

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

In the Matter of:)	
)	
Green Island Heaven and Hell, Inc.)	Case Nos.: 17-PRO-00011
t/a Green Island Café/Heaven & Hell)	License No.: 074503
)	Order No.: 2017-189
Applicant for a Substantial Change to a)	
Retailer's Class CT License)	
)	
at premises)	
2327 18th Street, N.W.)	
Washington, D.C. 20009)	

BEFORE: Donovan Anderson, Chairperson
Nick Alberti, Member
Mike Silverstein, Member
James Short, Member
Mafara Hobson, Member
Jacob Perry, Member

ALSO PRESENT: Green Island Heaven and Hell, Inc., t/a Green Island Café/Heaven & Hell,
Applicant

Jonathan Farmer, Counsel on behalf of the Applicant

Ted Guthrie, on behalf of Advisory Neighborhood Commission (ANC) 1C

Denis James, President, Kalorama Citizens Association, Protestant

Martha Jenkins, General Counsel
Alcoholic Beverage Regulation Administration

ORDER DENYING MOTION TO DISMISS

The Alcoholic Beverage Control Board (Board) denies Advisory Neighborhood Commission (ANC) 1C's motion to dismiss the application filed by Green Island Heaven and Hell, Inc., t/a Green Island Café/Heaven & Hell (Green Island) to add a summer garden to the premises.

ANC 1 argues that the application to add a summer garden conflicts with the operative settlement agreement; therefore, the application must be denied. *Mot. to Dismiss*, 1. According to ANC 1C, a summer garden only applies to “outdoor privately owned space.” 23 DCMR § 1004.1 (West Supp. 2017). But according to the ANC, this request is problematical because the settlement agreement only allows the licensee to use the space if it is enclosed. *Mot. to Dismiss*, 2.

Under § 25-446(c), a licensee must comply with the terms of any settlement agreement approved by the Board. D.C. Code § 25-446(c). Moreover, the Board is empowered to enforce the terms of any settlement agreement. *Id.* In practice, this means that the Board will not consider an application or request by a licensee that contravenes the terms of any valid settlement agreement.

The ANC is correct that § 1004.1 creates the summer garden endorsement for the purpose of allowing licensees to operate on “outdoor privately owned space.” Moreover, the ANC is also correct that Green Island’s settlement agreement requires the space to be enclosed in the manner required by the agreement. *In re Green Island Heaven and Hell, Inc., t/a Greend Island Café/Heaven & Hell*, Case No. 10-PRO-00178, Board Order No. 2010-469, Settlement Agreement, § 4.2 (D.C.A.B.C.B. Nov. 16, 2017).

Nevertheless, the Board disagrees with ANC 1C’s conclusions and proposed remedy. The ANC’s argument rests on the faulty logic that a summer garden does not qualify as a summer garden if it is enclosed. The Board finds no contradiction in the law or regulations with issuing a summer garden endorsement for the use of private outdoor space and the licensee adding an enclosure or other structure to the new seating area—even if it encloses the entire area.

Furthermore, Title 25 contemplates that licensees will request permission to build all sorts of structures outside, including atriums, enclosed outdoor patios, and roof decks with retractable rooves. In that vein, Title 25 sets out a process for licensees to increase their occupancies, to expand their operations, to use public and private space and other “floor[s], roof[s], or deck[s], and to “[c]hange the exterior design, architecture, or construction of the building” D.C. Code §§ 25-404, 25-762(a), (b)(1)-(3), (b)(7). As a result, Green Island’s request falls within the substantial change process and may be adjudicated on the merits by the Board.

Finally, the Board finds no outright or express limitation in the settlement agreement prohibiting the addition of a summer garden. To the extent that the settlement agreement regulates the use of the space or requires the building of structures, it would be the obligation of the licensee to use the space in conformance with the agreement upon approval by the Board.

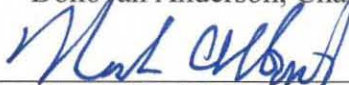
ORDER

Therefore, the Board, on this 19th day of April 2017, **DENIES** the motion to dismiss filed by ANC 1C. The ABRA shall deliver copies of this Order to the Parties.

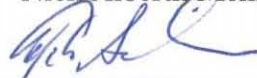
District of Columbia
Alcoholic Beverage Control Board



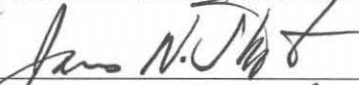
Donovan Anderson, Chairperson



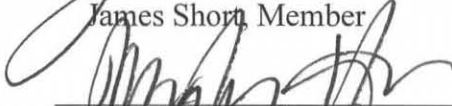
Nick Alberti, Member



Mike Silverstein, Member



James Short, Member



Mafara Hobson, Member



Jacob Perry, Member

Pursuant to D.C. Official Code § 25-433(d)(1), any party adversely affected may file a Motion for Reconsideration of this decision within ten (10) days of service of this Order with the Alcoholic Beverage Regulation Administration, Reeves Center, 2000 14th Street, NW, 400S, Washington, D.C. 20009.

Also, 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, 430 E Street, N.W., Washington, D.C. 20001; (202-879-1010). However, the timely filing of a Motion for Reconsideration pursuant to 23 DCMR § 1719.1 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).