

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

**In the Matter of:** )  
)  
1001 H St, LLC )  
t/a Ben's Chili Bowl/Ben's Upstairs/Ten 01 )  
)  
Application for Renewal of a )  
Retailer's Class CR License )  
)  
at premises )  
1001 H Street, N.E. )  
Washington, D.C. 20002 )  
)

Case No.: 16-PRO-00036  
License No.: ABRA-093103  
Order No.: 2017-051

1001 H St, LLC, t/a Ben's Chili Bowl/Ben's Upstairs/Ten 01, (Applicant)

Jay Williams, Co-Chair, Advisory Neighborhood Commission (ANC) 6A, (Protestant)

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

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**ORDER ON SETTLEMENT AGREEMENT  
AND WITHDRAWAL OF ANC 6A'S PROTEST**

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The Application filed by 1001 H St, LLC, t/a Ben's Chili Bowl/Ben's Upstairs/Ten 01, for Renewal of its Retailer's Class CR License, having been protested, came before the Alcoholic Beverage Control Board (Board) for a Roll Call Hearing on May 31, 2016, and a Protest Status Hearing on July 13, 2016, in accordance with D.C. Official Code § 25-601 (2001).

The official records of the Alcoholic Beverage Control Board (Board) reflect that The Applicant and ANC 6A have entered into a Settlement Agreement (Agreement), dated January 12, 2017, 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 Co-Chair Jay Williams, on behalf of ANC 6A, are signatories to the Agreement.

This Agreement constitutes a withdrawal of the Protest filed by ANC 6A of this Application.

Accordingly, it is this 1st day of February, 2017, **ORDERED** that:


1. The Application filed by 1001 H St, LLC, t/a Ben's Chili Bowl/Ben's Upstairs/Ten 01, for renewal of its Retailer's Class CR License, located at 1001 H Street, N.E., Washington, D.C., is **GRANTED**;
2. The Protest of ANC 6A in this matter is hereby **WITHDRAWN**;
3. The above-referenced Settlement Agreement submitted by the parties to govern the operations of the Applicant's establishment is **APPROVED** and **INCORPORATED** as part of this Order; except for the following modification:

Section 3(f) (Music/Dancing/Entertainment) – The following language shall be removed: “within ten (10) minutes.”

The parties have agreed to this modification.

4. Copies of this Order shall be sent to the Applicant and ANC 6A.

District of Columbia  
Alcoholic Beverage Control Board

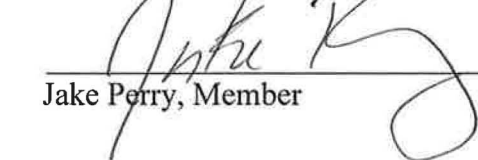
  
\_\_\_\_\_  
Donovan Anderson, Chairperson

  
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Nick Alberti, Member

  
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Mike Silverstein, Member

  
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James Short, Member

  
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Mafara Hobson, Member

  
\_\_\_\_\_  
Jake 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, 2000 14<sup>th</sup> Street, N.W., Suite 400S, Washington, DC 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 (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).



Made this 12th day of January, 2017

by and between

**Ben's Chili Bowl/Ben's Upstairs (ABRA # 093103)**  
1001 H Street, NE  
Washington DC 20002

and

**Advisory Neighborhood Commission 6A**

**Witnesseth**

Whereas, Applicant's premises is within the boundaries of ANC 6A; and,

Whereas, the parties desire to enter into an agreement governing certain requirements and understandings regarding the issuance of a Retailer's Class CR Liquor License at the subject premises; and,

**The Parties Agree As Follows:**

1. **Public Space Cleanliness and Maintenance.** Applicant will maintain the public space (minimally the front sidewalk up to and including the gutter in front of the subject premises, and the alleyway behind the subject premises) adjacent to the establishment in a clean and litter-free condition by:
  - a. Picking up trash, including beverage bottles and cans, and all other trash a minimum of twice daily, once during the morning and once during the evening.
  - b. Maintaining regular trash and garbage removal service, regularly removing trash from the trash and dumpster area, and seeing that the trash and dumpster area remain clean.
  - c. Depositing trash and garbage only in rodent-proof dumpsters, and seeing that dumpster covers fit properly and remain fully closed except when trash or garbage is being added or removed.
  - d. Exercising due diligence to prevent and/or rid vermin infestation in and around the establishment, including following, minimally, the recommendations and guidelines of the Vector Control Division of the Department of Public Works.
  - e. Assisting in maintenance of the curbs in front of the establishment to keep them free of trash, removing snow and ice from the sidewalk, and complying with all applicable D.C. laws and regulation in these respects.
  - f. Planting, watering, and generally tending to tree boxes directly in front of the subject premises, if any.
  - g. Promptly removing or painting over any graffiti written on the exterior walls of the property.
  - h. Requiring the owner and employees not to park on public space between the building and the curb.
  - i. Not locating trash bins, chairs, tables, or other equipment on public space without a valid space permit.

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## 2. **Business Operations and Practices.**

- a. Applicant will not, directly or indirectly, sell or deliver alcohol to any intoxicated person or to any person who appears to be intoxicated.
- b. Applicant agrees to take all necessary steps to prevent patron rowdiness, including refusing admission/service to rowdy and/or unruly persons.
- c. Applicant agrees to ensure that no patron brings an open container of an alcoholic beverage into the establishment from outside sources, and at no time exits the establishment with an open container of an alcoholic beverage. Wine shall be corked in accordance with DC Code § 25-113(b)(5).
- d. Applicant will not provide or sell alcoholic beverages "to go."
- e. Applicant agrees not to promote or participate in bar or pub "crawls" or any other event of this nature unless such event has been approved in writing by ABRA.
- f. The licensed establishment will be managed in person by Applicant or a board-licensed manager.
- g. Applicant, and all employees that are designated to serve alcoholic beverages, shall attend and complete alcoholic beverage server training.
- h. Applicant shall post a notice kept in good repair and visible from point of entry a sign that states:
  - i. Proper ID is required to be served and that the establishment will check IDs at all times prior to serving alcoholic beverages to patrons;
  - ii. It is illegal to sell alcohol to anyone under age 21;
  - iii. Patrons are requested not to litter, loiter, or make excessive noise in the neighborhood as they arrive or depart;
  - iv. Warning: Drinking alcoholic beverages during pregnancy can cause birth defects; and
  - v. The establishment requests that customers do not contribute to panhandlers.
- i. Applicant shall make every effort to prohibit and prevent loitering and criminal activity on or in front of the establishment premises, to include:
  - i. Asking loiterers to move on whenever they are observed outside the establishment;
  - ii. Calling the Metropolitan Police Department if illegal activity is observed; and
  - iii. Keeping a written record of dates and times (a "call log") when the MPD is called for assistance.
- j. Upon request of the Board, Applicant's call log and incident log shall be provided to the Board during meetings or hearings involving future renewals or contested proceedings involving Applicant's license.
- k. Applicant shall not support the installation of pay phones outside of the establishment on its property.
- l. Applicant will utilize and maintain existing floodlights on the exterior of its premises so as to fully light any abutting alleyway from dusk until dawn.
- m. Applicant shall provide valet parking services only with valet parking companies as defined, licensed, and in compliance with D.C. Municipal Regulations Title 24 Chapter 16. Applicant will not engage in valet parking that results in vehicles parked in residential parking spaces.

## 3. **Music / Dancing / Entertainment.**

- a. Applicant agrees to ensure that sounds originating from within the establishment are mitigated by installing adequate soundproofing.
- b. Applicant shall not produce any sound, noise, or music of such intensity that it may be heard in any premises other than the licensed establishment in accordance with DC Code § 25-725.
- c. In order to mitigate noise on an outdoor patio, summer garden, and/or rooftop deck the following steps will be taken:
  - i. A fence or other barrier will enclose the entire perimeter where possible;
  - ii. No fewer than two signs will be clearly posted to remind guests to keep their voices at normal speaking volume;
  - iii. Staff will monitor the outdoor area to make sure guests do not raise their voices above normal speaking tones; and
  - iv. Potted plants, trees, fountains, or other types of noise mitigation techniques will be

incorporated into the decor.

- v. Applicant may offer only the following types of entertainment on its roof deck and/or sidewalk café: unamplified music (e.g., acoustic guitar, wind ensemble, a capella singing, muted trumpet, saxophone, string (harp), electric piano, flute, upright bass, and drum instruments with brushes (no sticks)) and spoken word performances utilizing a small PA system (e.g., comedy show, poetry reading). Other types of entertainment, including but not limited to amplified music and disc jockeys, shall not be permitted on Applicant's roof deck and sidewalk café.
  - d. If the licensed establishment incurs two valid noise complaints during any six-month period, the ANC may, upon a vote at a regular and properly-noticed monthly meeting, elect to restrict the hours that the establishment may offer entertainment on the rooftop summer garden and/or the public space patio to an end point as early as 8:00pm. Such restriction shall remain in place for six months and will automatically expire after those six months have elapsed, provided there have been no further valid noise complaints during that six-month period. Applicant agrees that it shall not challenge such restriction provided that the ANC has identified a sufficient number of valid noise complaints during the six-month period in question.
  - e. For purposes of Section 3(d), "valid noise complaint" means (1) A complaint made to ABRA where an ABRA inspector or investigator has investigated the complaint and confirmed that the establishment is in violation of any DC noise ordinance and/or Section 3(b) of this Settlement Agreement; or (2) A written citation issued by the DC Metropolitan Police Department for a violation of any DC noise ordinance. In the event that both ABRA and the DC Metropolitan Police Department issue a written violation for an instance that occurs on the same day, such event shall only represent one "valid noise complaint" for purposes of this Settlement Agreement.
  - f. The hours of operation for the rooftop deck and public space patio are limited until 11:00 pm Sunday through Thursday evenings and 12:00 am on Friday and Saturday evenings. The sale and consumption of alcoholic beverages must end at that time and the deck and patio must be cleared of all patrons within ten (10) minutes.
  - g. The ANC agrees to reasonably consider all requests by Applicant for extended rooftop and/or public space patio hours on evenings before federal holidays and other special events, provided that Applicant requests such an extension with sufficient notice for the ANC to properly consider the request (e.g., at least a month in advance).
  - h. Applicant may offer facilities for dancing for patrons only with an entertainment endorsement, which the ANC agrees to support, and may have recorded and background music without an entertainment endorsement. "Entertainment" means live music or any other live performance by an actual person, including live bands, karaoke, comedy shows, poetry readings, and disc jockeys. The term "entertainment" shall not include the operation of a jukebox, a television, a radio, or other prerecorded music.
  - i. The kitchens for all CR license holders shall remain open and operational up until at least one hour prior to closing.
4. **Cooperation with ANC 6A.** Applicant agrees to work on resolving issues preventing Applicant from fulfilling its obligations under this Agreement with all of the following: the Single Member District (SMD) ANC Commissioner within whose boundaries the establishment is located, the Chair or Co-Chairs of the ABL Committee, the Chair of the ANC, and other Commissioners whose SMDs are adjacent to the location of the establishment.
5. **Review/Modification of Settlement Agreement**
- a. The ANC agrees that its Alcoholic Beverage Licensing ("ABL") Committee will, upon request by Applicant, review and discuss this Settlement Agreement at a regularly-scheduled meeting no less than every six (6) months and no more than every twelve (12) months from the date this Agreement is approved by the Board. At such meetings, the ABL Committee shall consider whether any terms

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of the Agreement should be modified and make such recommendation(s) to the ANC for consideration and a vote.

- b. The parties agree that, if changes to this Agreement are not mutually agreed upon, the initial time under which the Applicant may submit a request to ABRA for termination or amendment of this Settlement Agreement pursuant to D.C. Code § 25-446 shall be Applicant's next license renewal period, not at least four years after the entry of this Agreement, and that the ANC will not challenge any request to terminate or amend based on the four-year requirement contained in D.C. Code § 25-446(d)(2)(B).

**6. Miscellaneous.**

- a. Applicant shall post a copy of this Settlement Agreement in the establishment in conjunction with the posting of its alcoholic beverage license.
- b. Applicant will operate in compliance with all applicable DC laws and regulations.

**7. Enforcement.**


- a. If either party hereto believes in good faith that Applicant is in violation of this Agreement, written notice specifying the alleged violation shall be delivered to Applicant and Applicant shall have ten (10) days after receipt of such written notice to come into compliance with this Agreement or respond to said alleged notice of default. "Written notice" under this paragraph shall include e-mail.

**In Witness Whereof**

The parties have affixed hereto their hands and seals.

**Applicant:**

By: KAMAL B. ALI Date: 1-5-17

Signature: 

**Advisory Neighborhood Commission 6A Representative:**

By: Jay Williams, Co-Chair, ANC 6A ABL Committee Date: 01/12/17

Signature: 