

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

In the Matter of:)	
)	
C. Fields Group, LLC	)	License Number: 81908
t/a District Lounge and Grille	)	Order Number: 2010-412
)	
Application for a Substantial Change)	
to a Retailer's Class CR License)	
at premises)	
2473 18th Street, N.W.)	
B)	
Washington, D.C. 20009)	

C. Fields Group, LLC, t/a District Lounge and Grille, Applicant

M. Mindy Moretti, Commissioner, Advisory Neighborhood Commission (ANC) 1C

BEFORE: Nick Alberti, Acting Chairperson
Donald Brooks, Member
Herman Jones, Member
Calvin Nophlin, Member
Mike Silverstein, Member

ORDER ON AMENDMENT TO VOLUNTARY AGREEMENT

The official records of the Alcoholic Control Board (Board) reflect that C. Fields Group, LLC (Applicant), filed an application for a Substantial Change to its Retailer's Class CR License located at 2473 17th Street, N.W., Washington, D.C. The Applicant and Commissioner M. Mindy Moretti, on behalf of ANC 1C, (collectively the "Parties") have entered into an Amendment to Voluntary Agreement (Agreement) dated July 7, 2010, setting forth the terms and conditions that govern 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 M. Mindy Moretti, on behalf of ANC 1C, are signatories to the Agreement.

C. Fields Group, LLC
t/a District Lounge and Grille
License No: 81908
Page 2

Accordingly, it is this 28th day of July 2010, **ORDERED** that:

1. The Application filed by C. Fields Group, LLC, t/a District Lounge and Grille, for a Substantial Change to its Retailer's Class CR license located at 2473 17th Street, N.W., Washington, D.C., is **GRANTED**;
2. This above-referenced Agreement submitted by the Parties to govern the operations of the Applicant's establishment is **APPROVED** and **INCORPORATED** as part of this Order; and
3. Copies of this Order shall be sent to the Applicant and ANC 1C.

District of Columbia
Alcoholic Beverage Control Board

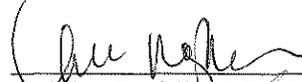


Nick Alberti, Acting Chairperson

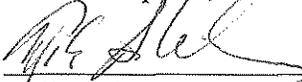


Donald Brooks, Member

Herman Jones, Member



Calvin Nophlin, Member



Mike Silverstein, Member

Pursuant to 23 DCMR § 1719.1 (April 2004), 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, 1250 U Street, N.W., Third Floor, Washington, DC 20009.

Resolution to Amend Voluntary Agreement Between ANC1C and C. Fields Group, LLC t/a District Lounge and Grille

Whereas, the Adams Morgan Advisory Neighborhood Commission (ANC1C) has a voluntary agreement with C. Fields Group, LLC (t/a District Lounge and Grille), License No. 081908; and

Whereas the licensee has applied for a substantial change to their Entertainment Endorsement.

Now Therefore Be It Resolved that the Adams Morgan Advisory Neighborhood Commission agrees to amend the Voluntary agreement between ANC1C and C. Fields Group, LLC (t/a District Lounge and Grille), License No. 081908 to read as follows:

Hours of Entertainment:

Sunday-Tuesday 7pm to 12:30a.m.

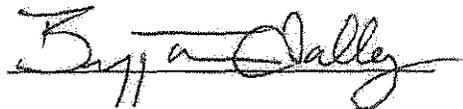
Wednesday and Thursday 7pm till 1:30 a.m.

Friday and Saturday 7pm till 2:30a.m.

Be It Further Resolved that ANC1C agrees that in the event of federal holidays and special events, the licensee may have live music until 1:30 a.m. Sunday through Tuesday; and

Be it Further Resolved that ANC1C agrees to strike the line from the original agreement that reads "There will be no dancing in the establishment" and instead replace it with "There will be no designated dance floor;" and

Be It Finally Resolved that ANC1C reiterates the language in the existing Voluntary Agreement that: "The doors and windows of the premises will be kept closed after 9:30pm and all all times during business hours when music is being played, or a sound amplification device is being employed in the premises, except when a person is in the act of using the door for ingress to or egress from the premises."



For C. Fields Group t/a District Lounge and Grille

7/7/10

Date



M. Mindy Moretti, For ANC1C

7/7/10

Date



Advisory Neighborhood Commission 1C

PO Box 21009, NW, Washington, DC 20009

202-332-2630 • www.anc1c.org

Commissioners:

July 9, 2010

Chairperson
Wilson Reynolds (1C07)

Charles Brodsky, chair
Alcohol Beverage Control Board
1200 U Street, NW
2nd Floor
Washington, D.C.

Vice Chairperson
Stacey Moye (1C01)

Secretary
Nancy Shia (1C06)

Treasurer
Kathie Boettrich (1C08)

Re: Substantial Change for C. Fields Group, LLC (t/a District Lounge and Grille), License No. 081908

Chris Otten (1C02)

Dear Chairman Brodsky,

Bryan Weaver (1C03)

Mindy Moretti (1C04)

J. Michael Loosdon (1C05)

On Wednesday, July 7, 2010 at a regularly scheduled meeting with a quorum being present, the Adams Morgan Advisory Neighborhood Commission (ANC1C) voted unanimously to support the substantial change request for the C. Fields Group, LLC (t/a District Lounge and Grille), License No. 081908.

The amendments to the existing voluntary agreement are included in this correspondence. In addition, ANC1C unanimously voted to support a stipulated license for these changes while the licensing process is ongoing.

Thank you for your time and consideration, please do not hesitate to contact me if you have any questions at all.

Sincerely,



M. Mindy Moretti
ANC1C ABC & Public Safety Committee Chair
202/302-1303
Anc1c04@yahoo.com

CC: Benjamin Dalley, C. Fields Group LLC
Matt Cronin, C. Fields Group LLC
Wilson Reynolds, ANC1C
Andrew Kline

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

<hr/>)		
In the Matter of:)		
)		
Cookie, Inc.)		
t/a Chloe)		
)		
Holder of a Retailer's	)	Application no.:	50210
Class CR License – at premises	)	License no.:	60621
2473 18 th Street, N.W	)	Order no.:	2006-022
Washington, D.C.)		
)		
Licensee)		
<hr/>)		

Bryan Weaver, on behalf of Advisory Neighborhood Commission 1C, and Cookie, Inc.,
Signatories

BEFORE: Charles A. Burger, Chairperson
Vera M. Abbott, Member
Judy A. Moy, Member
Audrey E. Thompson, Member
Peter B. Feather, Member
Albert G. Lauber, Member
Eartha Isaac, Member

ORDER ON AMENDMENT TO VOLUNTARY AGREEMENT

On March 3, 2006, Bryan Weaver, on behalf of Advisory Neighborhood Commission 1C, and Cookie, Inc., filed an amendment, dated January 4, 2006, to the Licensee's existing voluntary agreement, dated March 5, 2003, for approval by the Board, in accordance with Title 23 of the District of Columbia Municipal Regulations § 1609.4 (2004).

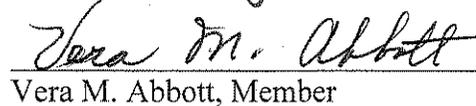
The official records of the Board reflect that the Signatories have reached an amendment to the existing voluntary agreement, dated March 5, 2003, which has been reduced to writing and has been properly executed and filed with the Board. The amendment clarifies that: (1) the doors and windows of the premises will be kept closed after 9:30 p.m.; (2) ID checks will be done inside the vestibule or in the roped off cue of the premises; and (3) the section stating that "There will be no DJ" will be removed from the March 5, 2003 agreement to permit the Licensee to have a DJ at the establishment.

Cookie, Inc.
t/a Chloe
Application no. 50210
License no. 60621
Page two

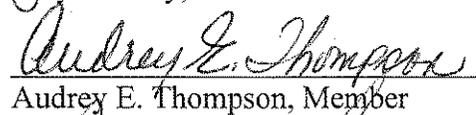
Having determined that the January 4, 2006 amendment to the existing voluntary agreement complies with all applicable laws and regulations, the Board does hereby, this 22nd day of March 2006, **APPROVE** the amendment and **INCORPORATE** the text of the same into this Order. Copies of this Order shall be sent to the Signatories.

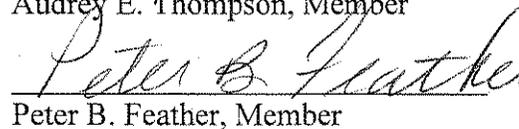
District of Columbia
Alcoholic Beverage Control Board

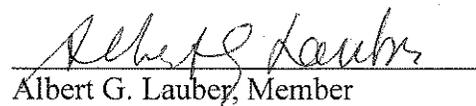

Charles A. Burger, Chairperson


Vera M. Abbott, Member


Judy A. Moy, Member


Audrey E. Thompson, Member


Peter B. Feather, Member


Albert G. Lauber, Member


Eartha Isaac, Member

Pursuant to 23 DCMR § 1719.1 (April 2004), 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, 941 North Capitol Street, N.E., Suite 7200, Washington, D.C. 20002.

**COOPERATIVE AGREEMENT CONCERNING
TRANSFER AND SUBSTANTIAL CHANGE OF LICENSE
FOR SALE OF ALCOHOLIC BEVERAGES**

AGREEMENT, made and entered into this 5th day of March 2003, by and between Cookie, Inc., Trading as Chloe Restaurant and Lounge (hereinafter the "Applicant"), and Advisory Neighborhood Commission IC (hereinafter the "Protestants"), witnesseth:

Whereas Applicant has filed an Application with the District of Columbia Alcoholic Beverage Control Board (hereinafter the "Board") for the transfer and substantial change of a Class CR License (No. 60621) for the premises formerly known as Mexicali Grill/Omega located at the entrance of 2473, and the second floors of 2473, 2475 and 2477 18th Street N.W., Washington, DC.

Whereas The Protestant has filed before The Board a protest opposing the granting of this Application,

Whereas in recognition of the Board's policy of encouraging parties to a protested proceeding to settle their differences by reaching cooperative agreements, the Parties hereto desire to enter into a cooperative agreement whereby (1) Applicant will agree to adopt certain measures to address the Protestant's concerns and to include this Agreement as a formal condition of its Application, and (2) Protestant will agree to the approval of the Application and withdrawal of the Protest *provided* that such Agreement is incorporated into the Board's order approving such Application, which order is thereby conditioned upon compliance with such Agreement,

Whereas Applicant has recently taken or intends to take certain measures designed to ameliorate Protestant's concerns,

Now, therefore, in consideration of the mutual covenants and undertakings memorialized herein, the Parties hereby agree as follows:

1. Hours. The hours of operation shall be:

INSIDE

Summer Garden

Monday	11am-2am	11am-11pm
Tuesday	11am-2am	11am-11pm
Wednesday	11am-2am	11am-11pm
Thursday	11am-2am	11am-11pm
Friday	11am-3am	11am- 1am
Saturday	11am-3am	11am- 1am
Sunday	11am-2am	11am-11pm

Last call will be announced ½ hour prior to closing, each night of operation.

2. Seating. Seating capacity will not exceed:

Interior table: 150	Interior bar: 20	Patio(s):	N/A
Summer Garden	25		

Inside Capacity will not exceed 170

(Indicate by floor, if more than one floor will have seating)

3. Noise/Music/Dancing. Applicant acknowledges familiarity with and will comply with noise-control provisions of District of Columbia law and regulations, including:

- Preventing emissions of sound, capable of being heard outside the premises, by any musical instrument or amplification device or other device or source of sound or noise, in accordance with the DC Noise Control Act of 1977 (Public Law 2-53), as amended. The Applicant agrees to abide to all Alcohol Beverage Control regulations, as amended.
- The doors and windows of the premises will be kept closed *after 9:30 pm and* at all times during business hours when music is being played, or a sound amplification device is being employed in the premises, except when persons are in the act of using the door for ingress to or egress from the premises.
- There shall be no music played on the roof or the summer garden.
- Music from inside will not audible at surrounding residential housing areas.
- Applicant and Protestant agree that any live music performances will be for the benefit and enjoyment of the establishments dining and bar patrons. Live music will be at a volume level conducive to allowing normal conversation among patrons.
- Applicant and Protestant agree that live music will end at 12:00 midnight.
- Applicant will make every reasonable effort to preserve the tranquility of the neighborhood, and as such ask musical performers to do the same.
- ~~(There will be no DJ --- This will be removed from revised agreement)~~ REMOVED 1/4/06 BW
- ~~There will be no dancing in the establishment.~~ BW

4. Trash/garbage/rodents.

(a) Applicant shall maintain regular trash/garbage removal service, regularly remove trash from the trash and dumpster area, and see that the trash and dumpster area remain clean. 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. Applicant will make every reasonable effort to eliminate food sources for rodents and eliminate the rat population.

(b) Applicant agrees to segregate and recycle bottles and glass refuse apart from trash and agrees not to dispose of the bottles and glass refuse in the outside trash dumpsters or recycling containers during the hours of 11:00pm and 8:00am.

5. Exterior including public space. (a) Applicant shall assist in the maintenance of the alleyway behind and the space in front of the establishment to at least

18 inches outward from the curb as needed to keep them free of trash and to remove snow and ice from the sidewalk and comply with all applicable D.C. laws and regulations in these respects. Applicant shall make every reasonable effort to prevent or disperse loitering or any other source of noise or disturbance in the areas in front or to the rear of the premises during business hours and at closing, and to cause patrons to leave those areas quietly at closing.

(b) Applicant will provide for the proper removal of grease and fatty oils from the establishment and will not deposit grease or fatty oils in the trash dumpsters. Applicant agrees to provide ANC with a copy of the contract to remove same from the establishment.

6. Items specific to establishment:

- (a) Applicant agrees not to place outside in the public space or summer garden any loudspeaker, tape player, CD player or other similar device, or to place any inside speaker in such a way that it projects loud sound into the public space or summer garden.
- (b) Applicant agrees to operate the establishment under the terms of its license and will not rent out the establishment to third parties for events where the owner/manager is not present and managing the business.
- (c) Applicant agrees not to place or cause to be placed any fliers, handbills or other similar advertisement in the public space, specifically on lampposts, street signs or any vehicle parked in the public space.
- (d) ID checks will be done inside *vestibule or in the roped off cue* of the premises.
- (e) Applicant agrees to not seek license class change to CT, CN or DN.
With in the ~~initial~~ REVIEW PERIOD.

7. Bar/Pub Crawls. Applicant agrees not to promote or participate in bar or pub "crawls", "tours", or similar events.

8. Consideration. Applicant will encourage employees and patrons to be considerate of neighboring residents at all times. Applicant will encourage employees and patrons leaving the establishment to keep conversations and noise down from 11:00 PM to 7:00 AM.

9. Modification. This Agreement can be modified only by the ABC Board, or by mutual agreement of all the parties with the approval of the ABC Board. If Applicant desires to modify the terms of this Agreement, then prior to implementing the changes, Applicant shall receive written agreement from ANC IC after a majority of Commissioners shall have voted in favor of changes at a full public meeting, a quorum being present.

10. Regulations. In addition to the foregoing, Applicant will operate in compliance with all applicable laws and regulations. Further, nothing in this agreement shall preclude the ANC from filing an objection to any request by the applicant to the Board of Zoning Adjustment.

11. Withdrawal of Protest. Protestant agrees to transfer and substantial change of the license and the withdrawal of its protest provided that this Cooperative Agreement is incorporated into the Board's order granting the aforesaid Application, which order is thereby conditioned upon compliance with such Cooperative Agreement.

APPLICANT:

By:

Date

Advisory Neighborhood Commission 1C:

By:

Date

Barbara W. [Signature]

Jan. 4, 2006



Advisory Neighborhood Commission 1C

PO Box 21652, NW, Washington, DC 20009

202-332-2630 • <http://www.anc1c.org>

February 4, 2006

Commissioners:

Chairperson

Alan Roth (1C01)

Vice Chairperson

Graham King (1C06)

Secretary

Mindy Moretti (1C04)

Treasurer

Jon Canty (1C02)

Andrew Miscuk (1C06)

Bryan Weaver (1C03)

Wilson Reynolds (1C07)

Lynn Taylor (1C08)

Hon. Charles Burger, Chairman
Alcoholic Beverage Control Board
941 North Capitol Street, NE – Suite 700
Washington, DC 20002

MAR 3 2006

Re: Cookie, Inc., Trading as Chloe Restaurant and Lounge
Class CR License No. 60621 --- Mutual Change to VA

Dear Chairman Burger:

At our Advisory Neighborhood Commission 1C meeting on Wednesday, January 4, 2006 the Adams Morgan advisory neighborhood commission (ANC) we discussed a series of issues regarding Cookie, Inc., Trading as Chloe Restaurant and Lounge --- and a group of three amendments to the voluntary agreement were presented:

- 1. The doors and windows of the premises will be kept closed after 9:30 pm and*
- 2. ID checks will be done inside vestibule or in the roped off cue of the premises.*
- 3. The section stating that "There will be no DJ" will be removed from revised agreement.*

At the January 4, 2006 meeting, our ANC, with a quorum present, voted to support these changes (5-1) and to ask the Board to expedite any necessary approval of the amendment so that the establishment can operate with in these new guidelines as soon as possible. Because these changes were sought in conjunction with the establishment, and between the only two parties of the existing Voluntary Agreement, ANC1C believes that this is *not* the kind of change that should warrant placarding or any other procedural delays.

We would appreciate your prompt consideration and approval of these amendments, and we thank you for your consideration of this request.

Sincerely,

Bryan Weaver
ABC and Public Safety Chair

THE DISTRICT OF COLUMBIA
ALCOHOLIC BEVERAGE CONTROL BOARD

In the Matter of)	
)	
Cookie, Inc.)	
t/a Barracuda	)	Case No: 50210-03/019P
Transfer Application of a Retailer's	)	Order No: 2003-70
License Class "CR" - to premises)	
2473 18 th Street, N.W.)	
Washington, D.C.)	
)	
Applicant)	

BEFORE: Charles A. Burger, Interim Chairperson¹
Vera M. Abbott, Member
Audrey E. Thompson, Member
Judy A. Moy, Member
Laurie Collins, Member

ALSO PRESENT: Fred P. Moosally, III, Esquire, General Counsel
Alcoholic Beverage Regulation Administration

Simon Osnos, on behalf of the Applicant

Denis James, on behalf of the Protestant

**FINDINGS OF FACT, CONCLUSIONS OF LAW,
AND ORDER**

The application, filed by Cookie, Inc., t/a Barracuda ("Applicant"), to transfer a Retailer's License Class "CR" from the first floor to the second floor of premises located at 2473 18th Street, N.W., Washington, D.C., initially came before the Alcoholic Beverage Control Board ("Board") for a roll call hearing on February 19, 2003. It was determined that a timely protest was filed pursuant to D.C. Official Code § 25-601 (2001), by Advisory Neighborhood Commission ("ANC") 1C and the Kalorama Citizens Association ("KCA").

¹ The Board voted 5-0 on June 4, 2003 to dismiss the protest of the Kalorama Citizens Association for the reasons set forth in this written Order, which is required to be issued pursuant to D.C. Official Code § 25-433(c). However, Ms. Ellen Opper-weiner who voted on this matter on June 4, 2003 is no longer a member of the Board. As a result, this Order is signed by the remaining four (4) Board members who voted on June 4, 2003.

The protest issues are whether the granting of the Applicant's request to transfer its Class "CR" Retailer's License from the first to the second floor of 2473 18th Street, N.W., will have an adverse effect on: (1) the peace, order, and quiet of the neighborhood and (2) residential parking needs and vehicular and pedestrian safety.

This case came before the Board for a public protest hearing on June 4, 2003. In addition to the February 19, 2003 roll call hearing, this case was also before the Board for status hearings on March 19, 2003 and April 23, 2003. The Board having considered the evidence, the testimony of the witnesses, and the documents comprising the Board's official file, makes the following:

FINDINGS OF FACT

1. Alireza Hajaligholi is the President of Cookie, Incorporated, which filed this application to transfer an existing Class "CR" Retailer's License from the first floor to a larger space on the second floor of 2473 18th Street, N.W., pursuant to 23 DCMR § 405.1, which allows an Applicant to file an ABC license application prior to obtaining a certificate of occupancy for the building in which the proposed licensed premises would be located. (Tr. 4/23/03 at 6-8, 21; Tr. 6/4/03 at 3; Alcoholic Beverage Regulation Administration ("ABRA") Application File No. 50210.) The establishment has also applied to operate and sell alcoholic beverages between the hours of 11 a.m. to 2 a.m. on Sunday through Thursday, and from 11:00 a.m. to 3 a.m. on Friday and Saturday. (ABRA Protest File No. 50210-03/019P.) The establishment's transfer application is also seeking various forms of entertainment including live music that consists of a three-piece band playing soft rock and R&B, and recorded music. (Tr. 4/23/03 at 23; See Question 16 of ABRA Application File No. 50210; ABRA Protest File No. 50210-03/019P.) The Applicant has not requested permission to have dancing. (See Question 16 of ABRA Application File No. 50210.) The Applicant initially applied under the trade name of Secret; however, this trade name was withdrawn and the Applicant's proposed trade name has been changed to Barracuda. (ABRA Application File No. 50210.) The Applicant has also applied for a summer garden although its license application was erroneously marked sidewalk café. (Tr. 4/22/03 at 21; ABRA Application File No. 50210.)

2. The Applicant's transfer to a new location license application was initially protested by ANC 1C by letter dated January 12, 2003 that was signed by ANC 1C Chairperson Alan Roth. (ABRA Protest File No. 50210-03/019P.) A copy of the ANC 1C resolution protesting the license application with a quorum present by a vote of 7-0 was also attached. (ABRA Protest File No. 50210-03/019P.) ANC 1C protested the transfer application based upon the establishment's adverse effect on peace, order, and quiet in the neighborhood until such time as the parties reached a voluntary/cooperative agreement. (See ABRA Protest File No. 50210-03/019P.) Pursuant to D.C. Official Code § 25-446, ANC 1C reached a written voluntary/cooperative agreement with the Applicant dated March 24, 2003 that was received by ABRA on April 23, 2003. (See ABRA Protest File

No. 50210-03/019P.) A cover letter from ANC 1C Public Safety Committee Chair Bryan Weaver, who had been authorized by the ANC 1C January 12, 2003 protest letter to act on its behalf, was included with the voluntary/cooperative agreement that withdrew the protest of ANC 1C to the Applicant's license application. (See ABRA Protest File No. 50210-03/019P.) The agreement was signed by Alireza Hajaligholi, on behalf of the Applicant, and by ANC 1C Chairperson Alan J. Roth, on behalf of ANC 1C. (See March 24, 2003 voluntary/cooperative agreement.)

3. The Applicant's transfer to a new location license application was also protested timely by the KCA, by letter dated December 19, 2002, which was signed by Michael Gould who was then President of the KCA. (ABRA Protest File No. 50210-03/019P.) The KCA objected to the transfer to a new location license application based upon the establishment's adverse effect on (1) peace, order, and quiet in the neighborhood and (2) vehicular and pedestrian safety. (ABRA Protest File No. 50210-03/019P.)

4. The Applicant and the KCA -- through its designated representative, Denis James -- had one settlement conference² with the Board's Mediation Specialist, La Verne Fletcher, on Tuesday, April 22, 2003. (Tr. 4/23/03 at 4; See ABRA Protest File No. 50210-03/019P.) The parties were not able to reach a voluntary/cooperative agreement on the protest issues at the Tuesday, April 22, 2003 settlement conference. (Tr. 4/23/03 at 4.) A day later, at the Wednesday, April 23, 2003 status hearing, the Applicant was still not clear as to the specific issues of concern to the KCA with regard to the KCA's filed protest issues. (Tr. 4/23/03 at 20-21.) The Board set a protest hearing for June 4, 2003 at the April 22, 2003 status hearing; however, the Board required that a second mediation occur to address the parties' issues of concern prior to the June 4, 2003 protest hearing. (Tr. 4/23/03 at 24-25.) Neither party objected at the April 23, 2003 status hearing to the scheduling of a second settlement conference. (Tr. 4/23/03 at 1-29.)

5. At the beginning of the June 4, 2003 protest hearing, the Applicant argued that the KCA's protest should be dismissed under D.C. Official Code § 25-445(e) based upon the KCA's unreasonable refusal to attend a second settlement conference. (Tr. 6/4/03 at 5-7.) The Board called Mediation Specialist, La Verne Fletcher, as a witness for the sole purpose of determining whether KCA attended a second Board ordered settlement conference and if not, the reason(s) for KCA not attending. (Tr. 6/4/03 at 9, 12, 24-25.) The Board did not permit Ms. Fletcher to testify with regard to discussions on specific settlement issues. (Tr. 6/4/03 at 12, 21, 24-25.)

6. La Verne Fletcher is the mediator for the Board and also serves in the position of Mediation Specialist with the Alcoholic Beverage Regulation Administration. (Tr. 6/4/03 at 13.) Ms. Fletcher stated that the first mediation in this matter was conducted on April 22, 2003, at 2 p.m., and was attended by Mr. Alireza Hajaligholi and Mr. Simon Osnos, on behalf of the Applicant, and by Mr. Denis James, on behalf of the KCA. (Tr. 6/4/03 at 14, 18.) Ms. Fletcher also noted that a second mediation was scheduled with the parties for a

² The terms "settlement conference" and "mediation" used in this Order have the same meaning.

specific date, which was several weeks after the first April 22, 2003 mediation. (Tr. 6/4/03 at 14-15.) Ms. Fletcher later received a call from Mr. Denis James who informed her that he was not going to be attending the second mediation that had been scheduled. (Tr. 6/4/03 at 15, 19.) Mr. James did not provide Ms. Fletcher with a reason he would not be attending. (Tr. 6/4/03 at 15.) Ms. Fletcher did not make any efforts to reschedule the settlement conference as the result of Mr. James stating that he would not participate in a second mediation. (Tr. 6/4/03 at 16-17.) Ms. Fletcher noted that Mr. Simon Osnos and the Applicant had agreed to attend the second scheduled settlement conference. (Tr. 6/4/03 at 16.)

7. Mr. James represented that he refused to attend or participate in a second mediation because he believed that based upon the lack of any fruitful progress in the first mediation it would be a waste of the Applicant's and Ms. Fletcher's time as he was sure that the KCA would not budge off of its position. (Tr. 6/4/03 at 27-28.) Rather, Mr. James stated that he was looking instead toward the protest hearing that had already been set. (Tr. 6/4/03 at 27-28.) Mr. James believed his attendance at the first settlement conference to be sufficient to meet the requirements of D.C. Official Code § 25-445.

8. The Board accepts the Applicant's representation that the second mediation was scheduled for May 13, 2003 at 11 a.m. (Tr. 6/4/03 at 28.) The Applicant stated that it did not attend the second mediation as a call was received from Ms. Fletcher prior to the scheduled mediation indicating that Mr. James would not be attending the second mediation. (Tr. 6/4/03 at 28.)

CONCLUSIONS OF LAW

9. Pursuant to D.C. Official Code § 25-313(a) (2001), an Applicant must demonstrate to the satisfaction of the Board that its liquor license application for which approval is sought is appropriate for the neighborhood in which it is located. Having considered the evidence upon which this determination must be made and the findings of fact adduced at the hearings, the Board concludes that the Applicant has demonstrated that granting the Applicant's request to transfer its existing Class "CR" license from the first floor to the second floor of 2473 18th Street, N.W. -- subject to the conditions imposed by the Board as listed below -- would be appropriate for the delineated area in which it is located.

10. The Board recognizes that pursuant to D.C. Official Code § 1-309.10(d) (2001) and D.C. Official Code § 25-609, an ANC's properly adopted written recommendations are entitled to great weight from the Board. In this case, pursuant to D.C. Official Code § 25-446, ANC 1C reached a written voluntary/cooperative agreement with the Applicant dated March 24, 2003 that was received by ABRA on April 23, 2003. A cover letter from ANC 1C Public Safety Committee Chair Bryan Weaver, who had been authorized by the ANC 1C January 12, 2003 protest letter to act on its behalf, was included with the voluntary/cooperative agreement that withdrew the protest of ANC 1C to the Applicant's license application subject to the approval by the Board of the signed agreement. The

Board gives great weight to the recommendations of ANC 1C and approves the March 24, 2003 voluntary/cooperative agreement and incorporates in this Order the conditions that will be placed on the Applicant's license pursuant to D.C. Official Code § 25-446 as set forth below.

11. D.C. Official Code § 25-445 sets forth the requirements for attending a settlement conference. These requirements were established by D.C. Law 13-298, the Title 25, D.C. Code Enactment and Related Amendments Act of 2001 ("D.C. Law 13-298"), effective May 3, 2001 (D.C. Official Code § 25-101 *et seq.*), which also codified Title 25 of the D.C. Official Code. The previous ABC governing statute, the District of Columbia Alcoholic Beverage Control Act, approved January 24, 1934, 48 Stat. 319, contained no reference to settlement conferences with the Board's rules on settlement conferences found solely in § 1512 of Title 23 of the District of Columbia Municipal Regulations ("DCMR") (1997). However, D.C. Law 13-298, which created D.C. Official Code § 25-445, modified the settlement conference provisions found in 23 DCMR § 1512, including providing the Board with the authority to consider withdrawn the protest of a Protestant who unreasonably refuses to make himself or herself available to attend a settlement conference as set forth in D.C. Official Code § 25-445(e). The Board is now faced for the first time to interpret the meaning of D.C. Official Code § 25-445(e) as it relates to the facts of this particular case.

12. D.C. Official Code § 25-445(d) prohibits a Protestant from unreasonably refusing to make himself or herself available to attend a settlement conference. In the event that a protestant unreasonably refuses to make himself or herself available for a settlement conference, D.C. Official Code § 25-445(e) requires the Board to consider the protest withdrawn unless, in the judgment of the Board, the Protestant shows good cause for refusing to be available. In this case, the KCA did attend a settlement conference on April 22, 2003. However, the KCA refused to attend a second mediation that had been ordered by the Board on April 23, 2003, which was scheduled by the parties and the Board's Mediation Specialist for May 11, 2003 at 11:00 a.m. As a result, the Applicant argues that the protest of the KCA must be considered withdrawn by the Board under D.C. Official Code § 25-445(e). In examining D.C. Official Code § 25-445(e), the Board must consider whether the Protestant's decision not to attend the second settlement conference was (1) unreasonable and (2) whether good cause exists as to why the Protestant refused to be available.

13. In this case, the testimony of Mr. James revealed that the reason for the KCA's non-attendance at the May 11, 2003 settlement conference was that the KCA believed that based upon the lack of any fruitful progress in the first mediation it would be a waste of the Applicant's and Ms. Fletcher's time to attend as KCA was sure that KCA would not budge off of its position. Instead, KCA had decided to look ahead to the scheduled June 4, 2003 protest hearing rather than attending the second settlement conference. The Board finds the rationale of the KCA for not attending the May 11, 2003 settlement conference to (1) be unreasonable, and (2) to not constitute good cause for refusing to be available.

Specifically, at the April 23, 2003 status hearing, the Board made it clear that its willingness to set a protest hearing on June 4, 2003 was predicated upon the attendance of the parties, including the KCA, to attend another settlement conference. The Board had decided to set another settlement conference, as described in D.C. Official Code § 25-445(a), as the April 23, 2003 status hearing revealed to the Board that the Applicant was still not clear as to the specific objections or concerns of the Protestant and that another settlement conference between the parties to discuss the Protestant's objections or concerns could possibly resolve the KCA's objections. It is worth noting that no objection was made by either party to the scheduling of the second settlement conference.

14. Additionally, the Board notes that it cannot, in the judgment of the Board, pursuant to D.C. Official Code § 25-445(e) accept one parties' belief that a settlement conference will not be successful as good cause for refusing to be available. The Board observes that it has frequently had cases before it that have settled and resulted in voluntary/cooperative agreements as the result of settlement conferences where at least one of the parties initially stated to the Board its preference to go directly to a protest proceeding as it did not believe that a settlement conference would be helpful. The Board notes that the fact that parties are unable to resolve their differences on their own is the reason that mediations are held with ABRA's Mediation Specialist. The success that the Board has had with settlement conferences over the last several years relies on the cooperation and willingness of both parties to participate in this process. In this case, the Applicant was willing to attend the second settlement conference; however KCA was not. While there is no requirement that the parties must resolve the Protestant's objections at the settlement conference, the resolution of a Protestant's objections cannot occur if either the Applicant or Protestant refuses to attend. The Board finds that D.C. Official Code § 25-445(e) seeks to require party attendance at a settlement conference for just this very reason. Otherwise, allowing a party to determine on its own whether or not attending a settlement conference would result in fruitful progress would undermine the usefulness of the settlement conference process and would also result in the Board hearing and deciding additional protests that could have been resolved through the settlement conference process.

15. The Board finds good cause pursuant to D.C. Official Code § 25-445(e) for a Protestant to not be available for a settlement conference to include such reasons as illness or other health related emergencies and unavoidable scheduling conflicts. The Board does not, however, consider a Protestant's belief that attending a settlement conference will not result in fruitful progress and would be a waste of time as either reasonable or good cause under D.C. Official Code § 25-445(e).

16. As a result, the Board finds that good cause as required under D.C. Official Code § 25-445(e) does not exist in this circumstance to justify the KCA's refusal to attend or participate in the second May 11, 2003 settlement conference. As such, pursuant to D.C. Official Code § 25-445(e), the Board considers the protest of the KCA to be withdrawn.

THEREFORE, it is hereby ORDERED on this 13th day of August 2003, that the transfer to a new location application for a Class "CR" Retailer's License filed by Cookies, Inc., t/a Barracuda, 2473 18th Street, N.W., Washington, D.C., be and the same is hereby, GRANTED. The Applicant shall obtain a certificate of occupancy for the new location as well as all other documents required by 23 DCMR § 405.3 prior to the issuance of the Class "CR" Retailer's License for this location.

It is FURTHER ORDERED that the following conditions agreed to by the Applicant and ANC 1C are approved by the Board and shall become a part of the Applicant's license:

1. The establishment's approved interior hours of operation shall be Sunday through Thursday from 11:00 a.m. to 2 a.m., and Friday and Saturday from 11:00 a.m. to 3 a.m. The establishment's approved outdoor hours for its summer garden shall be Sunday through Thursday from 11 a.m. to 11 p.m., and Friday and Saturday from 11 a.m. to 1 a.m.;
2. The establishment shall announce last call thirty (30) minutes prior to closing on each night of operation;
3. The establishment's interior seating capacity on the second floor shall not exceed one-hundred and seventy (170) patrons (Interior tables: 150 Interior Bar: 20). The establishment's outdoor seating capacity on its summer garden shall not exceed twenty five (25) patrons;
4. The Applicant agrees to comply with all District of Columbia noise-control laws and regulations which shall include preventing emissions of sound, capable of being heard outside of the premises, by any musical instrument or amplification device or other device of source or sound or noise, in accordance with the D.C. Noise Control Act of 1977 (Public Law 2-53), as amended;
5. The applicant shall comply with Title 25 of the D.C. Official Code and Title 23 of the District of Columbia Municipal Regulations;
6. The establishment's doors and windows are to be kept closed at all times during business hours when music is being played, or a sound amplification device is being employed in the premises, except when persons are in the act of using the door for ingress to or egress from the premises;
7. The establishment shall not be permitted to play music on the roof or the summer garden;
8. The establishment shall not permit music being played inside the establishment to be audible at surrounding residential housing areas;

*Summer Garden
not operating*

OK

*Windows are
closed
no speakers*

not operating

OK

9. Any live music performances at the establishment shall be for the benefit and enjoyment of the establishment's dining and bar patrons;
10. The establishment shall not play live music after 12:00 midnight; *no live*
11. The Applicant shall make every reasonable effort to preserve the tranquility of the neighborhood, and as such ask musical performers to do the same; *no music*
12. The establishment shall not be permitted to have a disc jockey or dancing; *-NO DJ*
13. The Applicant shall maintain regular trash/garbage removal service, regularly remove trash from the trash and dumpster area, and see that the trash and dumpster area remain clean. The 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. The Applicant will make every reasonable effort to eliminate food sources for rodents; *ok*
14. The Applicant agrees to segregate and recycle bottles and glass refuse apart from trash and agrees not to dispose of bottles and glass refuse in the outside trash dumpsters during the hours of 11:00 p.m. and 8:00 a.m.; *→ put out in Am. ok*
15. The Applicant shall assist in the maintenance of the alleyway behind and the space in front of the establishment to at least eighteen (18) inches outward from the curb as needed to keep them free of trash and to remove snow and ice from the sidewalk and comply with all applicable D.C. laws and regulations in these respects. The Applicant shall make every reasonable effort to prevent or disperse loitering or any other source of noise or disturbance in the areas in front or to the rear of the premises during business hours and at closing, and to cause patrons to leave those areas quietly at closing; *ok*
16. The Applicant shall provide for the proper removal of grease and fatty oils from the establishment and will not deposit grease or fatty oils in the trash dumpsters. The Applicant shall provide ANC 1C with a copy of the contract to remove grease and fatty oils from the establishment; *ok*
17. The Applicant shall not place outside in the public space or summer garden any loudspeaker, tape player, CD player or other similar device, or place any inside speaker in such a way that it projects loud sound into the public space or summer garden; *ok*
18. The Applicant shall operate the establishment under the terms of its license and shall not rent out the establishment to third parties for events where the owner/manager is not present and managing the business; *ok*

19. The Applicant shall not place or cause to be placed any fliers, handbills, or other similar advertisement in the public space, specifically on lampposts, street signs, or any vehicle parked in the public space; *OK*

20. The Applicant shall conduct identification document checks inside the premises to avoid an outside line on the street; *OK*

21. The Applicant agrees not to promote or participate in bar or pub "crawls", "tours", or similar events; *OK*

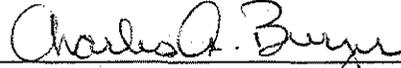
22. The Applicant shall encourage employees and patrons to be considerate of neighboring residents at all times. The Applicant shall encourage employees and patrons leaving the establishment to keep conversations and noise down from 11:00 p.m. to 7:00 a.m.;

*Doorway
ask if need
or outside*

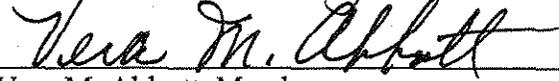
23. The Applicant shall operate in compliance with all applicable District of Columbia and Federal laws and regulations;

24. Nothing in this Board order shall preclude ANC 1C, the KCA, or any other individual from filing an objection to any request made by the Applicant to the Board of Zoning Adjustment.

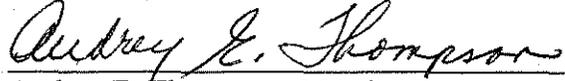
District of Columbia
Alcoholic Beverage Control Board



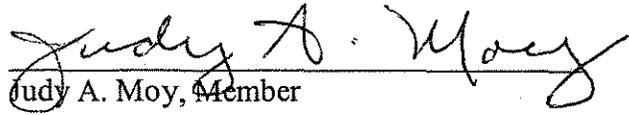
Charles A. Burger, Interim Chairperson



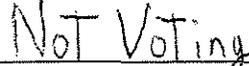
Vera M. Abbott, Member



Audrey E. Thompson, Member



Judy A. Moy, Member



Laurie Collins, Member

Pursuant to 23 DCMR § 1619.1 (June 1997), 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, 941 North Capitol Street, N.E., Suite 7200, Washington, D.C. 20002.

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, 500 Indiana Avenue, N.W., Washington, D.C. 20001. However, the timely filing of a Motion for Reconsideration pursuant to 23 DCMR § 1619.1 (June 1997) 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).