

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

In the Matter of:)
)
Stoney's, LLC)
t/a Stoney's)
)
Substantial Change and Renewal)
Application for a) License No. 75613
Retailer's Class CR License) Case No. 33436-07/054P and
) 33436-07/089P
at premises) Order No. 2008-012
1433 P Street, NW)
Washington, D.C.)
)

Stoney's, LLC, t/a Stoney's, Applicant

Charles Reed, Chairperson, on behalf of Advisory Neighborhood Commission 2F, and
Lyle M. Blanchard, Esquire, on behalf of 1425 P Street, LLC, Protestants.

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

ORDER ON VOLUNTARY AGREEMENT AND WITHDRAWN PROTEST

The Substantial Change and Renewal Applications to allow the Applicant, Stoney's, LLC, t/a Stoney's, to add an additional 50 seats to its second floor, having been protested, came before the Alcoholic Beverage Control Board (Board) on June 27, 2007, in accordance with D.C. Official Code § 25-601 (2001). Charles Reed, Chairperson, on behalf of Advisory Neighborhood Commission (ANC) 2F, and Lyle M. Blanchard, Esquire, on behalf of 1425 P Street, LLC, filed timely opposition by letter, (collectively, the Parties).

The official records of the Alcoholic Beverage Control Board (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 October 22, 2007, the Protestants have agreed to withdraw their 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.

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Accordingly, it is this 28th day of November 2007, **ORDERED** that:

1. The protests of Charles Reed, Chairperson, on behalf of ANC 2E, and Lyle M. Blanchard, Esquire, on behalf of 1425 P Street, LLC, are **WITHDRAWN**;

2. The Substantial Change and Renewal Applications of Stoney's, LLC, t/a Stoney's, located at 1433 P Street, Washington, D.C., to allow the Applicant to add 50 seats, are **GRANTED**;

3. The above-referenced Agreement is **INCORPORATED** as part of this Order;
and

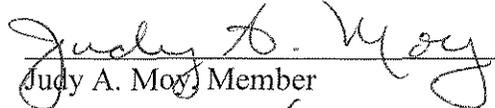
4. Copies of this Order shall be sent to the Protestants and the Applicant.

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District of Columbia
Alcoholic Beverage Control Board



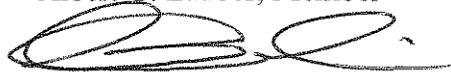
Peter B. Feather, Chairperson



Judy A. Moy, Member



Albert G. Lauber, 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.

VOLUNTARY AGREEMENT

THIS VOLUNTARY AGREEMENT ("Agreement") is made on this 22nd day of October, 2007, by and between Stoney's LLC ("Applicant"), on the one hand, and Advisory Neighborhood Commission 2F ("ANC 2F") and 1425 P Street, LLC ("1425 P") (collectively, ANC 2F and 1425 P Street are referred to herein as the "Protestants"), (collectively, the "Parties").

WITNESSETH

WHEREAS, Applicant has sought renewal of its retailers license Class CR-01 for a restaurant located at 1433 P Street, NW, Washington, DC (the "Premises"), and has sought a substantial change in operations to add an additional 50 seats in a second floor addition to the Premises.

WHEREAS, the Protestants, 1425 P, the owner of the 1425 P Street, N.W. property which abuts the Applicant's Premises, and ANC 2F, timely filed protests against the Applicant's substantial change request pursuant to D.C. Official Code §§ 25-601(1) and 601(4), respectively. ANC 2F also filed timely protest of the Applicant's license renewal.

WHEREAS, the Protestants wish to support Applicant's pending substantial change 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") approve the Applicant's substantial change application conditioned upon Applicant's compliance with the terms of this written Agreement.

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

Upon filing of noise complaint Notice with the Applicant, the Protestant who filed the Notice may request mediation by the ABC Board's mediator and the mediator shall schedule mediation within 10 days of the date of the written request and Notice of such request shall be provided to the Applicant. The Applicant shall cure the noise complaint issue pursuant to paragraph 10 but within a 10 day period due to nature of the complaint.

The Protestants and Applicant agree that they shall negotiate in good faith with respect to such issues of peace, order and quiet resulting from patrons of Applicant. If the Parties are unable to agree on the mediated resolution of a noise complaint, then the Protestants may ask the ABC Board for a show cause hearing pursuant to Section 1609.2 of DCMR, Title 23.

(c) The Applicant agrees that the hours of operation for the additional 50 seats on the second floor which is the subject of its substantial change application shall be placarded for renewal one year from the date of the ABC Board's approval of this Agreement.

4. Square Footage and Occupancy. The square footage of the establishment is approximately _____ square feet, including its second floor operation. Applicant will provide seating for at least 126 patrons at tables (including the 50 seats to be added in Applicant's pending substantial change application for a second floor operation) and up to 14 patrons at the bar. Applicant shall post the certificate of occupancy in a prominent location in the entryway. Applicant may not expand its occupancy or reduce available seating by more than five percent (5%) without amendment of this Agreement.

5. Parking. Applicant recognizes that parking in the vicinity of its restaurant is extremely limited, and that patrons who use automobiles in patronizing the restaurant will adversely impact the availability of public street parking. Applicant agrees that it shall offer

reasonable incentives to induce patrons either not to use automobiles to arrive at the restaurant or, at least, not to park in public parking spaces.

6. Local Restaurant. Applicant wishes to position itself principally as a neighborhood restaurant serving Logan Circle area residents. Applicant shall offer special inducements to such residents as a means of attracting their patronage.

7. Special Events. "Special events" for purposes of this Agreement means that the restaurant is reserved exclusively or principally for a single group or event during or after normal dinner hours. Applicant agrees that it will limit special events to not more than 8 during the first year of its operations, not more than 2 in any one month, and not more than 12 for the first 2 years. The Parties agree that when a special event is being held on any day of the week other than Sunday, Applicant shall reduce its closing hours by one hour. In addition, at all special events, Applicant will arrange for subsidized off street parking or valet parking.

The Protestants's concern giving rise to the limitation on the number of special events is that special events may unduly impact the neighborhood with additional parking, noise and trash problems; Applicant has conceded to the limitation with the understanding that the limit will be reviewed by the parties at the end of one year from the opening date of the restaurant. If experience demonstrates that there has not been such undue impact, the Protestants agree to consider increasing the limitation on special events; and if problems have occurred, Applicant agrees to consider reducing such limitation. The Parties will employ the procedure set forth in paragraph 19 in such review.

8. Public Space and Trash. Applicant is aware that illegal dumping in the public alley is an ongoing concern of its neighbors and that Applicant's trash practices, if not consistently diligent, may have the effect of encouraging such dumping. Applicant agrees to maintain a

dumpster in the rear of the building in the public alley and to contract with a commercial trash hauler for pickup at least twice per week. Applicant shall take whatever actions necessary to ensure that its dumpster does not overflow, including, but not limited to, scheduling additional trash pickups, if necessary. Applicant agrees to maintain such dumpster in a locked and completely closed position, and to ensure all trash is placed inside the dumpster. Trash and recyclable material shall not be deposited into the outside dumpster or other exterior holding facilities between the hours of 11:00 p.m. and 8:30 a.m. Applicant shall require its trash and recycling contractors to pick up trash and materials, and schedule its deliveries, after 9:00 a.m. and before 2:00 pm. Applicant shall also police the public alley and sidewalk (up to and including the curb) three times daily for refuse and other materials and maintain a clean, tidy and professional presence in these areas. Applicant shall not install exterior public pay telephones.

9. Sidewalk Café/Summer Garden/Expansion. Applicant may have outside seating in a sidewalk café area in accordance with its recently issued public space permit, and may serve alcoholic beverages in such area, provided, however, that such service shall require patrons also to purchase food; that is, alcohol only service in the café area shall not be permitted. Applicant shall direct that its employees inspect the sidewalk café and police it reasonably to ensure its cleanliness. There will be no music of any kind at the sidewalk café, and if the level of music from the interior is audible to adjoining residential occupants, Applicant agrees either to lower the volume so that it is not audible or revise the design of the doors onto the sidewalk cafe to provide for double doors. The sidewalk café shall close no later than 11:00 pm on Monday through Thursday, Midnight on Friday and Saturday and 11:00 pm on Sunday; Applicant will close the outdoor café whenever there is a special event. Applicant shall remove all tables and chairs from the outdoor café before closing.

Applicant recognizes that the premises abut residential tenancies to either side and immediately across the alley, and a “summer garden”, roof deck would present noise issues. Consequently, Applicant shall neither maintain a “summer garden” nor an unenclosed or an exterior roof deck that is unenclosed or enclosed without engineered sound proofed enclosing walls, floors and ceilings.

Applicant has provided ANC2F a statement under oath that all repair, building improvements, and other plumbing, carpentry, electrical, heating, ventilation and air conditioning work that has been performed by Stoney’s LLC since its acquisition of the premises to the date of the expansion has been properly permitted by the D.C. Department of Consumer and Regulatory Affairs, and that all work under such permits has been performed in accordance with the D.C. building code and the permits.

10. Noise and Privacy. Applicant has had a period of operation prior to the renewal of its license which gives rise to this Voluntary Agreement. Noise complaints during the first year following approval of this Agreement by the Parties and the ABC Board shall be resolved pursuant to the provisions of paragraph 3(b). Protestants are aware of complaints of noise or vibration by nearby residential tenants even if heretofore the Applicant was not aware of such complaints. If Applicant makes any change in its operations which increase internal noise or vibration, it shall make engineered architectural improvements to the property and take all necessary actions to ensure that music, noise and vibrations from the establishment are not audible from within nearby residential properties.

11. Dancing, Music and Entertainment. Applicant shall not offer, create facilities for, or otherwise encourage or permit dancing by patrons or employees. Applicant may have recorded

music background. Applicant shall keep all recorded music at a level that is inaudible, and free of any vibrations detectible from, outside the establishment.

12. Not applicable

13. Rats and Vermin Control. The Applicant shall provide rat and vermin control surrounding the dumpster area by providing outside traps and baiting. Applicant shall enter into a pest control contract with a licensed pest control company containing provisions commercially reasonable terms and reasonably agreeable to the Protestants. Applicant shall provide proof of its rat and vermin control contract upon request of the Protestants.

14. Security. Applicant shall designate one employee to control unruly patrons, whether inside or in the immediate outside area. 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.

15. Participation in the Community. In order to maintain an open dialogue with the community, Applicant is encouraged to regularly send a representative to ANC 2F meetings, which occur on the first Wednesday of each month at 7:00 p.m. at the Washington Plaza Hotel, 10 Thomas Circle, N.W., Washington, D.C. 20005, and LCCA Meetings, which occur on the second Wednesday of each month at 7:00 p.m. at the Washington Plaza Hotel. Applicant, upon notice from the ANC or LCCA shall send a representative of the establishment to a meeting(s) of the respective organization to discuss and find reasonable ways to resolve any problems associated with its operations.

16. 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 license and agrees not to transfer or sell to any other

entity (or to sell membership interests in Applicant to any person not currently a member), without first providing 30-days notice of an intent to do so. Applicant agrees to notify any prospective transferee, assignee or contractee of the existence of this Agreement and to provide them with a copy.

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

18. Informal Dispute Resolution.

a. Generally. In the case the Protestants have a concern regarding the operation of the business, they 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. Applicant shall also encourage any other individual not party to the Agreement to also contact the Applicant's manager as indicated above, but this provision shall not apply with respect to any complaint or issue that has previously been brought to Applicant's attention.

b. Review Procedures. Where this Agreement provides for or permits specific reviews, the Parties will meet and negotiate in good faith over the matters under review. If the Parties cannot agree, they may engage a mediator to assist in the negotiations.

19. 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.

20. 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:

Stoney’s LLC
1433 P Street, NW
Washington, DC 20005

With copy to:

Mallios & O’Brien
2600 Virginia Avenue NW
Suite 1112
Washington, DC 20037
Attn.: Dimitri P. Mallios, Esq.

If to ANC 2F, to:

Advisory Neighborhood Commission 2F
5 Thomas Circle, NW
Washington, DC 20005

With copy by email to www.anc2f@starpower.net

And copy to: Chairman ANC2F at the address indicated for the then incumbent as posted on the website, www.anc2f.org

If to 1425 P Street, LLC, to:

1425 P Street, LLC
805 15th Street NW
Suite 230
Washington, DC 20005

Attention: Ashley Gerstenfeld

With copy to:

Greenstein, DeLorme & Luchs, PC
1620 L Street, N.W., Suite 900
Washington, DC 20036
Attn.: Lyle M. Blanchard, Esq.

Applicant and other signatories may change the notice address listed above by written notice to the other signatories at the addresses listed above. 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.

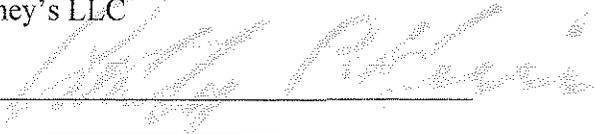
21. Counterparts. This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed as original, but all of which together shall constitute one and the same instrument.

22. Withdrawal of Pending Protests. Upon acceptance of this Agreement by the ABC Board, ANC 2F agrees to withdraw its pending protests of Applicant's renewal and substantial change of operations and 1425 P Street agrees to withdraw its pending protest as abutting property owner to Applicant's substantial change of operations application; all subject to Applicant's compliance with this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date and year first written above.

APPLICANT:

Stoney's LLC

By: 
Managing Member

ADVISORY NEIGHBORHOOD COMMISSION 2F

By: 
Charles Reed, Chairman

1425 P STREET, LLC

By: _____
Managing Member

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date and year first written above.

APPLICANT:

Stoney's LLC

By: _____

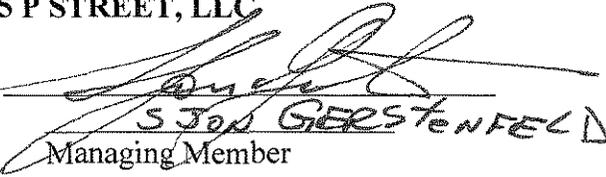
Managing Member

ADVISORY NEIGHBORHOOD COMMISSION 2F

By: _____

Charles Reed, Chairman

1425 P STREET, LLC

By:  _____
JON GERSTENFELD
Managing Member