Group of 5 are entitled to standing under D.C. Official Code § 25-601(2) (2001) because they share common grounds for their protest based on their collective, long-term involvement in the Shaw community as residents of the District of Columbia and more importantly, as members of the Scripture Cathedral Church. (Protestant's May 2, 2006 Legal Memorandum; Tr. 5/3/06 at 16-19.) Specifically, Ms. Curry stated that each member of the Group of 5 shares common concern for and has worked to improve the overall welfare of the affected community, especially the welfare of the children who attend the Scripture Cathedral Church day care center and the Immaculate Conception Catholic School. (Tr. 5/3/06 at 16-19; Protestant's May 2, 2006 Legal Memorandum.) Ms. Curry also argued that the plain language statutory interpretation of D.C. Official Code § 25-601(2) (2001) does not require that protesting individuals reside within the affected area and that where the Council of the District of Columbia ("D.C. Council") intended to make residency in the affected area a requirement for standing, it expressly did so in adjacent subsections of the provision, including D.C. Official Code §§ 25-601(1) and 25-601(3) (2001). (Protestant's May 2, 2006 Legal Memorandum; Tr. 5/3/06 at 15-16.)

7. With regard to the Applicant's opposition to the standing of ANC 2C, on May 3, 2006, the Board heard oral arguments from Mr. Kline petitioning the Board to dismiss ANC 2C based on the fact that ANC 2C's protest of the Applicant's license was unauthorized because notice of the meeting in which the ANC's protest action was considered failed to meet the procedural standards set forth under D.C. Official Code § 1-309.11 (2001). (Applicant's May 2, 2006 Legal Memorandum; Tr. 5/3/06 at 29-33.) Mr. Kline emphasized the democratic nature of the ANC and made reference to the statutory notice requirements implemented by D.C. Council to ensure that there remains a broad dissemination of information to the public with respect to ANC meetings as well as the positions and actions taken and adopted by each commission. (Applicant's May 2, 2006 Legal Memorandum; Tr. 5/3/06 at 29-30.) Specifically, Mr. Kline's May 2, 2006

memorandum cites D.C. Official Code § 1-309.11(c) (2001), which provides that the ANC must give official notice of all meetings to each commissioner, individuals with official business before the commission, and residents of the commission at least seven (7) days prior to the date of the meeting, and that notice must be provided in at least two (2) of the following ways: 1) posting of written notices in no less than four (4) conspicuous places in each single member district commission area; 2) publication in a city or community newspaper; 3) distributing notice to a list of residents and other stakeholders in the community; and, 4) any other manner approved by the ANC. (Applicant's May 2, 2006 Legal Memorandum.) Mr. Kline contended that ANC 2C satisfied only one method of notice, per D.C. Official Code § 1-309.11(c)(1) (2001), by hand delivering five (5) copies of ANC 2C's March 8, 2006 meeting agenda to each ANC 2C commissioner for posting. (Applicant's May 2, 2006 Legal Memorandum; Tr. 5/3/06 at 30-31.) Congruently, Mr. Kline argued that ANC 2C failed to meet the requirement that "individuals with official business before the Commission," i.e., the Applicant, be given notice at least seven (7) days prior to the meeting. (Applicant's May 2, 2006 Legal Memorandum; Tr. 5/3/06 at 31-32.) Mr. Kline stated that ANC 2C made no attempt to contact the Applicant directly and that the sole form of notice disseminated in the community, the March 8, 2006 meeting agenda, did not indicate that the Applicant's pending license application would be considered by ANC 2C during the meeting. (Applicant's May 2, 2006 Legal Memorandum; Tr. 5/3/06 at 31-32.) Consequently, the Applicant was not given an opportunity to appear before ANC 2C to address neighborhood concerns. (Applicant's May 2, 2006 Legal Memorandum; Tr. 5/3/06 at 31-32.)

8. With regard to the Applicant's opposition to the standing of the Group of 5, Mr. Kline restated the arguments posed in his May 2, 2006 memorandum arguing that the members of the Group of 5 do not share common grounds for their protest as required by D.C. Official Code § 25-601(2) (2001). (Applicant's May 2, 2006 Legal Memorandum; Tr. 5/3/06 at 20-29.) Mr. Kline referenced the legislative history of section 25-601(2), reciting examples of groups of individuals deemed to have standing based on a shared commonality or nexus to the neighborhood. (Applicant's May 2, 2006 Legal Memorandum; Tr. 5/3/06 at 23-24.) He indicated that such groups include groups of individuals belonging to a neighborhood PTA, groups of individuals belonging to a neighborhood community and/or business association, and groups of people residing on the same block. (Applicant's May 2, 2006 Legal Memorandum; Tr. 5/3/06 at 23-24.) Mr. Kline also cited the public policy reasoning underlying the importance of standing in a protest matter – as promulgated by the Board in its decision in Snoco Enterprises, Inc., t/a Joanna's 1819 Club ("Snoco Enterprises, Inc.") – stating that parties must have the requisite nexus or connection to an application so that they will be motivated to engage in a resolution via a voluntary agreement or in a protest hearing. (Applicant's May 2, 2006

Wami, LLC
t/a Be Bar
Case no. 61087-06/005P
License no. 74696
Page six

Legal Memorandum; Tr. 5/3/06 at 28-29.) Mr. Kline noted that when protestants live all over the District of Columbia, the required connection is missing and thus frustrates both the Applicant's efforts to come to a resolution and the Board's efforts to impose a resolution that is meaningful to the parties involved. (Applicant's May 2, 2006 Legal Memorandum; Tr. 5/3/06 at 28-29.) Mr. Kline's May 2, 2006 memorandum indicates that only two (2) individuals out of the Group of 5 reside within one mile of the Applicant's establishment and that the remaining individuals reside over three (3) miles away. (Applicant's May 2, 2006 Legal Memorandum.) Finally, Mr. Kline contended that members of the Group of 5 do not share common grounds for their protest as all eight (8) individuals no longer "reside or own/operate businesses within the neighborhood in proximity to the Applicant's proposed establishment" and that despite their membership in the Scripture Cathedral Church, any other common nexus to the neighborhood is attenuated at best. (Applicant's May 2, 2006 Legal Memorandum; Tr. 5/3/06 at 20-29.)

9. At the conclusion of the hearing, the Board dismissed the protests of: 1) ANC 2C because ANC 2C's protest was not properly authorized since notice of the March 8, 2006 ANC 2C meeting in which the decision to protest the Applicant's license application was considered was not given in accordance with D.C. Official Code § 1-309.11(c) (2001); and, 2) the Group of 5 because it was determined by the Board that the individuals did not share common grounds for their protest pursuant to D.C. Official Code § 25-601(2) (2001). (Tr. 5/3/06 at 97-105.) The Board also addressed the four hundred (400) foot measurement issue raised at the April 19, 2006 roll call hearing. (Tr. 5/3/06 at 102.) The Board determined that while the Applicant's establishment is located approximately three hundred and ninety (390) feet away from the Immaculate Conception School, the four hundred (400) foot restriction set forth in D.C. Official Code § 25-314(b)(1), which prohibits the issuance of a new license or transfer of a license to a new location within four hundred (400) feet of school, does not apply because there currently exists within four hundred (400) feet a functioning establishment holding a license of the same class, therefore satisfying the statutory exception to the four hundred (400) foot rule, as contained in D.C. Official Code § 25-314(b)(3). (Tr. 5/3/06 at 102.) The Board notes that Service America Corporation & National Business Services Enterprises, Inc., t/a Washington Convention Center, currently holds a Retailer's Class "Arena CX" License at premises 801 Mount Vernon Place, N.W. (ABRA Protest File No. 61087-06/005P; ABRA Application File No. 50221.)

10. On June 21, 2006, the Board received a voluntary agreement, dated June 19, 2006, between the Applicant and ANC 2F.

Wami, LLC
t/a Be Bar
Case no. 61087-06/005P
License no. 74696
Page seven

CONCLUSIONS OF LAW

11. The Board has the authority to determine whether a party has standing to file a protest to the issuance or renewal of a license, the approval of a substantial change in the nature of the operation as determined by the Board, a new owner license renewal, and transfer of a license to a new location pursuant to D.C. Official Code § 25-601 (2001). In the present case, the Board finds that the Group of 5 does not have standing to file a protest under D.C. Official Code § 25-601(2) (2001). The Board recognizes that pursuant to D.C. Official Code § 1-309.10(d) (2001) and D.C. Official Code § 25-609 (2001), an ANC's properly adopted written recommendations are entitled to great weight from the Board. See Foggy Bottom Ass'n v. District of Columbia ABC Bd., 445 A.2d 643 (D.C. 1982). In this case, the Board finds that ANC 2C's written protest of the Applicant's new license application was not properly authorized as ANC 2C did not comply with the ANC legal notice requirements. As such, the Board finds that the written protest of ANC 2C is not entitled to great weight and that ANC 2C does not have standing in this matter. The Board is approving the terms of the voluntary agreement reached by ANC 2F and the Applicant as part of this order.

12. With regard to standing for the Group of 5, the Board finds that the Group of 5 does not satisfy the requirements of D.C. Official Code § 25-601(2) (2001) as the individual protestants do not share common grounds for their protest. In making this determination, the Board relied upon both the legislative history of D.C. Official Code § 25-601(2) and legal precedent set by a previous Board ruling on this issue. Specifically, the October 10, 2000 Draft Report on Bill 13-449, the "Title 25, D.C. Code Enactment and Related Amendments Act of 2000" ("Committee Report"), the Committee on Consumer and Regulators Affairs ("Committee") specifies that the intended meaning of the term "sharing common grounds", as found in D.C. Official Code § 25-601(2) (2001), refers to "District residents who belong to the same neighborhood association, PTA, community group, business association, or people who simply live on the same block." This interpretation by the Committee clearly implies that the objectors to a liquor license issuance or renewal must share some common interest or affiliation in a neighborhood geographic sense. The Board further defined the Committee Report's interpretation of the term "sharing common grounds" in its 2002 ruling in the matter of Snoco Enterprises, Inc., in which the protest of a group of five (5) individuals seeking standing under D.C. Official Code § 25-601(2) (2001) was dismissed. In that instance, the Board held that a common interest or affiliation among the five (5) individuals seeking standing must also create a "nexus between them and the establishment..." that is based on geographic proximity. In Snoco Enterprises, Inc., the Board found that this standard was not met as none of the individuals belonged to a neighborhood community group or association and none lived closer than one and a half (1 ½) miles from the Applicant's establishment.

Wami, LLC
t/a Be Bar
Case no. 61087-06/005P
License no. 74696
Page eight

Similarly, in the present case, the individuals of the Group of 5 do not reside within the immediate neighborhood of the establishment's proposed location. Rather, the evidence showed that only two (2) out of the eight (8) individuals reside within one mile of the Applicant's proposed location and that the remaining individuals reside over three (3) miles away.

13. Ms. Curry contends in her May 2, 2006 Legal Memorandum that the term "sharing common grounds" refers only to "a basis" or "foundation" for challenging the issuance of the liquor license" and that through their collective membership and involvement in the Scripture Cathedral Church, coupled with their shared concern for the welfare of the children who attend the neighborhood daycare center and schools, the individuals of the Group of 5 satisfy the sharing common grounds requirement needed for standing under D.C. Official Code § 25-601(2) (2001). The facts cited by Ms. Curry may indicate that the individuals of the Group of 5 have similar "grounds for the objection" as required for a valid protest by D.C. Official Code § 25-602(a) (2001). However, in order to have standing, a group of five (5) or more individuals must also "share common grounds," and the Board has consistently held that the "common grounds" shared by the protesting individuals must be based on geographic proximity.

14. This interpretation by the Board is further supported by examining the standing provision as a whole. A close reading of D.C. Official Code § 25-601 (2001) reveals numerous terms that are critical to a party's standing and all presuppose a physical proximity to the establishment, such as "*abutting property owner*", "*affected area*", "*affected ANC*", "*property owned...within a 600-foot radius of the establishment.*" In our view, this indicates a clear intent by the D.C. Council that a party's geographic proximity to the establishment is a requirement for standing to file a protest. While all of the individuals comprising of the Group of 5 are residents of the District, none of the individuals resides within the immediate proximity of the Applicant's establishment. Moreover, only two (2) individuals of the Group of 5 reside within one mile of the establishment. As such, the Board finds that despite their membership in the Scripture Cathedral Church, the individuals of the Group of 5 do not meet the "sharing common grounds" requirement to obtain standing in this matter. Based upon the above, the Board is dismissing the protest of the Group of 5.

15. With regard to the standing of ANC 2C, the Board finds that the written protest of ANC 2C is not entitled to great weight and that ANC 2C does not have standing to protest the Applicant's new license application because ANC 2C failed to comply with the ANC legal notice requirements. Pursuant to D.C. Official Code § 1-309.10(d)(1) (2001), prior to making a written recommendation on matters coming before District agencies, including the Board, an ANC is legally mandated to "consider each such

Wami, LLC
t/a Be Bar
Case no. 61087-06/005P
License no. 74696
Page nine

[proposed District government] action or actions in a meeting with notice in accordance with D.C. Official Code § 1-309.11(c).” The notice requirements of D.C. Official Code § 1-309.11(c) (2001) provide that each ANC shall give notice of all meetings to each Commissioner, individuals with official business before the ANC, and residents of the ANC no less than seven (7) days prior to the date of the meeting. Specifically, notice of each meeting must be given in at least two (2) of the following ways: 1) posting written notices in at least four (4) conspicuous places in each single member district within the ANC; 2) publication in a city or community newspaper; 3) transmitting or distributing notice to a list of residents and other stakeholders in the community; and, 4) in any other manner approved by the ANC. D.C. Official Code § 1-309.11(c) (2001).

16. Based on the testimony and written submissions provided by ANC Commissioner Thorpe, the recommendation to protest the Applicant’s new license application was voted on by a majority of the commissioners during ANC 2C’s March 8, 2006 meeting. However, the Board is not convinced that ANC 2C provided at least two (2) forms of notice of the March 8, 2006 meeting as required by D.C. Official Code § 1-309.11(c) (2001). The testimony and evidence submitted by ANC Commissioner Thorpe reveals that one form of notice of the March 8, 2006 meeting was given in accordance with D.C. Official Code § 1-309.11(c)(1) (2001) as five (5) copies of the March 8, 2006 meeting agenda were distributed to each ANC 2C single member district commissioner on March 1, 2006 for posting. However, the Board does not find that a second form of notice of the March 8, 2006 meeting was effectuated by ANC 2C, as required by law. The Board finds that ANC Commissioner Thorpe’s use of a voicemail greeting on his personal telephone does not constitute a duly approved secondary form of notice. The only secondary forms of notice approved by ANC 2C were the use of e-mails, phone calls, and “in general the ANC Handbook requirements”, which restate the notice requirements set forth in D.C. Official Code § 1-309.11(c) (2001). The Board notes that ANC Commissioner Thorpe submitted no additional evidence to demonstrate that e-mails were sent or phone calls were made to notify the constituents of ANC 2C of the March 8, 2006 meeting. Additionally, the Board finds that there is a major difference between proactively e-mailing and/or calling ANC constituents to inform them of the dates and times of ANC meetings, on the one hand, and expecting ANC constituents to call the personal telephone of an ANC Commissioner in order to secure this information, on the other hand. The Board finds that the latter approach goes against the very purpose of the notice requirement law, which states that “each Commission shall establish mechanisms to ensure the broadest dissemination of information with respect to Commission meetings, positions, and actions.” D.C. Official Code § 1-309.11(b)(3) (2001). The Board also finds that ANC 2C failed to properly notify the Applicant of the March 8, 2006 meeting at least seven (7) days prior to the meeting based on the fact that ANC 2C did not contact the Applicant directly to inform the Applicant of the meeting and the only substantiated

Wami, LLC
t/a Be Bar
Case no. 61087-06/005P
License no. 74696
Page ten

notice disseminated publicly, the March 8, 2006 ANC 2C meeting agenda, gave no indication that the Applicant's license application would be considered by ANC 2C during the meeting. As such, the Applicant was unable to appear before ANC 2C to address potential neighborhood concerns prior to ANC 2C's decision to protest the Applicant's license application. Accordingly, the Board finds that ANC 2C's written protest of the Applicant's license was not authorized by law because proper notification of the meeting in which ANC 2C's protest action was considered failed to satisfy the statutory notice requirements of D.C. Official Code § 1-309.11 (2001). Consequently, the Board finds that the written protest of ANC 2C is not entitled to great weight and that ANC 2C does not have standing in this matter.

17. With regard to the voluntary agreement between the Applicant and ANC 2F, the official records of the Board reflect that the parties have reached an agreement that has been reduced to writing and has been properly executed and filed with the Board. Pursuant to the agreement, dated June 19, 2006, ANC 2F has agreed to withdraw its protest, provided, however, the Board's approval of the pending application is conditioned upon the licensee's continuing compliance with the terms of the agreement.

ORDER

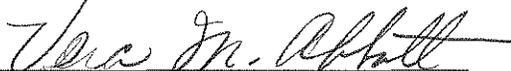
Accordingly, it is this 16th day of August 2006, ORDERED that:

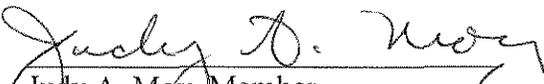
1. The protest of ANC Commissioner Reed, on behalf of ANC 2F, is WITHDRAWN;
2. The protests of Mr. Davitt, President, on behalf of BAA, Reverend Anthony Evans, on behalf of the DC Black Church Initiative, Ms. Curry, on behalf of the Group of 5, and ANC Commissioner Thorpe, on behalf of ANC 2C, are DISMISSED;
3. The new application of Wami, LLC, t/a Be Bar, for a Retailer's Class "CT" License at 1839 9th Street, N.W., Washington, D.C., is GRANTED;
4. The above-referenced agreement is INCORPORATED as part of this Order;
and
5. Copies of this Order shall be sent to the Protestants and the Applicant.

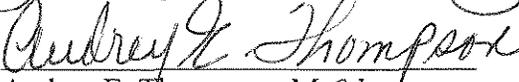
Wami, LLC
t/a Be Bar
Case no. 61087-06/005P
License no. 74696
Page eleven

District of Columbia
Alcoholic Beverage Control Board

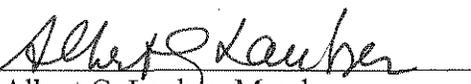

Charles A. Burger, Chairperson

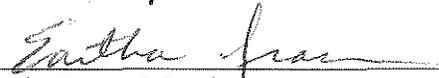

Vera M. Abbott, Member


Judy A. Moy, Member


Audrey E. Thompson, Member


Peter B. Feather, Member


Albert G. Lauber, Member


Eartha Isaac, 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, 941 North Capitol Street, N.E., Suite 7200, Washington, D.C. 20002.

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).

VOLUNTARY AGREEMENT

THIS VOLUNTARY AGREEMENT ("Agreement") is made on this 19th day of June 2006, by and between WAMI, LLC t/a BE BAR ("Applicant") and Advisory Neighborhood Commission 2F ("ANC 2F").

WITNESSETH

WHEREAS, Applicant has applied for a retailers license Class C Tavern license for the premises at 1318 9th Street; and

WHEREAS, the Protestants support Applicant's license application subject to approval of a mutually satisfactory Voluntary Agreement; and

WHEREAS, the Applicant has agreed to enter into this Agreement with the Protestants to request the Alcoholic Beverage Control Board ("ABC Board") to approve the Applicant's license application with the provisions of this Voluntary Agreement being conditions of the license which must be complied with by Applicant.

NOW THEREFORE, in consideration of the recitals set forth above and the mutual covenants and conditions set forth below, the parties agree as follows:

1. **Recitals Incorporated.** The recitals set forth above are incorporated herein by reference.
2. **Nature of Business.** The Applicant shall manage and operate a tavern. Any substantial change shall be of great concern to residents and shall require approval by the ABC Board.

3. **Hours of Operation.** The Applicant's hours of operation shall be as follows:

Sunday-Thursday: 5:00 P.M.-2:00 A.M.

Friday and Saturday: 5:00 P.M.-3:00 A.M.

In addition, Applicant may open as early as 11:30 A.M. daily for private functions, luncheons and/or lunch service. Applicant may not extend its hours without amendment of this Agreement.

4. **Square Footage and Occupancy** The square footage of the establishment is 25 feet by 120 feet for a total of 3,000 feet for patrons. The current authorized maximum occupancy of the establishment is 150 patrons. Applicant shall post the certificate of occupancy in a prominent location in the entryway.

5. **Parking.** Applicant shall advertise the availability of public transportation. Protestants recognize that 9th Street from the convention center north to "O" Street, is presently not well traveled during the evening hours. Any increase in patronage to Applicant's establishment will aid in fostering a safer and more accessible environment along this corridor for patrons and residents alike.

6. **Noise and Privacy.** Applicant will comply with Title 25, Section 725 of the D.C. code, make architectural improvements to the property, and take all necessary actions to ensure that music, noise and vibrations from the establishment are not audible within any adjacent residential properties. Applicant will also take all necessary steps to ensure that the music, noise, and vibrations are not disruptive to the adjacent residential property occupants' reasonable use of outdoor areas of their property. Should any sound, noise, or music be heard in any residential premises, Applicant will take immediate remedial action. If necessary, Applicant will take

reasonable steps to reduce noise emanating from the establishment from the opening of the entry and exit doors.

7. **Sidewalk Café.** Given that the width of Ninth Street, NW does not allow enough public space to be used as a sidewalk café, no alcoholic beverages will be served or allowed on the sidewalk.

8. **Public Space and Trash.** The Applicant shall keep the sidewalk (up to and including the curb), tree box(es), curb, and alley free of litter, bottles, and other debris in compliance with D.C. Code and Municipal Regulations. Applicant shall not deposit trash or recyclable material into the outside dumpster or other exterior holding facilities after 11:00 P.M. or before 8:30 A.M. Applicant shall make reasonable efforts to require its trash and recycling contractors to pick up trash and materials, and schedule its deliveries, after 8:00 A.M.

9. **Rats and Vermin Control.** The Applicant shall provide rat and vermin control surrounding the dumpster area by providing outside traps and baiting. Applicant agrees to maintain the cleanliness of the dumpster/bins and surrounding area so as to prevent pugnacious odors and the attraction of vermin. Applicant shall enter into a pest control contract with a licensed pest control company containing commercially reasonable terms. Applicant shall provide proof of its rat and vermin control contract upon request of the Protestants.

10. **Music and Dancing.** Applicant intends to offer recorded as well as live, music and provide a space for dancing.

11. **Security.** Applicant shall designate at least one employee to control unruly patrons, whether inside or in the immediate outside areas. Further, this employee aided by signage at the entrance, will instruct patrons that they are within a residential neighborhood and ask them upon leaving to leave quietly.

12. **Drugs.** The Licensee shall prohibit sales of illegal drugs within or in front of the Establishment, and shall contact the police when known or suspected drug transactions occur. Licensee shall cooperate with the police in prosecuting all violations.

13. **License Ownership.** Applicant agrees to abide by all Alcoholic Beverage Regulations Administration (ABRA) regulations regarding the ownership of the license. Applicant also agrees to be the sole owner of the ABC licensee and agrees not to transfer or sell to any other entity before obtaining approval from the ABC Board. Applicant agrees to notify any prospective transferee, assignee, or contractee of the existence of the Agreement and to provide them with a copy.

14. **Binding Effect.** This Voluntary Agreement shall be binding upon and enforceable against the successors and assigns of Applicant.

15. **Informal Dispute Resolution.** In the event the Protestants, or any of them have a concern regarding the operation of the business, the concerned individual shall first contact the Applicant's Manager prior to involving the ANC, District of Columbia agencies or officials, or law enforcement agencies, or instituting proceedings under this Agreement.

16. **Notices and Enforcement Before ABC Board.** In the event of a violation of the provisions of this Voluntary Agreement, Applicant shall be notified in writing by the person alleging such violation and given an opportunity to cure such violation within thirty (30) days thereafter before action against Applicant on the basis of such violation may be undertaken, unless the violation be of such a nature that more immediate action is required, in which case, the period for opportunity to cure shall be reduced to a reasonable time commensurate with the violation (such 30-day or shorter period is hereinafter referred to as the "cure period"). A material violation of this Agreement or its ABC license by Applicant, which has not been cured

within the cure period, shall constitute cause for seeking a Show Cause Order from the ABC Board. Any notices required to be made under this Agreement shall be in writing and mailed by certified mail, return receipt requested, postage prepaid, or hand-delivered, to the other parties to this Agreement.

17. **Notice.** Notice under this Agreement shall be in writing, and may be given by mail or by hand delivery. Mail notice shall be deemed effective as of three days after mailing and hand delivery upon actual delivery. Notices may be addressed:

If to Applicant, to:

WAMI LLC
1318 9th Street, NW
Washington, DC 20001

With a Copy to:

Andrew J. Kline, Esq.
1225 19th Street, NW
Suite 320
Washington, DC 20036

If to ANC 2F, to:

Advisory Neighborhood Commission 2F
5 Thomas Circle
Washington, D.C. 20005
anc2f@starpower.net

With a copy to:

ANCommissioner 2F06, Chairman ANC2F, at the addresses indicated for the then incumbent as posted on the website,
www.anc2f.org

Applicant and other signatories may change the notice address listed above by written notice to the other signatories at the addresses provided in this Agreement. Failure to give notice

shall not constitute waiver or acquiescence to the violation, but notice shall be a prerequisite to the filing of a complaint with the Alcoholic Beverage Control Board.

18. **Counterparts.** This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed as original, but all of which together shall constitute one and the same instrument.

19. **Withdrawal of Protest** Upon execution of this Agreement and its acceptance by the ABC Board, any protest of the Applicant's application for license filed by any of the parties hereto, shall be deemed withdrawn.

WAMI, LLC

Advisory Neighborhood Commission 2F

By: *Michael G. Watson* date: 6/19/06 By: *Michael G. Nelson* date: 6/19/2006
Michael G. Watson, Managing Member Michael G. Nelson, Commissioner, 2F06

Andrew J. Kline (DC & MD)
akline@klinelawdc.com
Scott H. Rome (DC & MD)
srome@klinelawdc.com
Bryan K. Short (VA)
bshort@klinelawdc.com
LaQuan S. Partee, Legal Assistant
Lpartee@klinelawdc.com

LAW OFFICES
ANDREW J. KLINE
1225 NINETEENTH STREET, N.W.
SUITE 320
WASHINGTON, D.C. 20036

(202) 686-7600
FAX (202) 293-3130

June 21, 2006

VIA HAND DELIVERY

Alcoholic Beverage Control Board
c/o Tiwana Clarke, Esq.
941 North Capitol Street, NE
7th Floor
Washington, DC 20002

GOVT OF THE DISTRICT OF COLUMBIA
ALCOHOLIC BEVERAGE CONTROL BOARD
REGISTRATION SECTION
2006 JUN 21 AM 11:53
RECEIVED
WWM

**RE: WAMI, LLC t/a Be Bar
Applicant for Retailer's License Class CN
Address: 1318 9th Street, NW, Washington, DC 20001**

Dear Members of the Board:

Please be advised that the parties have reached a resolution in the above-captioned matter. Enclosed is a Voluntary Agreement signed by Michael Watson on behalf of WAMI, LLC and Michael Nelson on behalf of ANC 2F. Given that the parties have reached resolution, it is no longer necessary to hold a status hearing on this matter on Monday, June 26, 2006. We are respectfully requesting that it be taken off the Board's calendar.

If you or the Board have further questions regarding the enclosed Voluntary Agreement, please do not hesitate to contact me, otherwise we look forward to the dismissal of the protest, the Board's final order and issuance of the Applicant's alcoholic beverage license.

Very truly yours,


Andrew J. Kline

AJK/jrj
Enclosure

cc: Fred Moosally, General Counsel, ABRA
Zandra Goode, ABRA
Michael Nelson
Michael Watson
Tom McGuire
(all via e-mail)