

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

In the Matter of:)	
)	
Foggy Bottom Grocery, LLC)	
t/a FoBoGro)	
)	
Application for Renewal of a)	Case No.: 17-PRO-00086
Retailer's Class B License)	License No.: ABRA-082431
)	Order No.: 2018-139
at premises)	
2140 F Street, NW)	
Washington, D.C. 20037)	

Foggy Bottom Grocery, LLC, t/a FoBoGro (Applicant)

William Kennedy Smith, Chairperson, Advisory Neighborhood Commission (ANC) 2A

BEFORE: Donovan Anderson, Chairperson
Nick Alberti, Member
Mike Silverstein, Member
James Short, Member
Donald Isaac, Sr., Member
Bobby Cato, Member
Rema Wahabzadah, Member

**ORDER ON SETTLEMENT AGREEMENT AND
WITHDRAWAL OF ANC 2A'S PROTEST**

The Application filed by Foggy Bottom Grocery, LLC, t/a FoBoGro, for renewal of its Retailer's Class B License, having been protested, came before the Alcoholic Beverage Control Board (Board) for a Roll Call Hearing on January 8, 2018, and a Protest Status Hearing on February 14, 2018, in accordance with D.C. Official Code § 25-601 (2001).

The official records of the Board reflect that the Applicant and ANC 2A entered into a Settlement Agreement (Agreement), dated March 26, 2018, 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 Chairperson William Kennedy Smith, on behalf of ANC 2A, are signatories to the Agreement.

This Agreement constitutes a withdrawal of the Protest filed by ANC 2A of this Application.

Accordingly, it is this 4th day of April, 2018, **ORDERED** that:

1. The Application filed by Foggy Bottom Grocery, LLC, t/a FoBoGro, for renewal of its Retailer's Class B License, located at 2140 F Street, NW, Washington, D.C., is **GRANTED**;
2. The Protest of ANC 2A in this matter is hereby **WITHDRAWN**;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 modifications:

Section 1 (Underage Drinking) – The language “specifically by following best practices identified by the Alcoholic Beverage Regulation Administration” shall be replaced with the language “as in accordance with District laws and regulations.”

Section 2 (Noise and Loitering) – The last sentence shall be modified to read as follows: “FoBoGro shall make the audit report available to the ABC Board upon request.”

Section 7 (Notice and Opportunity to Cure) – The language “for seeking a Show Cause Order from the ABC Board” shall be replaced with the language “for filing a Complaint with the ABC Board.”

The parties have agreed to these modifications.

4. Copies of this Order shall be sent to the Applicant and ANC 2A

District of Columbia
Alcoholic Beverage Control Board

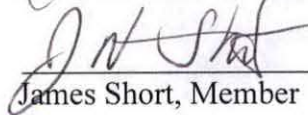


Donovan Anderson, Chairperson

Nick Alberti, Member

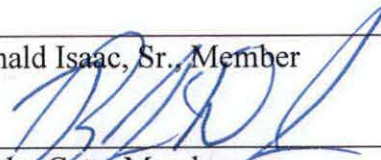


Mike Silverstein, Member

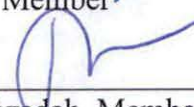


James Short, Member

Donald Isaac, Sr., Member



Bobby Cato, Member



Rema Wahabzadah, 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

This Settlement Agreement is made on this 26th day of March, 2018, by and between Foggy Bottom Grocery, LLC t/a FoBoGro ("the Licensee") and Advisory Neighborhood Commission 2A ("the ANC"):

WITNESSETH

WHEREAS, the Licensee's application for renewal of its Class B Alcoholic Beverage Control (ABC) license for premises 2140 F Street, NW is pending before the District of Columbia ABC Board; and,

WHEREAS, said premises is within the jurisdictional boundaries of the ANC and the ANC has protested this application; and

WHEREAS, the parties desire to enter into this Settlement Agreement in order to reflect their understandings regarding certain aspects of the Licensee's operations;

NOW, THEREFORE, in consideration of the recitals set forth above and the terms and conditions provided below, the parties agree as follows:

1. Underage Drinking

FoBoGro shall ascertain the true age of all patrons desiring to purchase alcoholic beverages from the establishment, specifically by following best practices identified by the Alcoholic Beverage Regulation Administration.

2. Noise and Loitering

FoBoGro shall curtail noise emanating from the establishment, specifically noise taking place between the hours of 10pm and 7am. The establishment shall direct its employees to instruct individuals sitting on the wall in front of the business or loitering on the patio area to disperse. In addition, the establishment shall post "no loitering" signage in a conspicuous place at the front of the business – as well as signage indicating that items purchased at the establishment shall not be consumed on or adjacent to the premises.

The establishment shall minimize its usage of outdoor space between the hours of 10pm and 7am – other than to meet DC code for removal of waste – in order to minimize noise impacts on surrounding residents from the usage of dumpsters, trash cans, and any other equipment belonging to FoBoGro.

3. Property Maintenance

FoBoGro will work with its landlord, The George Washington University, to maintain the condition of its leased property and the public space in the front of its establishment in order to ensure that the establishment's operations do not have an adverse impact on the surrounding environment. Specifically, the establishment shall encourage the University to erect a barrier running west-to-east

across the total width of the adjacent vacant lot (2138 F Street), in order to curtail cut-through traffic into the alley system behind the establishment.

FoBoGro, otherwise subject to its lease, shall not store any of its property (e.g., ice chests) on the vacant lot and shall take due care to ensure that its trash cans and other equipment in the rear of the establishment are maintained in an orderly manner.

4. Parking & Loading

Establishment shall work with the University, the Metropolitan Police Department, and Department of Public Works in order to request continual enforcement of the loading zone regulations, and shall discourage its patrons or vendors from double-parking on F Street NW.

FoBoGro shall advise its vendors to conduct deliveries to the establishment within the hours specified on the loading zone reserved for such activity directly in front of the property on F Street. At least quarterly per calendar year, on dates coinciding with semesters of the University, the establishment shall conduct an audit of all of its deliveries for a period of one week during operating business hours — noting for each record the vendor, the time of arrival/departure if after the loading zone posted hours, and whether the vendor was parked in the loading zone area. Upon request, the ANC chairman or SMD Commissioner shall have the opportunity to review such audit information and engage in consultation on any delivery concerns that may arise.

5. Litter Abatement and Vector Control

The establishment shall clean trash from the area directly in front of the premises at a minimum interval of every six (6) hours during its business day. Establishment shall maintain a contemporaneous record of cleanings performed by its employees pursuant to this section.

Establishment shall conduct vector control in accordance with best practices as established by the D.C. Department of Public Works (DPW) and the D.C. Department of Health.

6. Licensee Point of Contact

FoBoGro shall supply to the ANC, in the context of section 7 of this agreement, a point of contact with managerial authority and regular on-site presence that is to be made available in order to address issues of community concern. Once the individual originally cited in this agreement ceases to be an eligible point of contact for the establishment, FoBoGro shall serve notice on the ANC of the name and contact information for his or her replacement and shall do so during any ABRA license period on the departure of all subsequent points of contact.

7. Notice & Opportunity to Cure

In the event that either party believes that the other materially breached any obligations under this Agreement, such party shall give written notice to the other of the existence of the breach and the specific nature thereof. The party alleged to be in breach shall have ten (10) days from the receipt of notice to cure the alleged breach. If the breach is not cured within the notice period—or, with respect to a breach which reasonably requires more than ten (10) days to cure, efforts to cure the

breach have not been commenced—failure shall constitute a cause for seeking a Show Cause Order from the ABC Board pursuant to D.C. Official Code § 25-447. In the case of a continuing violation, no notice or opportunity to cure need be provided for subsequent violations of this Agreement, following the initial provision of notice. Any notices required to be made under this Agreement shall be in writing and sent either via e-mail or U.S. mail, postage prepaid, to the parties to this Agreement at the addresses below. Notice shall be deemed given as of the time of receipt or refusal of receipt.

If to Licensee: Steuart Martins
 2140 F Street NW
 Stu@PirateVentures.com
 (202) 779-1100

If to the ANC: William Kennedy Smith, Chairman
 Advisory Neighborhood Commission 2A
 2301 L Street, NW
 Washington, DC 20037
 2A04@anc.dc.gov

Either party may change its notice address by written notice to the other. Failure to give notice shall not constitute waiver or acquiescence to the violation, but notice shall be a prerequisite to the filing of a complaint with the ABC Board or any other enforcement action.

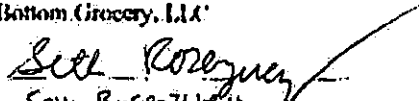
9. Incorporation of Settlement Agreement

The Licensee acknowledges that the ANC is relying on the foregoing commitments in determining to withdraw the protest which heretofore has been filed with the ABC Board. The parties jointly request that this Agreement be incorporated into the ABC Board's order approving the renewal of this Class B license application.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year first above written.


Foggy Bottom Grocery, LLC

By:


Seth Rosenzweig, Owner

ADVISORY NEIGHBORHOOD COMMISSION 2A

By:


William Kennedy Smith, Chairman