

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

In the Matter of:)

Biergarten Haus, Inc.)
t/a Biergarten Haus)

Applicant for Renewal of a)
Retailer's Class CT License)

at premises)
1355 H Street, NE)
Washington, D.C. 20002)

Case No.: 19-PRO-00125
License No.: ABRA-083695
Order No.: 2019-907

Biergarten Haus, Inc., t/a Biergarten Haus (Applicant)

Nicholas Alberti, Co-Chair, Advisory Neighborhood Commission (ANC) 6A ABL
Committee

Pleurat Hundozi, Dmitri White and Sharon Stewart, A Group of Three Individuals

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

**ORDER GRANTING REINSTATEMENT OF APPLICATION AND ANC 6A, ON
DISMISSAL OF THE GROUP OF THREE INDIVIDUALS' PROTEST, ON
WITHDRAWAL OF ANC 6A'S PROTEST, AND ON SETTLEMENT
AGREEMENT**

On December 2, 2019, a Roll Call Hearing was held where the Alcoholic Beverage Control Board's (Board) Agent dismissed the Application and ANC 6A for failure to appear. The Board's Agent also dismissed the Group of Three Individuals for failing to meet the standing requirements needed to file a protest.

Prior to the Roll Call Hearing, but unbeknownst to the Board's Agent, the Applicant and ANC 6A submitted a Settlement Agreement for the Board's review and approval. The Board takes this opportunity to reinstate the Application and ANC 6A in conjunction with its consideration of the Settlement Agreement. The Board affirms the Board Agent's dismissal of the Group of Three Individuals.

The official records of the Board reflect that the Applicant and ANC 6A have entered into a Settlement Agreement (Agreement), dated January 29, 2010, 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 and former Commissioner Kelvin J. Robinson, on behalf of ANC 6A, are signatories to the Agreement.

Accordingly, it is this 5th day of December, 2019, **ORDERED** that:

1. The Application filed by Biergarten Haus, Inc., t/a Biergarten Haus, for renewal of its Retailer's Class CT License, located at 1355 H Street, NE, Washington, D.C., is **GRANTED**;
2. The Protest of ANC 6A in this matter is hereby **WITHDRAWN**;
3. The Protest of the Group of Three Individuals in this matter is hereby **DISMISSED**;
4. The above-referenced Settlement Agreement submitted by the Applicant and ANC 6A to govern the operations of the Applicant's establishment is **APPROVED** and **INCORPORATED** as part of this Order, except for the following modifications:

Section 5 (Modifications) – At the end of the first sentence, the following language shall be added: “or as required by District law.”

Subsection 7(b) (Enforcement) – The language “petition the ABC Board for a “show cause” hearing pursuant to 23 DCMR 1513.5” shall be replaced with the language “file a complaint with the ABC Board.”

Subsection 7(c) (Enforcement) – The language “and its assigns” shall be replaced with the language “and its successors.”


The Applicant and ANC 6A have agreed to these modifications.

4. Copies of this Order shall be sent to the Applicant, ANC 6A, and Pleurat Hundozi, Dmitri White and Sharon Stewart.

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).

Made this 29 day of January, 2010
by and between
Biergarten Haus
1355 H Street, NE
Washington DC 20002

and

Advisory Neighborhood Commission 6A

Preamble

Through this agreement, both parties aim to create an environment whereby the applicant may operate as a viable contributing business in the ANC 6A community, while concurrently curtailing any adverse effects a business such as the applicant's could have on the surrounding neighborhood.

The applicant agrees to work regularly with the ANC 6A, neighborhood associations, and residents to ensure the business operations do not adversely affect the surrounding neighborhood. All parties believe the statements and provisions contained in this agreement are reasonable and must become wholly integrated into the day-to-day operation of the business establishment.

Further, ANC 6A acknowledges that this Cooperative Agreement shall be presented to all Class CR applicants within the boundaries of ANC 6A. The community and merchants have agreed that it is in all the parties best interests to standardize the requirements for the operations of restaurant, tavern, and nightclub establishments within the boundaries of ANC 6A. To the greatest extent possible, the ANC will not insist upon or allow any significant changes to this Cooperative Agreement that will unfairly benefit or, conversely, cause competitive disadvantage to, any individual applicant or establishment within the ANC, unless such change is required by the District of Columbia government, other authorized governmental bodies, or rule of law.

The community and merchants understand and agree that the changes imposed upon the operations of all licensees within the ANC as set forth herein are important measures to protect the safety, peace, order and quiet of the neighborhood, its residents, and businesses.

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 immediately before business hours and again between 5:00 p.m. and 8:00 p.m.).
 - b. Maintaining regular trash garbage removal service, regularly remove trash from the trash and dumpster area, and see that the trash and dumpster area remain clean.

- c. Applicant shall deposit trash and garbage only in rodent-proof dumpsters, and shall see 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 curb in front of the establishment to keep them free of trash and to remove snow and ice from the sidewalk and comply 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.
- e. Promptly removing or painting over any graffiti written on the exterior walls of the property.

2. Business Operations and Practices:

- a. Applicant will not, directly or indirectly, sell or deliver alcohol to any intoxicated person, or to any person of intemperate habits, or to any person who appears to be intoxicated. A person of intemperate habits shall be defined as:
 - i. Any person convicted of alcohol offences or alcohol-related crimes three times or more in any one year; and
 - ii. Who has been so identified to the licensee by the Metropolitan Police Department by giving a photo and name to the licensee.
- 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 bring alcohol into the establishment from outside sources, and at no time exits the establishment with alcoholic beverages.
- d. Applicant will not provide or sell alcoholic beverages "to go." Applicant agrees not to promote or participate in bar or pub "crawls" or any other event of this nature.
- e. The licensed establishment will be managed by the applicant in person or a board licensed manager.
- f. Applicant, and all employees of the applicant, shall attend and complete an alcoholic beverage server training course/seminar.
- g. Applicant shall post a notice kept in good repair and visible from point of entry a sign, which states:
 - i. Proper ID required (proof of age 21 minimum to be served and assurances that ID's will be checked at all times prior to serving alcoholic beverages to patrons).
 - ii. Prohibition against selling alcohol to minors.
 - iii. Request to patrons to not 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.
 - v. Request that customers do not contribute to panhandlers.
- h. Applicant shall make reasonable efforts 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 (MPD) to remove loiterers if they refuse Applicant's request to move on,
 - iii. Calling the Metropolitan Police Department if illegal activity is observed,
 - iv. Keeping a written record of dates and times (i.e. log) when the MPD was called for assistance.
- i. Applicant's log shall be provided to the Board and, for good cause shown to the Board, to any valid protestant during hearings involving future renewals or contested proceedings involving the Applicant's license.
- j. Applicant shall not support of the installation of pay phones outside of the establishment on their property.

- k. Applicant will utilize and maintain high-intensity flood-lights on the exterior of its premises so as to fully light any abutting alleyway from dusk until dawn.
- l. Applicant shall provide valet parking services only with valet parking services as defined licensed and in compliance with Title 24 DCMR Chapter 16.

3. Music / Dancing / Entertainment:

- a. Applicant agrees to ensure that sounds originating from within the establishment are mitigated by installing adequate sound proofing.
- 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 Official Code Title 25-725.
- c. In order to mitigate noise on the patio or summer garden the following steps will be taken:
 - 1) The hours for the patio will be until 11PM on weekdays and 12AM on weekends.
 - 2) Applicant shall not offer any type of live or pre-recorded music on the patio with the exception of a single accordion player.
 - 3) A fence or other barrier will enclose the entire perimeter.
 - 4) No fewer than two signs will be clearly posted to remind guests to keep their voices at normal speaking volume.
 - 5) Staff will monitor the outdoor area to make sure guests do not raise their voices above normal speaking tones.
 - 6) Potted plants, trees, fountains or other types of noise mitigation techniques will be incorporated into the summer garden decor.
- d. If residents have no noise complaints from date of opening to June 15, 2010 and the licensee has a record of good conduct during this time period, the hours for service on the patio may be extended to be consistent with the licensee's normal business hours. If during this same period, the ANC receives numerous complaints regarding the accordion player, applicant will discontinue all live music in outdoor space.
- e. Applicant shall obtain an entertainment endorsement to have a cover charge. For purposes of this clause, a cover charge is a fee required by an establishment to be paid by patrons for admission that is not directly applied to the purchase of food or drink.
- f. Applicant may offer facilities for dancing for patrons only with an entertainment endorsement 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.

4. Cooperation with ANC 6A. Applicant agrees to work on resolving issues preventing the applicant from fulfilling its obligations under this cooperative agreement with all of the following: the Single-Member District (SMD) ANC Commissioner within whose boundaries the establishment is located, the Chair of the ABL Committee, and other Commissioners whose SMD's are adjacent to the location of the establishment.

5. Modifications. This agreement can be modified only by mutual agreement of all the parties with the approval of the ABC Board. In the case of ANC6A, if applicant desires to modify the terms of this agreement, the applicant, prior to implementing the change(s), shall receive written agreement from ANC6A after a majority of the commissioners shall have voted in favor of the changes at a full public meeting.

6. Miscellaneous:

- a. Applicant certifies that it does not owe more than \$100 to the District of Columbia government as the result of any fine, fee or penalty interest or past due tax.

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

7. Enforcement:

- a. If either party hereto believes in good faith that the applicant is in violation of this agreement, written notice specifying the alleged violation shall be delivered to the applicant and the 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.
- b. Applicant and the ANC 6A Commission agree to enter into this agreement. If the applicant should breach the conditions of this agreement, it is understood by all parties that the ANC 6A, and/or its committees, or others shall immediately petition the ABC Board for a "show cause" hearing pursuant to 23 D.C.M.R. 1513.5.
- c. This cooperative agreement is binding on the applicant and its assigns and will continue in force for any and all subsequent license holders at this location.

In Witness Whereof

The parties have affixed hereto their hands and seals.

Applicant:

By: Aaron McIovern, Biergarten Haus, LLC Date: 3/2/2010

Signature: 

Advisory Neighborhood Council 6A Representative:

By: Kevin J. Robinson Date: 3/3/2010

Signature: 

ABC Board-Licensed Manager:

By: _____ Date: _____

Signature: _____