

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

**In the Matter of:**

Ghana Café, LLC  
t/a Ghana Café

Application for a Substantial Change  
(Summer Garden)  
to a Retailer's Class CR License

at premises  
1336 14<sup>th</sup> Street, N.W.  
Washington, D.C. 20005

License No.: ABRA-082751  
Case No.: 10-PRO-00142  
Order No.: 2011-367

**BEFORE:** Nick Alberti, Interim Chairperson  
Donald Brooks, Member  
Herman Jones, Member  
Calvin Nophlin, Member  
Mike Silverstein, Member

**ALSO PRESENT:** Ghana Cafe, LLC, t/a Ghana Café, Applicant

Charles Reed, Chairperson, Advisory Neighborhood Commission 2F

Jeffrey Dzieweczynski, on behalf of the Protestant, A Group of Five or More Individuals

Martha Jenkins, General Counsel  
Alcoholic Beverage Regulation Administration

**ORDER DENYING GHANA CAFÉ'S REQUEST  
FOR A SUMMER GARDEN**

Ghana Cafe, LLC, t/a Ghana Café (Applicant), filed an Application for a Substantial Change to a Retailer's Class CR License, located at 1336 14<sup>th</sup> Street, N.W., Washington, D.C. The requested substantial change to the operations of the establishment included a summer garden with 51 seats (Application).

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On October 29, 2010, a protest against the request for a summer garden was timely filed by A Group of Five or More Individuals, which was granted standing at the Roll Call Hearing. A second protest was filed by Advisory Neighborhood Association (ANC) 2F on November 15, 2010, represented by Chairperson Charles Reed. During the Roll Call Hearing, ANC 2F was denied standing as a protestant by the Board's Agent, because a protest letter was not in the protest file. After reviewing the facts, the Board determined that a timely protest was filed by ANC 2F on November 15, 2010. Therefore, ANC 2F was granted standing.

On January 12, 2011, the Board dismissed the Protest of ANC 2F for failure to appear at the Protest Status Hearing. On January 19, 2011, ANC 2F filed a request for reinstatement with the Board indicating that Samuel V. Goekjian, a duly designated representative for its Commission in this protest, sought to appear at the hearing but was unintentionally delayed briefly and arrived shortly after the Board adjourned; the delay was inadvertent; the reinstatement of the protest on behalf of the Commission will not unduly burden the applicant or the Board in view of the fact that a hearing on the protest will in any event take place since other protestants remain in the case; and the Board should avail itself of the opportunity of hearing the views of the Commission which, by law, exists to advise the Board as to matters affecting this community. On February 2, 2011, the Board reinstated ANC 2F Protest.

The Application came before the Alcoholic Beverage Control Board (Board) for a Roll Call Hearing on November 29, 2010, and a Protest Status Hearing on January 1, 2011. The Applicant and the Protestants were unsuccessful in negotiating an amended Voluntary Agreement during Mediation on December 23, 2010. The Protest Hearing was held on May 11, 2011. At the conclusion of the Protest Hearing, the Board took the matter under advisement.

The protest issues raised by the Protestants pursuant to D.C. Official Code § 25-602 and 23 DCMR § 1601.8 are whether the Application will adversely impact the peace, order, and quiet of the neighborhood. The Board gives "great weight" to ANC 2F's recommendation under D.C. Official Code § 25-609 (2001).

The Board will not address the protest issues in this Order. Instead, although the Board held a Protest Hearing on the Applicant's request for a summer garden, the Board determined that the summer garden is expressly prohibited by the Voluntary Agreement, dated October 7, 2009, between the Applicant, ANC 2F, 1426 Rhode Island Condominium Association, The Willison Condominium Association, Jeffrey Dziejewczynski, Jim Kane, Jeff Trammell, Stuart Serkin, Ran Borgersen, Shannon Herbert, Joann Teal, and Sandy Adelman, which was approved by the Board on October 28, 2009. Section 6(c) (Public Space and Trash) of the Voluntary

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Agreement states: “Applicant shall not allow loitering at the rear of the building, nor permit the rear of the building to be used as a smoking, break area, or gathering place for employees, patrons or others and shall post a notice to such effect.”

Under D.C. Official Code § 25-446(d)(1), “unless a shorter term is agreed upon by the parties, a voluntary agreement shall run for the term of a license, including renewal periods, unless it is terminated or amended in writing by the parties and the termination or amendment is approved by the Board.” Ghana Café’s Voluntary Agreement is in essence a contract between its signatories. *See North Lincoln Park Neighborhood Ass’n v. District of Columbia District Alcoholic Beverage Control Bd.*, 727 A.2d 872, 875 (D.C. 1999) (“Once entered, the [voluntary] agreement between the parties becomes the law of the case, and its terms may not be enlarged or diminished by the court, for to do so would be to create a new stipulation to which the parties have not agreed.” (quoting *Goozh v. Capitol Souvenir Co.*, 462 A.2d 1140, 1142 (D.C. 1983))). Further, Chairperson Reed, during the hearing, acknowledged that the Application is prohibited pursuant to the terms of the voluntary agreement. *See Transcript (Tr.)* 5/11/11 at 228.

Upon consideration of this request, the Board must deny Ghana Café’s request for a summer garden, because it is prohibited by the plain language of the Voluntary Agreement.

### ORDER

Therefore, it is hereby **ORDERED** on this 17th day of August, 2011, that the Substantial Change to Retailer’s Class CR License filed by Ghana Cafe, LLC, t/a Ghana Café, located at 1336 14<sup>th</sup> Street, N.W., Washington, D.C., to include a summer garden with 51 seats, be and the same hereby is **DENIED**.

Copies of this Order shall be sent to the Applicant, ANC 2F, and Jeffrey Dzieweczynski, on behalf of A Group of Five or More Individuals.

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Mike Silverstein, Member

Pursuant to 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, 2000 14th Street, N.W., Suite 400S, Washington, D.C. 20009.

Also, pursuant to section 11 of the District of Columbia Administrative Procedure Act, Pub. L. 90-614, 82 Stat. 1209, D.C. Official Code § 2-510 (2001), and Rule 15 of the District of Columbia Court of Appeals, any party adversely affected has the right to appeal this Order by filing a petition for review, within thirty (30) days of the date of service of this Order, with the District of Columbia Court of Appeals, 500 Indiana Avenue, N.W., Washington, D.C. 20001.

However, the timely filing of a Motion for Reconsideration pursuant to 23 DCMR § 1719.1 (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).