

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

In the Matter of:)	
)	
The Berliner Group, LLC)	
t/a Lapis)	
)	
Applicant for a New)	Case No. 10-PRO-00129
Retailer's Class CR License)	License No. ABRA-085260
at premises)	Order No. 2010-594
1032 Wisconsin Avenue, N.W.)	
Washington, D.C. 20007)	

The Berliner Group, LLC, t/a Lapis ("Applicant")

Ron Lewis, Chairperson, Advisory Neighborhood Commission (ANC) 2E ("Protestant")

BEFORE: Mital M. Gandhi, Member
Nick Alberti, Member
Donald Brooks, Member
Herman Jones, Member
Calvin Nophlin, Member
Mike Silverstein, Member

ORDER ON VOLUNTARY AGREEMENT AND WITHDRAWAL OF PROTEST

The official records of the Alcoholic Beverage Control Board (Board) reflect that The Berliner Group, LLC, t/a Lapis ("Applicant"), filed an Application for a new Retailer's Class CR License located at 1032 Wisconsin Avenue, N.W., Washington D.C. The Applicant and Chairperson Ron Lewis, on behalf of ANC 2E, have entered into a Voluntary Agreement, dated December 2, 2010, setting forth the terms and conditions that govern 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 Chairperson Ron Lewis, on behalf of ANC 2E, are signatories to the Agreement. This Agreement constitutes a withdrawal of the Protest filed by ANC 2E of this Application.

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Accordingly, it is this 8th day of December 2010, **ORDERED** that:

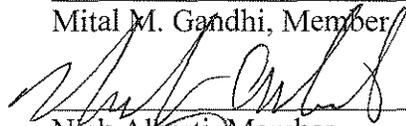
1. The Application filed by The Berliner Group, LLC, t/a Lapis (“Applicant”), for a new Retailer’s Class CR license located at 1032 Wisconsin Avenue, N.W., Washington, D.C., is **GRANTED**;
2. The Protest of ANC 2E in this matter is hereby **WITHDRAWN**;
3. The above-referenced Voluntary Agreement submitted by the Parties to govern the operations of the Applicant’s establishment are **APPROVED** and **INCORPORATED** as part of this Order; and
4. Copies of this Order shall be sent to the Applicant and ANC 2E.

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District of Columbia
Alcoholic Beverage Control Board



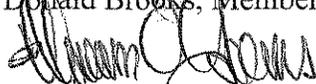
Mital M. Gandhi, Member



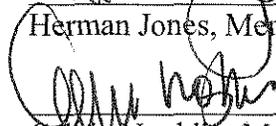
Nick Alberti, Member



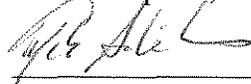
Donald Brooks, Member



Herman Jones, Member



Calvin Nophlin, Member



Mike Silverstein, 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, 1250 U Street, N.W., Third Floor, Washington, DC 20009.

VOLUNTARY AGREEMENT

THIS AGREEMENT is made and entered into as of this 2nd day of December, 2010 by and between The Berliner Group, LLC, t/a Lapis (hereinafter the "Applicant") and Advisory Neighborhood Commission 2E ("Protestant").

WHEREAS, Applicant has filed an application with the District of Columbia Alcoholic Beverage Control Board (hereinafter "ABC Board") for issuance of a Retailer's Class CR license for premises 1032-1034 Wisconsin Avenue, N.W., Washington, D.C.

WHEREAS, in recognition of the ABC Board's policy of encouraging parties to a protested proceeding to settle their differences by negotiating agreements, the parties hereto being desirous of entering into an agreement whereby, subject to approval of the ABC Board, Applicant will agree to adopt certain measures to address the Protestant's concerns and Protestant will agree to the issuance of the ABC License and withdraws the Protest.

NOW, THEREFORE, in consideration of the mutual covenants and undertakings memorialized herein, the parties agree as follows:

- 1. Nature of Business:** Applicant will operate at all times as a bona-fide Class CR Restaurant (as such term is defined in ABC statutes and regulations), seating 28 inside and 12 on a Summer Garden. Food service will be available until forty-five (45) minutes before closing, and "last call" for alcoholic beverages shall be announced one-half (1/2) hour before closing. Applicant will not make its premises available to promoters for presentation of advertised "parties" or "events" intended to generate profit for such promoters. However, such latter restriction shall not preclude Applicant from closing its premises to the general public for time to time in order to accommodate invitation only private functions.
- 2. Noise Suppression:** Applicant shall not present amplified entertainment. Commercially-reasonable sound attenuation methods will be utilized in the renovation of the premises so as to impede the projection of sound to the public streets or adjacent or nearby premises. The Restaurant's operation shall at all times be in compliance with the D.C. Noise Control Act and DC Code 25-725. Applicant will encourage employees and patrons to be considerate of residents in the neighborhood after departing the building, by keeping conversations and other noises at a level that will not disturb the peace, order, quiet and tranquility of residents in the enjoyment of their homes and by departing the vicinity of the premises immediately upon exiting.
- 3. Outdoor Seating:** Patron presence on Applicant's Summer Garden shall terminate at 11:00pm Sundays through Thursdays and 2:00 Fridays and Saturdays. Applicant shall not present live entertainment, recorded music or speakers on its Summer Garden.
- 4. Deliveries:** To maintain the peace, order and quiet of the surrounding neighborhood, Applicant shall receive all deliveries of food, beverages and supplies during hours between 9:00 am and 5:00 pm.

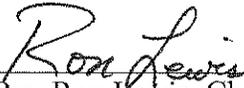
5. **Trash Pick-Up and Removal:** Applicant will maintain regular trash/garbage removal service, a minimum of 5 times per week (days to be decided by owner and business necessity) only during the hours from 9:00 am to 5:00 pm., Trash and dumpster areas shall be kept clean. The Applicant shall enclose the dumpsters and keep dumpster lids tightly closed and incapable of being entered by rodents, in order to limit odors and help control pest and rodent population. Applicant will contract for regular rodent and pest (insect) abatement. There shall be no outdoor disposal of glass bottles after 9:00pm.
6. **Removal of Grease and Oils:** Applicant will provide for the proper (recyclable) removal of grease and oils and will not deposit these substances for removal in dumpsters or trash cans.
7. **Ingress and Egress:** No patron shall be allowed to ingress or egress at any location except at the designated building's front entrance (except in case of an emergency).
8. **Communication with Protestant.** Applicant agrees to meet, as reasonably requested, with the Protestant to address any perceived problems arising from the operation of the business. The Applicant agrees to work in good faith with the Protestant to resolve any such problems.
9. **Withdrawal of Protest.** Protestant agrees to the issuance of the license and the withdrawal of its protests upon execution of this Agreement, provided that this Voluntary Agreement is incorporated into the Board's order issuing, amending or renewing the license, which order is thereby conditioned upon compliance with such Voluntary Agreement.
10. **Right to Seek Redress:** The parties agree that Applicant will be given notice of any alleged violation of this Agreement and will be afforded reasonable time to investigate and respond to any complaint (not greater than ten (10) days). The parties agree that if any complaints of violation this Agreement are not resolved, then any failure of the Applicant to adhere to the foregoing commitments will constitute a breach of this agreement and grounds for the Protestant to petition the Board for issuance of an order to Show Cause, as provided by D.C. Code 25-446(e).

IN WITNESS WHEREOF, the Parties place their signatures to this agreement, this 2nd day of ~~November~~ December 2010.

APPLICANT:
THE BERLINER GROUP, LLC

PROTESTANT:
ADVISORY NEIGHBORHOOD COMMISSION 2E


By: Omar Popal


By: Ron Lewis, Chair, ANC 2E

LAW OFFICES
MALLIOS & O'BRIEN

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WASHINGTON, D.C. 20037

(202) 625-7700

DISTRICT OF COLUMBIA
ALCOHOLIC BEVERAGE
REGULATION ADMINISTRATION

2010 DEC -3 P 3:42

DIMITRI P. MALLIOS (1932-2009)
STEPHEN J. O'BRIEN*
STUART J. LONG
MICHAEL D. FONSECA

REC'D BY *AMJ* FACSIMILE
(202) 625-7706

*Also Admitted in Virginia

December 3, 2010

VIA HAND DELIVERY

Alcoholic Beverage Control Board
1250 U Street, NW - Third Floor
Washington, DC 20009

Attention: Assistant Attorney General Thea Davis

Re: The Berliner Group LLC, t/a Lapis, Applicant for a
Retailer's License Class CR License at premises
1032-1034 Wisconsin Avenue, NW

Dear Members of the Board:

We are pleased to transmit the enclosed December 2, 2010, Voluntary Agreement between the applicant and Advisory Neighborhood Commission 2E.

As all protests of this application now have been resolved, we request, and will appreciate, early issuance of the Board's order approving the application pursuant to 23 DCMR 405.1.

Thank you for your attention to this submission.

Very truly yours,



Stephen J. O'Brien

copy: Advisory Neighborhood Commission 2E