

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

**In the Matter of:** )  
 )  
Whenever Possible, LLC )  
t/a Mary )  
 )  
Applicant for a New )  
Retailer's Class CR License )  
 )  
at premises )  
2100 2nd Street, SW )  
Washington, D.C. 20024 )  
 )

License No.: ABRA-113534  
Order No.: 2019-553

Whenever Possible, LLC, t/a Mary, Applicant

Commissioner Gail Fast and Dr. Coralie Farlee, on behalf of Advisory Neighborhood Commission (ANC) 6D

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

---

**ORDER ON SETTLEMENT AGREEMENT**

---

The official records of the Alcoholic Beverage Control Board (Board) reflect that Whenever Possible, LLC, t/a Mary, Applicant for a new Retailer's Class CR License and ANC 6D have entered into a Settlement Agreement (Agreement), dated July 15, 2019, 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 Commissioner Gail Fast and Dr. Coralie Farlee, on behalf of ANC 6D, are signatories to the Agreement.

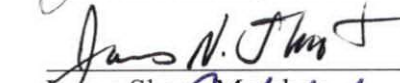
Accordingly, it is this 17th day of July, 2019, **ORDERED** that:

1. 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; and
2. Copies of this Order shall be sent to the Applicant and ANC 6D.

District of Columbia  
Alcoholic Beverage Control Board

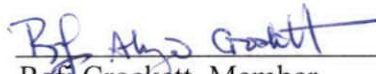
  
\_\_\_\_\_  
Donovan Anderson, Chairperson

  
\_\_\_\_\_  
Mike Silverstein, Member

  
\_\_\_\_\_  
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 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).

★ ★ ★ **Advisory Neighborhood  
Commission 6D**

**SETTLEMENT AGREEMENT**

THIS SETTLEMENT AGREEMENT (“Agreement”) is made on this 15th day of July 2019 by and between Whenever Possible, LLC t/a Mary (“Applicant”), at 2100 2<sup>nd</sup> Street, SW, Washington, DC 20024 ABRA License # 113534 and Advisory Neighborhood Commission 6D (“the ANC”), (collectively, the “Parties”).

**PREAMBLE**

Through this agreement both parties aim to create an environment in which the Applicant may operate as a viable contributing establishment in the ANC6D community.

**WITNES ETH**

WHEREAS, Applicant has applied for a License Class CR for a business establishment (“Establishment”) serving spirits, wine, and beer, and food, including indoor and outdoor space, with no endorsements located at 2100 2<sup>nd</sup> Street, SW, Washington, D.C. 20024 (“Premises”); and

WHEREAS, the Applicant is encouraged to work regularly with ANC6D and its representatives, other neighborhood organizations, and residents to ensure that the business operations facilitate the enjoyment of the surrounding neighborhood; and

WHEREAS, the Parties propose entering into a Settlement Agreement pursuant to D.C. Official Code § 25-446 for the operation and maintenance of the Establishment in such a manner as to minimize the effect of the establishment within the ANC on (1) peace, order, and quiet, including the noise and litter provisions set forth in §§ 25-725 and 25-726; and (2) residential parking needs and vehicular and pedestrian safety, and to eliminate the need for a Protest Hearing regarding the license application; and

WHEREAS The Parties agree that any substantial change in operations is considered of great concern to the community which they may bring to the attention of the ABC Board; and

WHEREAS, the Parties have agreed to enter into this Agreement and request that the Alcoholic Beverage Control Board (“ABC Board”) approve the Applicant’s license application conditioned upon the Applicant’s compliance with the terms of this written Agreement; and

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. ***Nature of the Business.*** The Applicant will manage and operate an Establishment serving spirits, wine, and beer, offering a full service restaurant, with indoor space and one summer garden. There shall be no entertainment, dancing or cover charge

endorsements. The hours for music originating in or piped to the summer garden are listed in #3, below. Establishment shall not participate in pub crawls. No signage that is visible outside shall have flashing lights. Provided that advance notice is given to the community and placards are issued, nothing in this section shall prohibit the Applicant from applying for any endorsements, including but not limited to, additional summer garden/sidewalk café.

3. ***Hours of Operation and Sales.***

Unless approved by the board, with advance notice to the community by placarding as required by D.C. Code § 25-421 and § 25-422, the hours of operation of the indoor space and sales, service, and consumption of alcohol in the indoor space shall not exceed:

Sunday through Thursday: 8:00 a.m. - 2:00 a.m.,  
Friday and Saturday: 8:00 a.m. - 3:00 a.m., and

The hours of operation of and sales, service, and consumption of alcohol in the summer garden shall not exceed:

Sunday through Thursday: 8:00 a.m. – 12 a.m.,  
Friday and Saturday: 8:00 a.m. - 2 a.m., and

The hours for music originating in or piped to the summer garden shall not exceed:

Sunday through Thursday: 8:00 a.m. – 12:00 a.m., and  
Friday and Saturday: 8:00 a.m. – 2:00 a.m.

Provided that the applicant may apply for and the ANC will not object to a one-day substantial change permit: (a) on days designated by the DC ABC Board as “Holiday Extension of Hours”; (b) in the event the Council of the District of Columbia or the ABC Board grants licensees in general extended operating hours (such as for Inauguration); and (c) on January 1 of each year operation until 4:00a.m. Applicant may also apply for a one-day substantial change for any endorsements.

Consistent with Alcoholic Beverage Control Board interpretations, “closing hours” shall be construed as the hours at which no patrons shall remain on the premises.

4. ***Floors Utilized and Occupancy.*** Unless approved by the Board, The Applicant will operate its Establishment on the first floor of the building and one summer garden that is immediately adjacent to the building. The Certificate of Occupancy will state the seating and occupant load; however, unless approved by the Board, the Establishment will not exceed a total occupancy load of 250 which includes indoor capacity of a maximum of 147 seats; and one summer garden with 50 seats.

5. ***Summer Garden/Sidewalk Cafe.***

The hours for sales, service and consumption of alcoholic beverages and playing of recorded music in the summer garden are listed in #3, above.

The Summer Garden shall be located contiguous to the establishment and if located adjacent to any public walkway, be delineated by using fencing or other means to separate the Summer Garden area from any public walkway.

The Applicant shall take reasonable measures to ensure that all furniture, fixtures, equipment, or other property of the Establishment and property belonging to patrons is contained within summer garden and does not extend into the pedestrian walkway.

Applicant shall not knowingly permit patrons to leave the premises with open containers, cups, bottles/cans, etc. excepting food and beverages packaged "to go."

6. **Parking Arrangements.** It is a concern of the ANC that the Applicant's operation of the Establishment does not create or exacerbate parking problems within the ANC. The Applicant shall notify patrons (through a website or other means) that there is limited parking in the vicinity and shall provide information about public transportation.

7. **Noise and Privacy.** Applicant shall strictly comply with D.C. Official Code § 25-725. Applicant agrees to take reasonable measures to ensure that music, noise and vibration from the Establishment are not audible in any residential premises. Options for noise mitigation can include: awnings, shrubbery, cinderblock or wooden walls (perhaps with vines), trees in planters, fountains with running water, or other muting or muffling objects.

If operating between the hours of 10 pm and 7 am, Applicant shall inform its patrons by signage or other means that upon exiting the Establishment, that residences are in proximity to the Establishment and urge quiet and decorum by patrons when exiting the Establishment.

The Applicant agrees to monitor sounds from voices and music and other amplified sounds on the summer garden area and agrees to take reasonable measures to address any reasonable concerns raised by nearby residents as soon as possible.

Applicant shall receive all deliveries of food, beverages, and supplies during hours between 7:00 a.m. and 7:00 p.m.

8. **Public Space and Trash.** The Applicant shall participate in the building's trash removal and storage program. The Applicant shall take reasonable steps to enclose its 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 shall take reasonable steps to ensure that the area around the dumpster is kept clean at all times and the dumpster is placed such that it does not encroach on the abutting property owners and so that no garbage is placed on the abutting property. 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. Applicant will contract for regular rodent and pest (insect) abatement. Applicant shall take reasonable measures to have the Establishment and the area immediately around the Premises properly cleaned at the end of each night.

9. **Security.** Applicant shall take reasonable steps to monitor patrons, including, designating a sufficient number of employees to assure adequate security and to control unruly patrons, whether inside the establishment or in the immediate outside area.  
Applicant shall have recording cameras which cover the outside areas and the areas where alcoholic beverages are served. If responsible for the video surveillance equipment, the establishment shall maintain security cameras and (a) Ensure the cameras are operational; (b) Maintain footage for a minimum of 30 days; and (c) Make the security footage available within 48 hours upon the request of ABRA or the Metropolitan Police Department.
10. **License Ownership and Compliance with ABRA Regulations.** Applicant promises to the ANC that it shall abide by all Alcoholic Beverage Regulations Administration (ABRA) regulations regarding the ownership of the license and all other provisions applicable to liquor licensees, and agrees that the ANC shall have standing to ask the ABC Board to enforce any violations of the agreement.
11. **Participation in the Community.** Applicant is encouraged to maintain open communication with the ANC and the community for which the ANC acts.
12. **Notice and Opportunity to Cure.** In the event that any of the parties is in breach of this Agreement, it shall be entitled to reasonable notice and opportunity to cure, as a condition precedent to seeking enforcement of the Agreement. Unless the breach is of an emergency nature or is a repetition of a prior breach, reasonable notice and opportunity shall provide for a cure within 30 days of the date of such notice. If Applicant or the licensee fails to cure within the 30-day period (or, with respect to a breach which reasonably requires more than 30-days to cure, fails to commence cure of such breach and diligently pursues such cure) failure shall constitute a cause for filing a complaint with the ABC Board pursuant to D.C. Official Code § 25-447. The parties do not intend for a violation of any DC law or regulation to also be considered a violation of this Settlement Agreement.

If to Applicant: Whenever Possible, LLC t/a Mary  
2100 2<sup>nd</sup> Street, SW  
Washington, DC 20024  
Attn: Corey Polyoka, Member  
Phone: 443-417-5020  
e-mail: [corey@woodberrykitchen.com](mailto:corey@woodberrykitchen.com)

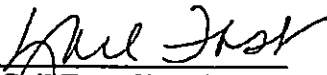
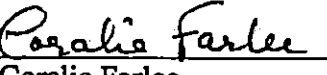

If to Protestant: Advisory Neighborhood Commission 6D  
1101 4<sup>th</sup> Street, SW, Suite W130  
Washington, DC 20024  
Attn: Chair, ANC  
Phone: (202) 202 554-1795  
e-mail: [office@ANC6D.org](mailto:office@ANC6D.org)

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.

- 13. **No Protest.** Upon execution of this Agreement by the Parties and its acceptance by the ABC Board, and in reliance thereupon, the ANC shall refrain from filing a protest of the Applicant's pending license application.

**The ANC:**

**APPLICANT:**

<p><b>Chair, ANC6D</b>   <u>7/15/2019</u>          Gail Fast, SMD01 Date  <b>Chair, ABC Committee, ANC6D</b>   <u>15 July 19</u>          Coralie Farlee Date</p>	<p>Whenever Possible, LLC t/a Mary          By:  <u>7/15/19</u>          Corey Polyoka, Member Date</p>
---	---