

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

In the Matter of:)
)
Bar Di Bari, LLC)
t/a Bar Bari)
)
Applicant for a New)
Retailer's Class CR License)
)
at premises)
1401 R Street, N.W.)
Washington, D.C. 20009)
_____)

Case No. 12-PRO-00084
License No. ABRA-090488
Order No. 2012-529

Bar Di Bari, LLC, t/a Bar Bari (Applicant)

Matt Raymond, Vice Chairman, Advisory Neighborhood Commission (ANC) 2F

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

**ORDER ON VOLUNTARY AGREEMENT AND
WITHDRAWAL OF PROTEST OF ANC 2F**

The Application filed by Bar Di Bari, LLC, t/a Bar Bari, for a new Retailer's Class CR License, having been protested, came before the Alcoholic Beverage Control Board (Board) for a Roll Call Hearing on November 26, 2012, in accordance with D.C. Official Code § 25-601 (2001).

The official records of the Board reflect that the Applicant and ANC 2F have entered into a Voluntary Agreement (Agreement), dated December 5, 2012, that governs the operation of the Applicant's establishment.

The Agreement has been reduced to writing and has been properly executed and filed with the Board. The Applicant and Vice Chairman Matt Raymond, on behalf of ANC 2F, are signatories to the Agreement.

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This Agreement constitutes a withdrawal of the Protest filed by ANC 2F.

Accordingly, it is this 13th day of December, 2012, **ORDERED** that:

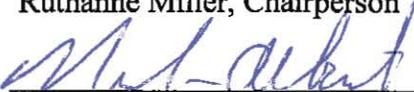
1. The Application filed by Bar Di Bari, LLC, t/a Bar Bari, for a new Retailer's Class CR License, located at 1401 R Street, N.W., Washington, D.C., is **GRANTED**;
2. The Protest of ANC 2F in this matter is hereby **WITHDRAWN**;
3. The above-referenced Voluntary Agreement submitted by the Parties to govern the operations of the Applicant's establishment is **APPROVED** and **INCORPORATED** as part of this Order; and
4. Copies of this Order shall be sent to the Applicant and ANC 2F.

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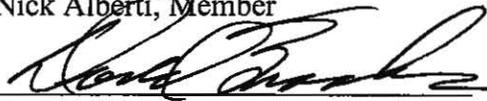
District of Columbia
Alcoholic Beverage Control Board



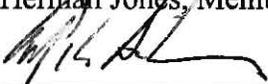
Ruthanne Miller, Chairperson



Nick Alberti, Member



Donald Brooks, Member

Herman Jones, Member


Mike Silverstein, Member

Pursuant to 23 DCMR § 1719.1 (April 2004), any Party adversely affected by this Order may file a Motion for Reconsideration within ten (10) days of service of this Order with the Alcoholic Beverage Regulation Administration, 2000 14th Street, N.W., Suite 400S, Washington, D.C. 20009

VOLUNTARY AGREEMENT

THIS VOLUNTARY AGREEMENT (“Agreement”) is made on this 5th day of December, 2012, by Bar di Bari, LLC t/a Bar Bari (“Applicant”) and Advisory Neighborhood Commission 2F (“ANC 2F”).

RECITALS

(a) Applicant has applied for a Retailer Class CR License (the “License”) for a business establishment (“Establishment”) located at 1401 R St. N.W., Washington, D.C. (the “Premises”); and,

(b) Applicant desires to cooperate with the ANC in order to mitigate concerns related to the potential impact of operation of the Establishment on the surrounding community; and,

(c) In lieu of contested protest proceedings regarding the application for the License, the Parties wish to enter into a Voluntary Agreement pursuant to D.C. Official Code § 25-446 to address such concerns:

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 the Business. The applicant will manage and operate a restaurant with an emphasis on food service. Any change from this model shall require prior approval by the Alcoholic Beverage Control Board (“ABC Board”).
3. Hours of Operation. Applicant’s hours of interior operation shall not exceed the following:

Sunday – Thursday	6:30 a.m. – 1 a.m.
Friday – Saturday	6:30 a.m. – 2 a.m.

The hours of operation of the Applicant's sidewalk café shall be limited to:

Sunday – Thursday	6:30 a.m. – 11 p.m.
Friday - Saturday	6:30 a.m. – 12 midnight

Hours of alcoholic beverage service, sales and consumption may not begin prior to 8:30 a.m. any day of the week.

It is understood that upon expiration of the above hours of operation, no patron may remain on the Premises (interior or exterior, as the case may be).

Provided, however, that (a) on days designated by the ABC Board as “Extended Hours for ABC Establishments” or “Daylight Savings Time Extension of Hours” Applicant may operate for one additional hour (that is, one hour later); (b) in the event the Council of the District of Columbia or the ABC Board grants licensees in general extended operating hours for specific occasions, such as Inauguration or World Cup, Applicant may avail itself of such extended hours.

4. Floors Utilized and Occupancy. The interior of the establishment is approximately 1,300 square feet; any deviation from this by more than twenty (20) percent shall require Applicant to file an amendment to its application with the Board for determination as to whether such deviation constitutes a substantial change in operation. The Applicant will provide seating and service to customers on the first floor of the building. The Establishment's interior seating and occupancy shall not exceed the lesser of the maximum capacity allowed for the building by the District of Columbia or 32 seating and 97 total occupancy. Applicant shall post its Certificate of Occupancy in a prominent location within the Establishment.

5. Sidewalk Café. The Applicant may have outside seating in accordance with a sidewalk café endorsement to its ABC license and a duly-issued public space permit, and may serve alcoholic beverages to seated patrons in such area, provided, the total capacity for such sidewalk café shall not exceed 45 seats. Any increase in such seating shall require approval of the District of Columbia Public Space Committee, after notice and opportunity for comment by the ANC, and approval by the ABC Board. Applicant shall not serve alcoholic beverages on its sidewalk café later than thirty (30) minutes prior to the hour of termination of operation of said sidewalk café, as specified in Section 3, above. Applicant shall direct its employees to inspect the sidewalk cafe regularly.

6. Noise. Applicant shall adhere to D.C. Code §25-725 with respect to emanation of noise from the Establishment. Applicant shall present only recorded background music. Applicant shall not install any exterior speakers to the Establishment, and agrees that no speakers will be installed in or in any way directed to the sidewalk café.

7. Public Space and Trash. Applicant shall keep the sidewalk (up to and including the curb), tree boxes and alley free of litter, bottles, and other debris in compliance with D.C. Code and Municipal Regulations. Applicant shall police these areas twice daily for refuse and other materials. Applicant further agrees to hold all recyclable materials and perishable food waste within the building until the morning of the scheduled pick-up. The Applicant shall require its trash and recycling contractors to pick up trash and materials not earlier than 8:00 a.m. Applicant's employees shall not dispose of bottles or glass into trash containers or dumpsters in a manner which creates noise audible outside of the premises after 10:00 p.m. Applicant shall not install exterior public pay phones.

8. Rat and Vermin Control. Applicant shall provide monthly rat and vermin control for the Establishment.

9. Patrons. Applicant shall take reasonable steps to prevent its patrons from causing noise or disturbances in front of, or immediately adjacent to, the Establishment during the hours of operation and as they depart at closing.

10. Incident Log. The Establishment's website, if any, will prominently feature the name and contact information for an individual to which any comments about the operation of Establishment may be addressed. The Applicant shall maintain a log for every complaint lodged with the Establishment for any issue relating to this Agreement, including, but not limited to, complaints of noise, parking congestion, traffic congestion, security, trash, rodents, and/or operating hours. The log shall include, for each separate complaint, to the extent provided by any such complainant, the name of the complainant, the date of the complaint, any contact information provided by the complainant, the nature of the complaint, and the response taken by the Applicant or the Establishment. Every complaint shall be kept on file in the complaint log for a minimum of three years from the date on which the complaint was made. Applicant shall make the complaint log available to the Board for inspection and copying upon reasonable advance request.

11. Agreement Available Upon Demand. A copy of this Agreement shall be kept on the premises and made available to law enforcement officers and Alcoholic Beverage Regulatory Administration ("ABRA") inspectors immediately upon request.

12. Compliance with ABRA Regulations. Applicant shall abide by applicable ABRA regulations regarding ownership of the License.

13. Participation in the Community. Applicant is encouraged to send a representative from time to time to ANC 2F meetings. ANC 2F meetings 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, except as may be specified on www.ANC2F.org.

14. License Ownership. Applicant agrees not to transfer or sell the license to any other entity before obtaining approval from the Alcohol Beverage Control Board. Applicant agrees to specifically notify any prospective transferee, assignee, or contractee of the existence of this Agreement and to provide them with a copy.

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

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

17. Notice and Opportunity to Cure. In the event that either party believes that the other materially breached any obligations under this Agreement, such party shall give written notice to the other of the existence of the breach and the specific nature thereof. The party alleged to be in breach shall have fourteen (14) days from the receipt of notice to cure the alleged breach (or if the breach shall relate to excessive noise or disturbance, such shorter period as may be reasonable under the circumstances to immediately restore peace, order and quiet, including mitigation measures such as decreasing the volume of recorded music). In the case of a continuing violation, no notice or opportunity to cure need be provided for subsequent violations of this Agreement, following the initial provision of notice. Any notices required to be made under this Agreement shall be in writing and sent either via e-mail or U.S. mail, postage prepaid,

to the parties to this Agreement at the addresses below. Notice shall be deemed given as of the time of receipt or refusal of receipt.

If to Applicant: Bar Bari
4620 Lee Highway, Suite 213
Arlington, Va. 22207
aaron@tangysweet.com

With a copy to: Mallios & O'Brien
2600 Virginia Avenue, N.W.
Washington, D.C. 20037
sobrien@malliosobrien.com

If to the ANC: Advisory Neighborhood Commission 2F
5 Thomas Circle, N.W.
Washington, D.C. 20005
Anc2f@starpower.net

Either party may change its notice address by written notice to the other. 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 ABC Board or any other enforcement action.

ADVISORY NEIGHBORHOOD COMMISSION 2F

By: 
Matt Raymond

BAR DI BARI, LLC

By: 
Aaron Gordon