

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

_____)	
In the Matter of:)	
RC CT Avenue Restaurant, LLC,)	License Number: 71792
t/a Epicurean & Company)	ORDER NUMBER: 2009-238
Application for Substantial Change)	
to Retailer’s Class CR License)	
at premises)	
4250 Connecticut Avenue, N.W.)	
Washington, D.C. 20008)	
_____)	

RC CT Avenue Restaurant, LLC, t/a Epicurean & Company, Applicant

Jane Solomon, Chairperson, Advisory Neighborhood Commission (ANC) 3F, Protestant

BEFORE: Peter B. Feather, Chairperson
Mital M. Gandhi, Member
Nick Alberti, Member
Charles Brodsky, Member
Donald Brooks, Member
Herman Jones, Member

ORDER ON VOLUNTARY AGREEMENT AND WITHDRAWAL OF PROTEST

The official records of the Alcoholic Control Board (the “Board”) reflect that, RC CT Avenue Restaurant, LLC, t/a Epicurean & Company, (“Applicant”) applied for a Substantial Change – Entertainment Endorsement – to its Retailer’s Class CR License located at 4250 Connecticut Avenue, N.W., Washington D.C. This application was protested by ANC 3F. The Applicant and Jane Soloman, Chair, ANC 3F (the “Parties”) have entered into a Voluntary Agreement (Agreement) dated September 21, 2009, setting forth the terms and conditions that govern the operation of the Applicant’s establishment. This Agreement constitutes a withdrawal of the Protest of this Application.

The Agreement has been reduced to writing and has been properly executed and filed with the Board. The Applicant and Chairperson Solomon are signatories to the Agreement.

Accordingly, it is this 30th day of September 2009, **ORDERED** that:

1. The Application filed by RC CT Avenue Restaurant, LLC, t/a Epicurean & Company, for a Substantial Change – Entertainment Endorsement – to its Retailer’s Class CR License, located at 4250 Connecticut Avenue, N.W., Washington, D.C., is **GRANTED**,

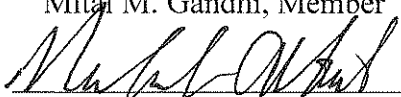
2. The Protest in this matter is hereby **WITHDRAWN**,

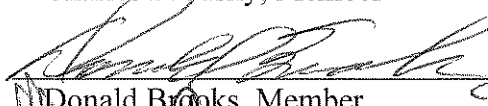
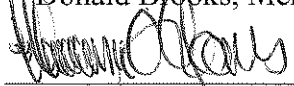
3. This above-referenced Voluntary Agreement submitted by the Parties to govern the operations of the Applicant’s establishment is **APPROVED** and **INCORPORATED** as part of this Order; and

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

District of Columbia
Alcoholic Beverage Control Board


Peter B. Feather, Chairperson

Mital M. Gandhi, Member

Nick Alberti, Member

Charles Brodsky, Member

Donald Brooks, Member

Herman Jones, 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.

VOLUNTARY AGREEMENT

This VOLUNTARY AGREEMENT ("Agreement") is made on this 21st day of September 2009, by and between RC CT Avenue Restaurant, LLC t/a Epicurean and Company, License # 071792, (the Applicant) and Advisory Neighborhood Commission 3F ("Protestant"), North Cleveland Park, Forest Hills and Tenleytown (collectively, the "Parties").

WITNESSETH

WHEREAS, pending before the District of Columbia Alcoholic Beverage Control Board is the Applicant's application for a substantial change to add an entertainment endorsement to its Retailer's Class "CR" (Restaurant) liquor license for its premises at 4250 Connecticut Avenue, N.W.; and

WHEREAS, Protestant is Advisory Neighborhood Commission 3F, who filed a timely protest against the issuance of the Applicant's license and entertainment endorsement application pursuant to D.C. Official Code §25-601(1) and 601(4), respectively; and

WHEREAS, the Parties entered into mediation with the Mediator, Alcoholic Beverage Control 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

WHEREAS, the Parties are desirous of entering into a Voluntary 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 on (i) the peace, order and quiet of the neighborhood and (ii) pedestrian safety and vehicular traffic, and to eliminate the need for a Protest Hearing regarding the license application.

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. The Applicant shall manage and operate a *bona fide* restaurant on its premises with an emphasis on food and live entertainment, as noted below. Any change from this model shall be considered by both Parties to be a substantial change in operation of great concern to residents and requires the applicant to seek ANC approval and requires prior approval by the ABC Board.
2. The Applicant's hours of operation shall be as follows:

Monday through Sunday: 6:00 a.m. – 12:00 midnight

The Applicant's hours for selling and serving alcohol shall be as follows:

Monday through Saturday: 8:00 a.m. – 12:00 midnight

Sunday: 10:00 a.m. – 12:00 midnight

The Applicant's hours for live entertainment shall be as follows:

Monday through Sunday: 5:00 p.m. – 11:00 p.m.

The Applicant intends to host no more than 12 private parties a year at which time the restaurant will be closed to the public. The hours of operation and the hours for serving alcoholic beverages at private parties shall be 8:00 a.m. to 2:00 a.m. Monday through Saturday and 10:00 a.m. to 2:00 a.m. on Sunday. The Applicant will adopt a parking plan to ensure that late night party-goers do not disturb the peace and quiet of the residential streets surrounding the restaurant.

3. The Establishment is self-service, cafeteria style with tables and chairs for the exclusive use of dining patrons and a bar area with 30 seats. The maximum occupancy of the Establishment according to its Certificate of Occupancy is 127 patrons.
4. Applicant shall offer food to its patrons at all times it is open. At no time shall a patron be able to purchase an alcoholic beverage from the Applicant and not be able to purchase food from the Applicant. The Applicant shall offer take-out food, but will not provide alcoholic beverages on a take-out basis.
5. The Applicant will offer live entertainment provided by students from the area colleges and universities. The Applicant shall permit no form of dancing. Applicant will strictly comply with D.C. Official Code § 25-725 and to that end shall make improvements to the property and take all necessary actions to ensure that music, noise, and vibration from the Establishment are not audible in any other premises other than the licensed establishment. Applicant agrees to keep its doors and windows closed when live music is being played at the establishment. If necessary, Applicant will take reasonable steps to reduce noise emanating from the Establishment from the opening of the entry or exit doors.
6. The Applicant shall not install or utilize any equipment for video games or juke boxes.
7. The Applicant shall post no signs in public space or outside the restaurant advertising liquor sales, happy hours, or the like.
8. Applicant will care for the 35 feet of public space that borders the restaurant on Connecticut Avenue, including provision for suitable plantings. Applicant shall keep the sidewalk (up to and including the curb) and tree box(es) clean and free of litter,

bottles, and other debris in compliance with D.C. Code and Municipal Regulations. Applicant shall police these areas sufficiently to assure that refuse and other materials are promptly removed. Applicant shall ensure that the area around the dumpster(s) is kept clean at all times and the dumpster does not encroach on abutting property owners and so that no garbage is placed on abutting property.

9. The Applicant shall provide rat and vermin control for its trash receptacles and property. Applicant shall provide proof of its rat and vermin control contract upon the request of the Protestants. Applicant shall have the Establishment and the area around the Premises properly cleaned at the end of each night to ensure that there are not garbage and odors present the following morning.
10. An ABC licensed manager, conversant with all aspects of this agreement, shall be on site at the Applicant's premises during all hours of operation. Applicant promises to Protestants that it shall abide by all Alcoholic Beverage Regulation Administration (ABRA) regulations regarding the ownership of the license and all other provisions applicable to liquor licenses and agrees that Protestants shall have standing to ask the ABC Board to enforce any violations of the agreement. Applicant also specifically agrees to be the sole owner of the ABC license.
11. Applicant agrees to seek to maintain open communication with the Protestants, and the community for which the ANC acts. Applicant, upon notice from the ANC shall send a representative of the Establishment to a meeting(s) to confer and deal in good faith with issues raised under this Agreement or new issues that might arise with regard to the operation of the Establishment.
12. 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 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 seeking a Show Cause Order from the ABC Board pursuant to D.C. Official Code § 25-447. Unless otherwise noted above, any notices required to be made under this Agreement shall be in writing and mailed via certified mail, return receipt requested, or hand-delivered, to the other parties to this Agreement at the following addresses. Notice shall be deemed given as of the time of receipt or refusal of receipt:

If to Applicant: Epicurean and Company
4250 Connecticut Avenue, N.W.
Washington, D.C. 20008
202-237-7711

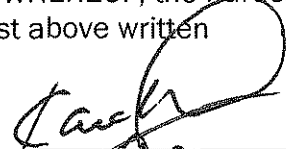
If to Protestant: Advisory Neighborhood Commission 3F

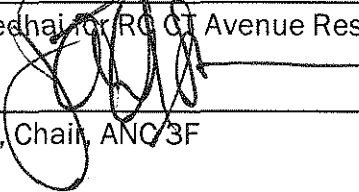
4401-A Connecticut Avenue, N.W., PMB 244
Washington, D.C. 20008-2322
202-362-6120

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. Upon execution of this Agreement by the Parties and its acceptance by the ABC Board, Protestants shall withdraw the Protest.

IN WITNESS WHEREOF, the Parties have affixed hereunto their hands and seals on the year and day first above written

By:  _____ for the Applicant
Kanchan S. Seehaj for RC CT Avenue Restaurant, LLC T/A Epicurean and Company

By:  _____ for the Protestant
Jane Solomon, Chair, ANO 3F