

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

In the Matter of:

Silver Cathedral Commons, LLC
t/a Silver

Applicant for a New
Retailer's Class CR License

at premises
3404 Wisconsin Avenue, NW
Washington, D.C. 20016

Case No.: 17-PRO-00028
License No.: ABRA-105729
Order No.: 2017-423

Silver Cathedral Commons, LLC, t/a Silver (Applicant)

Nancy J. MacWood, Chairperson, Advisory Neighborhood Commission (ANC) 3C

BEFORE: Donovan Anderson, Chairperson
Nick Alberti, Member
Mike Silverstein, Member
James Short, Member
Jake Perry, Member
Donald Isaac, Sr., Member

**ORDER ON SETTLEMENT AGREEMENT AND
WITHDRAWAL OF ANC 3C'S PROTEST**

The Application filed by Silver Cathedral Commons, LLC, t/a Silver (Applicant), for a new Retailer's Class CR License, having been protested, came before the Alcoholic Beverage Control Board (Board) for a Roll Call Hearing on June 12, 2017, in accordance with D.C. Official Code § 25-601 (2001).

The official records of the Board reflect that the Applicant and ANC 3C entered into a Settlement Agreement (Agreement), dated July 17, 2017, 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 Nancy J. MacWood, on behalf of ANC 3C, are signatories to the Agreement.

This Agreement constitutes a withdrawal of the Protest filed by ANC 3C.

Accordingly, it is this 9th day of August, 2017, **ORDERED** that:

1. The Application filed by Silver Cathedral Commons, LLC, t/a Silver, for a new Retailer's Class CR License, located at 3404 Wisconsin Avenue, NW, Washington, D.C., is **GRANTED**;
2. The Protest of ANC 3C in this matter is hereby **WITHDRAWN**;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 2 (Nature of the Business) – The following language shall be removed:
“and ANC 3C.”

Subsection 5(a)(1) (Entertainment - Inside) – This Subsection shall be modified to read as follows: “In accordance with the entertainment endorsement, entertainment will be permitted inside from 4 p.m. to 11 p.m. Thursday, and 4 p.m. to 12 a.m. Friday and Saturday. Nothing herein shall prevent Applicant from seeking to extend interior Entertainment Endorsement (“EE”) hours in accordance with Title 25 of the D.C. Official Code and Title 23 of the District of Columbia Municipal Regulations. Any change made by the Applicant to the interior EE hours shall be of great concern to the community.”

Subsection 5(b)(1) (Entertainment - Outside) – This Subsection shall be modified to read as follows: “Entertainment will be permitted on the sidewalk café under the terms established by Applicant's entertainment endorsement, but the EE for the sidewalk café shall terminate effective January 14, 2018, unless there shall be an amendment to this agreement extending the sidewalk café EE privileges. In the event Applicant's sidewalk café EE shall expire without amendment to this agreement, nothing herein shall prejudice Applicant's right to reapply for a sidewalk café EE in accordance with Title 25 of the D.C. Official Code and Title 23 of the District of Columbia Municipal Regulations. Any change made by the Applicant to the sidewalk café EE shall be of great concern to the community.”

Subsection 5(b)(4) (Entertainment - Outside) – This Subsection shall be modified to read as follows: “The ANC will not object to the applicant applying for a one-day substantial change, for up to six times per year in accordance with District law, to allow it to provide live entertainment on the sidewalk café from 4:00 p.m. to 8:00 p.m. each day.”

Subsection 5(b)(5) (Entertainment - Outside) – This Subsection shall be modified to read as follows: “The ANC will not object to the applicant applying for a one-day substantial change, in accordance with District law, to allow it provide live entertainment on the sidewalk café from 4:00 p.m. to 8:00 p.m. on designated federal holidays.”

Section 12 (Review Modification of Settlement Agreement) – The language “or as required by District law” shall be added after “D.C. Official Code § 25-446.”


The parties have agreed to these modifications.

4. Copies of this Order shall be sent to the Applicant and ANC 3C.

District of Columbia
Alcoholic Beverage Control Board


Donovan Anderson, Chairperson


Nick Alberti, Member


Mike Silverstein, Member

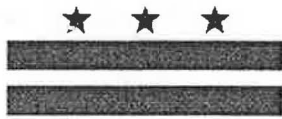

James Short, Member


Jake Perry, Member

Donald Isaac, Sr., 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).



ADVISORY NEIGHBORHOOD COMMISSION 3C
GOVERNMENT OF THE DISTRICT OF COLUMBIA
CATHEDRAL HEIGHTS • CLEVELAND PARK
MASSACHUSETTS AVENUE HEIGHTS • MCLEAN GARDENS
WOODLAND-NORMANSTONE • WOODLEY PARK

Single Member District Commissioners
01-Lee Brian Reba; 02-Gwendolyn Bole; 03-Jessica Wasserman
04- Beau Finley; 05- Emma Hersh; 06-Angela Bradbery
07- Maureen Kinlan Boucher; 08-Malia N. Brink; 09-Nancy MacWood

P.O. Box 4966
Washington, DC 20008
Website <http://www.anc3c.org>
Email all@anc3c.org

**ANC 3C Settlement Agreement With Silver
Cathedral Commons (LLC) (ABRA-105729) for 3404
Wisconsin Avenue NW**

THIS SETTLEMENT AGREEMENT ("Agreement") is made on July 17, 2017, by and between Silver Cathedral Commons LLC ("Applicant") and Advisory Neighborhood Commission 3C ("ANC 3C").

RECITALS

(a) Applicant has applied for a Retailer Class License (the "License") for a full-service restaurant with a sidewalk café ("Establishment") serving American cuisine and alcoholic beverages located at 3404 Wisconsin Ave. NW, Washington, D.C. (the "Premises"); and,
(b) Applicant desires to cooperate with the ANC in order to mitigate concerns related to the potential impact of operation of the Establishment on the surrounding community; and,
(c) In lieu of contested protest proceedings regarding the application for the License, the Parties wish to enter into a Settlement Agreement pursuant to D.C. Official Code § 25-446 to address such concerns; and,
(d) Applicant will agree to adopt certain measures to address ANC 3C's concerns and to include this Agreement as a formal condition of its application;
(e) ANC 3C will agree to the issuance of the new license provided that such an agreement is incorporated into the ABC Board's order issuing the license, which license is conditioned upon compliance with this Agreement;

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 a retailer's class "C" restaurant. Any change from this license class shall require prior approval by the ABC Board and ANC 3C.
3. Hours of Operation. It is understood that upon expiration of the below hours of operation, no patron may remain on the interior or exterior of the Premises. Applicant's hours will not exceed the following:

Inside: Sunday through Wednesday: 7 a.m. to 12 a.m.; Thursday: 7 a.m. to 1 a.m.; Friday and Saturday: 7 a.m. to 2 a.m.

Outside (sidewalk café): Sunday through Thursday: 7 a.m. to 11 p.m. Friday and Saturday: 7 a.m. to 12 a.m.

Holiday hours:

On designated federal holidays, Applicant may operate and sell alcoholic beverages inside from 7 a.m. to 2 a.m. and outside (on the sidewalk café) from 7 a.m. to 12 a.m.

4. Sidewalk Café. The Applicant may have outside seating in accordance with a sidewalk café endorsement to its ABC license and a duly issued public space permit, and may serve alcoholic beverages to seated patrons in such area, provided, the total capacity for such sidewalk café shall not exceed 68 seats. Applicant will serve only seated patrons and agrees not to rent the sidewalk café area out for private parties or other events.
5. Entertainment:
 - (a) Inside:
 1. In accordance with the entertainment endorsement, entertainment will be permitted inside from 4 p.m. to 11 p.m. Thursday, and 4 p.m. to 12 a.m. Friday and Saturday. Nothing herein shall prevent Applicant from seeking to extend interior Entertainment Endorsement ("EE") hours, provided that the request is not made before July 1, 2018, and that there is notice to the community of any such application.
 2. The entertainment will consist only of the following: no more than 2 acoustical (nonelectrical) instruments, and vocalists, amplified with a microphone. No drums, electric guitars or other electronic instruments will be permitted.
 3. Entertainment will be permitted inside no more than two (2) days per week, between Thursday and Sunday, in accordance with the hours provided in 5. (a)(1).
 - (b) Outside (sidewalk café):
 1. Entertainment will be permitted on the sidewalk café under the terms established by Applicant's entertainment endorsement, but the EE for the sidewalk café shall terminate effective January 14, 2018, unless there shall be an amendment to this agreement extending the sidewalk café EE privileges. In the event Applicant's sidewalk café EE shall expire without amendment to this agreement, nothing herein shall prejudice Applicant's right to reapply for a sidewalk café EE provided that there is notice to the community of any such application.
 2. Entertainment will be permitted on the sidewalk café no more than two (2) days per week, between Thursday and Sunday, between the hours of 4:00 p.m. to 8:00 p.m.
 3. The Applicant may have entertainment no more than eight (8) times per month.
 4. However, the Applicant may have live entertainment on the sidewalk café during the Establishment's opening week from 4:00 p.m. to 8:00 p.m. each day.
 5. On designated federal holidays, the Applicant may have live entertainment on the sidewalk café from 4:00 p.m. to 8:00 p.m.

6. The entertainment will consist only of the following: no more than 2 acoustical (nonelectrical) instruments amplified with a microphone. No drums, electric guitars or other electronic instruments will be permitted.
 7. Speakers will be turned to face the interior of the café.
6. Noise. Applicant acknowledges familiarity with and agrees to comply with all applicable noise control provisions of DC law and regulations, including D.C. Code § 25-725 which prohibits noise from licensed premises of such intensity that it may be heard in any premises other than the licensed establishment.
7. Public Space and Trash. Applicant shall make best efforts to keep the sidewalk (up to and including the curb), tree boxes and alley free of litter, bottles, chewing gum, trash and other debris in compliance with D.C. Code and Municipal Regulations. Applicant shall police these areas daily for refuse and other materials.
8. Applicant will participate in the building's trash removal program and will provide sealable container(s) for trash, food waste, and recycling designed to prevent intrusion by rodents, vermin and other pests, and further agrees to keep the containers closed and sealed at all times when waste is not being disposed.
9. Rat and Vermin Control. Applicant will maintain a contract with a professional, licensed rat, pest, and vermin control company to provide for routine control for the interior and exterior of the premises as needed to control pests.
10. Complaints. The Establishment's website will prominently feature the name and contact information for an individual to which any comments or concerns about the operation of the establishment may be addressed. The Applicant shall notify ANC3C's Single-Member District (SMD) Commissioner of every complaint lodged with the establishment for any issue relating complaints of noise, trash, rodents, and operating hours. Applicant shall make all reasonable efforts to notify the 3C06 Commissioner via email to 3C06@anc.dc.gov within 48 hours of the Applicant's receipt of the complaint. The information shall include, for each separate complaint, to the extent provided by any such complainant, the name of the complainant, the date of the complaint, any contact information provided by the complainant, the nature of the complaint, and the response taken by the Applicant or the Establishment.
11. Agreement Available Upon Demand. A copy of this Agreement shall be kept on the premises and made available to law enforcement officers and Alcoholic Beverage Regulatory Administration inspectors immediately upon request.
12. Review Modification of Settlement Agreement. This Agreement may be modified and such modification implemented by Applicant only by mutual agreement of the parties and the subsequent approval of the modification by the ABC Board pursuant to DC Official Code § 25-446.
13. Notice and Opportunity to Cure. In the event that either party believes that the other 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 fourteen (14) days from the receipt of notice to cure the alleged breach (or if the breach shall relate to excessive noise or disturbance, the lesser of 72 hours or such shorter period as may be reasonable under the circumstances to immediately restore peace, order and quiet). If the breaching party fails to cure within the notice period—or, with respect to a breach that reasonably requires more than fourteen (14) days to cure, the breaching party fails to commence cure of such breach and diligently pursue a cure, then the non-breaching party shall be entitled to file a complaint with the ABRA 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. 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.

If to Applicant:

Silver Cathedral Commons, LLC
3404 Wisconsin Avenue, NW
Washington, DC 20016
Attn: Robert Giaimo
Phone: 301-770-4187
e-mail: robertgiaimo@gmail.com

If to ANC:

Advisory Neighborhood Commission 3C
P.O. Box #4966
Washington, DC 20008
Attn: Angela Bradbery
Phone: (202) 669-6517
e-mail: 3C06@anc.dc.gov

14. Withdrawal of Protest. Upon execution of this Agreement by the parties and its acceptance by the ABC Board, and in reliance thereupon, the ANC shall withdraw the protest it has filed of the Applicant's pending license application.

ADVISORY NEIGHBORHOOD COMMISSION 3C

By: Mary J. McWhorter, Chair
Signatory

APPLICANT

By: Mark P. Fulmer
Signatory