

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

In the Matter of:

Donahue, LLC
t/a Donahue

Application for Substantial Change
to Retailer's Class CT License

at premises
1338 Wisconsin Avenue, NW
Washington, D.C. 20007

Case No.: 19-PRO-00121
License No.: ABRA-115150
Order No.: 2020-088

Donahue, LLC, t/a Donahue, Applicant

Rick Murphy, Chairperson, Advisory Neighborhood Commission (ANC) 2E

Cheryl Gray, President, Citizens Association of Georgetown (CAG)

Terry Edmondson, on behalf of A Group of Five or More Individuals

BEFORE: Donovan Anderson, Chairperson
James Short, Member
Bobby Cato, Member
Rema Wahabzadah, Member
Rafi Crockett, Member

**ORDER ON SETTLEMENT AGREEMENT, WITHDRAWAL OF ANC 2E'S AND
CAG'S PROTESTS AND DISMISSAL OF A GROUP OF FIVE OR MORE
INDIVIDUALS' PROTEST**

The Application filed by Donahue, LLC, t/a Donahue, for a Substantial Change to its Retailer's Class CT License, having been protested, came before the Alcoholic Beverage Control Board (Board) for a Roll Call Hearing on November 25, 2019, in accordance with D.C. Official Code § 25-601 (2001).

The official records of the Board reflect that the Applicant, ANC 2E, and CAG entered into a Settlement Agreement (Agreement), dated January 20, 2020, that governs the operations of the Applicant's establishment.

The Agreement has been reduced to writing and has been properly executed and filed with the Board. The Applicant; Chairperson Rick Murphy, on behalf of ANC 2E; and Cheryl Gray, on behalf of CAG; are signatories to the Agreement.

This Agreement constitutes a withdrawal of the Protests filed by ANC 2E and CAG of this Application.

In addition, the Board dismissed the Protest of the Group of Five or More Individuals pursuant to D.C. Official Code § 25-609(b), which states that "...In the event that an affected ANC submits a settlement agreement to the Board on a protested license application, the Board, upon its approval of the settlement agreement, shall dismiss any protest of a group of no fewer than 5 residents or property owners meeting the requirements of § 25-601(2)..."

Accordingly, it is this 5th day of February, 2020, **ORDERED** that:

1. The Application filed by Donahue, LLC, t/a Donahue, for a Substantial Change to its Retailer's Class CT License, located at 1338 Wisconsin Avenue, NW, Washington, D.C., is **GRANTED**;
2. The Protests of ANC 2E and CAG in this matter are hereby **WITHDRAWN**;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 modifications:

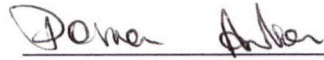
Subsection 3(A) (Hours of Operation and Sales, Service & Consumption of Alcoholic Beverages) – This Subsection shall be removed.

Section 13 (Binding Effect) – The following language shall be removed: "and assigns."


The parties have agreed to these modifications.

4. The Protest of the Group of Five or More Individuals is **DISMISSED**; and
5. Copies of this Order shall be sent to the Applicant, ANC 2E, CAG, and Terry Edmondson, on behalf of the Group of Five or More Individuals.

District of Columbia
Alcoholic Beverage Control Board



Donovan Anderson, Chairperson




James Short, Member



Bobby Cato, Member

Rema Wahabzadah, Member



Rafi Crockett, 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 14th 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).

**SETTLEMENT AGREEMENT
BETWEEN DONAHUE LLC, ADVISORY NEIGHBORHOOD COMMISSION 2E, AND THE
CITIZENS ASSOCIATION OF GEORGETOWN**

THIS SETTLEMENT AGREEMENT ("Agreement") is made on this 20th day of January, 2020 by and between Donahue LLC ("Applicant"), Advisory Neighborhood Commission 2E ("ANC2E") and The Citizens Association of Georgetown ("CAG"), also referred to collectively as the "Parties."

RECITALS

Whereas, the Applicant has applied to the Alcoholic Beverage Regulation Administration for the transfer of an existing Class "C" Tavern License ("License") with Summer Garden Endorsement for the premises located at 1338 Wisconsin Avenue, NW ("Premises");

Whereas, the Parties wish to enter into a Settlement Agreement pursuant to D.C. Official Code § 25-446 to address concerns related to peace, order and quiet;

Whereas, this Settlement Agreement is intended to replace in its entirety any and all previously-existing Settlement Agreements for the Premises or between the Parties, and all such previous agreements are hereby declared superseded, null and void, and of no further effect.

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. **Occupancy.** The establishment's total occupancy load is 115, which is inclusive of the 85 seats and 100 patron occupancy load in the interior and 15 patron occupancy load on the Summer Garden.

However, no more than twelve (12) times per year, during private events hosted at the establishment, the Applicant may operate using the maximum occupancy load stated on its Certificate of Occupancy (not to exceed 15 patrons on the Summer Garden and not to exceed 170 total occupancy load). The Applicant may avail itself to the additional occupancy during a private event provided that the event attendees are limited to those who have RSVP'd for the event and the premises are closed to the general public for the duration of the event.

3. Hours of Operation and Sales, Service & Consumption of Alcoholic Beverages. Applicant agrees that its hours of operation and sales, service & consumption of alcoholic beverages shall be as follows:

- Sunday through Thursday: 11:00am – 1:30am; and
- Friday and Saturday: 11:00am – 2:30am.

Exceptions to the stated hours shall be granted for:

A. 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; and

C. On January 1 of each year Applicant may operate until 3:00am.

Alcohol sales shall end 30 minutes prior to closing ("last call"). However, patrons may remain on the Premises and finish consuming any alcoholic beverages purchased at or prior to last call until the end of the hours of operation.

4. Summer Garden. Applicant may hold a Summer Garden Endorsement on its ABC license. There shall be one Summer Garden on the premises. The Summer Garden maximum occupancy load shall not exceed 15 patrons. Applicant agrees that its hours of operation and sales, service & consumption of alcoholic beverages on the Summer Garden shall be as follows:

- Sunday through Thursday: 11:00am – 1:30am; and
- Friday and Saturday: 11:00am – 2:30am.

5. Noise & Sound Mitigation Techniques.

- A. No music played inside the Premises nor noise emanating from the Premises (including the Summer Garden) shall be audible outside of the Premises on O Street, NW; Wisconsin Avenue, NW; or N Street, NW (including hotels and residences fronting on said streets), at any time except while doorways are open to provide ingress or egress to and from the interior of the Premises. Doors that provide access to the interior of the Premises, including door between the interior and the Summer Garden shall be kept closed except when persons are in the act of entering or existing the interior of the Premises.
- B. Applicant agrees to construct an adjustable pergola that covers the Summer Garden to prevent noise emanating from the premises to be heard in surrounding residences. The pergola shall be the same height at the existing walls surrounding the Summer Garden. The pergola's louvers shall be adjustable allowing for it to rotate in such a manner so that when the pergola is closed, there shall be no gaps or openings between the pergola and the existing walls, essentially creating an enclosed room. The pergola shall be constructed of wood. The interior facades of the brick and concrete walls separating the Summer Garden from the properties to the south, west, and north shall be entirely covered with commercial grade Sound Silencer acoustical panels (or another brand of similar quality and absorption ability). The Summer Garden shall at all times be furnished with upholstered and cushioned chairs and sofas that provide seating for no fewer than 15 patrons.
- C. Applicant agrees that the pergola shall be closed at 9:00pm on all evenings when the Summer Garden is in use. However, after October 31, 2020, if Applicant has demonstrated to the reasonable satisfaction of ANC2E and CAG that the noise emanating from Summer Garden's operations has not disturbed nearby residents, the Parties shall reevaluate the aforementioned closing time for the pergola on weekends, potentially extending it until not later than 10:00pm on Friday and Saturday. For the purposes of this section "nearby residents" include those who live on the 3200 block of O

Street, NW; 3200 block of N Street, NW; and the 1300 block of Potomac Street, NW, between N and O Streets, NW.; and

D: Applicant may install two speakers on the western wall of the Summer Garden which will be pointed at the Summer Garden. The speakers contemplated are "Sonance Professional Series 4" Surface Mount Speakers," however, Applicant may substitute another brand of speaker similar quality and size. In no instance shall the LF Driver of any speaker selected exceed 4 inches in size. No subwoofers shall be installed on the Summer Garden.

6. License Endorsements. The application does not provide for Entertainment, Cover Charge, or Dancing Endorsements and no such endorsements will issue as a result of the application as filed.

7. Patrons and Security.

- A. Applicant shall take reasonable and immediate action to prevent its patrons from causing unreasonable noise, disturbances, loitering, or engaging in illegal activity in the area immediately outside of the Premises; and
- B. Applicant shall maintain a clearly visible sign, with letters that are at least four inches tall, which measures at least 8 1/2 x 11 inches, near the exits of the Premises which encourages its patrons to be respectful of the surrounding neighbors and leave in a quiet, orderly manner.

8. Trash & Public Space.

- A. Trash pickup will occur one time per day, seven days a week except on federal holidays and/or when trucks cannot access the premises because of inclement weather;
- B. Trash pickup shall not occur between the hours of 10:00pm and 7:00am; and
- C. The public space adjacent to and in front of the premises is to be kept tidy at all times, and litter is to be removed by the Applicant's staff at least three times per day.

9. Cleaning and Vermin Control Measures.

- A. Applicant will maintain a contract with a professional, licensed cleaning company to provide for routine cleaning of the Premises, including the kitchen hood, as needed to maintain cleanliness. Regular routine hood and exhaust cleaning shall not occur prior to 8:00am; and
- B. Applicant will maintain a contract with a professional, licensed rat, pest, and vermin control company to provide for routine control for the Premises as needed to control pests.

10. Deliveries. Deliveries shall not be earlier than 7:00am nor later than 7:00pm.

11. No Third Party Promoters. No third party promoters will conduct business on the Premises and cover charges will never be collected to enter the Premises or partake in the Applicant's offerings. "Third party promoter" does not include individuals hosting private events or individuals accepting donations on behalf of or in partnership with charitable organizations on the Premises.

12. Point of Contact. At all times, at least one member of Applicant's staff ("Point Person") who is on-site will be responsible for acting in a responsive manner if/when a concern arises with

neighboring residents. This Point Person shall understand the terms of this Agreement; be empowered to at all times enforce the terms set forth herein; and will contact Applicant's owners as the situation necessitates.

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

In consideration of the agreements set forth above, ANC2E and CAG shall, upon approval of this agreement by the Alcoholic Beverage Control Board, agree to withdraw their Protests of the application for the transfer of the License at the Premises.

[signatures on the following page]

IN WITNESS WHEREOF, The Parties have executed this Agreement as of the date first above written.

ADVISORY NEIGHBORHOOD COMMISSION 2E

By: Richard T. Murphy, Jr. Date: 01/21/2020
Rick Murphy, ANC 2E03, Chair

THE CITIZENS ASSOCIATION OF GEORGETOWN

By: _____ Date: _____
Cheryl Gray, President

DONAHUE LLC


By: [Signature] Date: 01-20-2020
Noe T. Landini, Managing Member

IN WITNESS WHEREOF, The Parties have executed this Agreement as of the date first above written.


ADVISORY NEIGHBORHOOD COMMISSION 2E

By: _____ Date: _____
Rick Murphy, ANC 2E03, Chair

THE CITIZENS ASSOCIATION OF GEORGETOWN


By: _____ Date: 1-22-20 _____
Cheryl Gray, President

DONAHUE LLC


By: _____ Date: 01-20-2020 _____
Noe T. Landini, Managing Member