

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

In the Matter of:)	
)	
Top Shelf LLC)	
t/a Penn Quarter Sports Tavern)	
)	
Application for a Substantial Change)	Case No. 10766-08/024P
To a Retailer's Class "CR" License)	License No. 76039
at premises)	Order No. 2008-264
)	
639 Indiana Ave., N.W.)	
Washington, D.C. 20004)	
)	

Top Shelf LLC t/a Penn Quarter Sports Tavern, Applicant

Karen Wirt, Chairperson, and Charley Docter, Commissioner, on behalf of Advisory Neighborhood Commission 6C, and Dominick Cardella, Abutting Property Owner, Protestants

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

ORDER ON VOLUNTARY AGREEMENT AND WITHDRAWN PROTEST

The Substantial Change Application (Application) was filed by Top Shelf LLC t/a Penn Quarter Sports Tavern to its Retailer's Class CR license for an Entertainment Endorsement, a Class Change from a Retailer's Class CR license to a Retailer's Class CT license and a change in the hours of operation and sale of alcoholic beverages. The Application, having been protested, came before the Alcoholic Beverage Control Board (Board) for a Roll Call hearing on January 2, 2008 in accordance with D.C. Official Code § 25-601 (2001). Karen Wirt, Chairperson, on behalf of Advisory Neighborhood Commission (ANC) 6C, filed a timely protest letter dated December 17, 2007, and Dominick Cardella, Abutting Property Owner filed a timely protest letter dated December 3, 2007.

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The official records of the Board reflect that the Applicant and the Protestants have reached a Voluntary Agreement which has been reduced to writing and has been properly executed and filed with the Board. Pursuant to the Voluntary Agreement, dated September 10, 2008 the Protestants have agreed to withdraw their protests, provided, however, the Board's approval of the pending Application is conditioned upon the Applicant's continuing compliance with the terms of the Voluntary Agreement.

Accordingly, it is this 1st day of October 2008, **ORDERED** that:

1. The protests of ANC 6C and Dominick Cardella are **WITHDRAWN**;
2. The Substantial Change Application filed by Top Shelf LLC t/a Penn Quarter Sports Tavern to its Retailer's Class CR license for an Entertainment Endorsement, a Class Change from Class CR to a Class CT and a change in the hours of operation and sale of alcoholic beverages at 639 Indiana Ave., N.W., Washington, D.C., is **GRANTED**;
3. The above-referenced Voluntary Agreement is **INCORPORATED** as part of this Order; and
4. Copies of this Order shall be sent to the Applicant and to the Protestants.

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District of Columbia
Alcoholic Beverage Control Board

Peter B. Feather, Chairperson



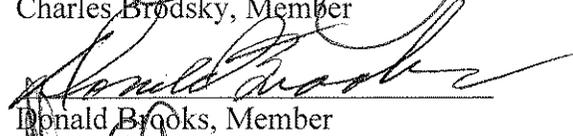
Judy A. Moy, Member

Mital M. Gandhi, Member

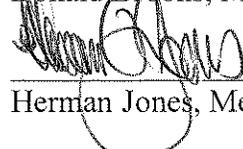


Nick Alberti, Member

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

Dated as of September 10, 2008 by and between

**Top Shelf LLC/Penn Quarter Sports Tavern
ABRA License Number 76039
("Establishment")**

**639 Indiana Avenue
Washington, DC 20004
("Premises")**

And

**Protestors including Advisory Neighborhood Commission 6C
("ANC 6C") and Dominick Cardella, (adjacent neighbor)**

PREAMBLE

This Voluntary Agreement, having been adopted by a vote of a majority of the Commissioners of ANC 6C at a full public meeting, and executed by the Establishment and ANC 6C ("the Parties"), and dated as indicated above, pertains to the applications filed with the Alcohol Beverage Regulation Administration in October, 2007 and in June, 2008. Through this Voluntary Agreement, the Parties aim to create an environment whereby the Establishment may operate as a viable contributing business at its premises in the ANC 6C community, while concurrently curtailing any adverse effects its operations could have on the surrounding neighborhood and residents.

The Establishment agrees to work regularly with ANC 6C, neighborhood associations, and residents to ensure that its operations do not adversely affect the surrounding neighborhood. All parties believe the statements and provisions contained in this Voluntary Agreement are reasonable and must become wholly integrated into the day-to-day operations of the Establishment.

The community and the Establishment understand and agree that the requirements imposed upon the Establishment, as set forth herein, are important measures to protect the safety, peace, order and quiet of the neighborhood, residents, and businesses.

WITNESSED

Whereas, the Establishment's Premises are within the boundaries of ANC 6C09;

Whereas, the Parties desire to enter into an agreement governing certain requirements and understandings regarding the Retailer's Class CN Liquor License change applications, filed by the Establishment, in October, 2007 and in June, 2008;

Now, therefore, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **Use and Purpose of Premises.** The Establishment will operate as a "tavern." It will not operate as a "nightclub." According to ABRA regulations, a "tavern" is a space in a building which is regularly used and kept open as a place where food and alcoholic beverages may be served. The Establishment is not requesting an "entertainment endorsement" for dancing. The Establishment acknowledges that with an "entertainment endorsement," a business may offer entertainment, except nude performances, and offer facilities for dancing by patrons. And, without an "entertainment endorsement," for dancing, a business may have recorded and live music, but may not provide facilities for dancing for its employees, patrons, or entertainers.

2. **Public Space Cleanliness and Maintenance.** The Establishment shall maintain the public space adjacent to the Premises in a clean and litter-free condition. The area maintained shall include, but will not be limited to, the entirety of the adjacent sidewalk(s) up to and including the curb/gutter and 18" into the street(s) adjacent the Establishment (the "Maintenance Area"). Cleanliness and maintenance of the Maintenance Area and Premises shall include, but not be limited to, the following:

- (a) Picking up and properly disposing of all trash and litter, regardless of source, a minimum of twice daily. Removing trash from the Premises or Maintenance Area and placing it on the curb between the hours of 10 p.m. and 7 a.m. with reasonable measures being taken to prevent disturbing residential neighbors during the course of such trash pick-up, collection, and removal.
- (b) Ensuring that all trash and garbage is placed only in rodent-proof trash containers, that trash covers fit properly, and that trash containers remain fully closed except when trash or garbage is being added or removed.
- (c) Maintaining a contract with a service for regular trash, garbage, and recycling removal.
- (d) Exercising due diligence to prevent and/or have eliminated vermin infestation in and around the Establishment, including following, at a minimum, the recommendations and guidelines of the Vector Control Division of the Department of Public Works.

3. **Business Operations and Practices – General.**

- (a) The Establishment's "Hours of Operation," Sunday thru Thursday, will be 6:30 a.m. to 2 a.m. "Hours of Sale of Alcoholic Beverages," Sunday thru Thursday, will be 11 am to 1:30 am. "Hours of Operation," Friday and Saturday, will be 6:30 a.m. to 3 a.m., with the provision that the Establishment will end operations on one of its two floors at 2 a.m. "Hours of Sale of Alcoholic Beverages," Friday and Saturday, will be 11 a.m. to 2:30 a.m., with the provision that the Establishment will end the sale of alcoholic beverages on one of its two floors at 1:30 a.m. Last Call will occur 30 minutes before closing on each floor.

- (b) The Establishment will not, directly or indirectly, sell or deliver alcohol to any intoxicated person.
- (c) The Establishment agrees to ensure that no patron shall:
 - (i) bring alcohol into the Premises from outside sources, except as provided by law;
 - or
 - (ii) Exit the Establishment with alcoholic beverages.
- (d) All the Establishment's employees shall attend alcoholic beverage server training as required by DC law.
- (e) The Establishment shall post a notice kept in good repair and visible from point of entry stating that proper identification is required for the service of alcohol.
- (f) The Establishment agrees to reasonably check identification to ensure that only patrons of legal age are served alcoholic beverages.
- (g) As long as the Establishment provides food service, the Establishment shall at all times provide metal utensils and reusable, sturdy plates or bowls in connection with all food served and consumed on the Premises. Take-away purchases are exempt from this requirement.

4. Business Operations and Practices – Security and Parking.

- (a) The Establishment shall have on the Premises a minimum of one security host for every 60 patrons, whose sole responsibility is the monitoring of the peace, order and quiet of the establishment and its immediate environs. An Establishment manager may be used to satisfy the requirement for one security host.
- (b) The Establishment shall take all necessary steps to prevent patron rowdiness, including refusing admission and service to, or ejecting, rowdy or unruly persons ("Disruptive Patrons"). Should any disturbance occur inside or outside the Premises where a patron is, or patrons are, required to leave, the Establishment's personnel/staff shall escort any and all other patrons ("Concerned Patrons") who request assistance as a result of their fear that they could be harmed by the Disruptive Patrons, while enroute to their vehicle, the nearest Metro, or a taxi, as may be appropriate and/or shall take such other measures as deemed appropriate under the circumstances, including, but not limited to, contacting the police, to see that the Concerned Patrons exit the Building and the environs safely without being harmed and to ensure that there is no additional disturbance outside the Premises when the Concerned Patrons exit.
- (c) The Establishment shall not allow or encourage staff or patrons to remove any of their clothing as part of any "strip tease" type dance or in any other type of circumstance. Nudity and/or partial nudity shall not be utilized in any advertisement or display inside or outside the Building.

(d) The Establishment shall make every effort (within the law) to prohibit criminal activity inside or adjacent to the Building. The Establishment shall attempt to achieve this by:

- (i) Calling the Metropolitan Police Department if illegal activity is observed;
- (ii) Working with the D.C. Metropolitan Police Department (MPD) if, in the opinion of the MPD, the operation of this Establishment has caused, or is contributing to, criminal activities in the neighborhood. In the event of such a circumstance, the Establishment shall make the changes to its operations that the MPD believes are necessary to ameliorate the situation. If the MPD determines that a police presence is necessary to maintain peace, order, and quiet, the Establishment shall provide to MPD funds sufficient to cover the police presence.

5. Business Operations and Practices – Exterior.

- (a) The Establishment shall not permit the installation of pay phones inside or on the Premises and shall actively oppose the installation of pay phones outside the Premises on public space.
- (b) The Establishment will install and maintain on the exterior of its Premises lighting which shall be in use from dusk until dawn every day of the year
- (c) The Establishment agrees to fully encourage its patrons, with noticeable signage, to enter and leave the Premises in a peaceful, quiet, and orderly manner that is respectful of the neighborhood.
- (d) If neighbors, acting as “Protestors,” as provided by law, file a complaint about the Establishment’s operations, and in the reasonable judgment of the Protestors, an aspect of the operation is causing a detrimental effect on the neighbors or the neighborhood, even if the action or inaction complained about is not a breach of this Agreement, the Establishment shall meet with the Protestors, and while acting in good faith and using reasonable judgment under the circumstances, shall attempt to find an acceptable solution to resolve the concerns of the neighbors.

6. Sound, Music, Dancing, and Entertainment.

- (a) The Establishment agrees to take reasonable measures, including the possibility of additional sound proofing, to minimize the level of sound emanating from the Premises. The establishment will control amplified volume levels and maintain an environment quiet enough, as provided by DC law, to allow residents enjoyment of the neighborhood.
- (b) The Protestors understand that the Establishment has a public space permit and that there may be amplified sound from music or television audible beyond the public

space. The Establishment will have all exterior, amplified sound equipment and speakers turned off prior to 11 p.m. daily, and exterior televisions turned off prior to 10 p.m.

(c) The closing hours of operation for the Unenclosed Sidewalk Café shall be 10 pm on Sunday - Thursday and 11pm on Friday - Saturday. The closing hours of operation for the Enclosed Sidewalk Café shall be 11 pm on Sunday - Thursday and 12 midnight on Friday - Saturday. This provision will not restrict smokers who are prohibited by DC law from smoking inside any establishment.

(d) At all times the walkway between the Enclosed and Unenclosed Sidewalk Café will remain open with an unencumbered 7 foot wide pedestrian lane.

(e) The Establishment will post conspicuous signage to advise patrons of its Sidewalk Café's closing times. The establishment shall also and at all times post a legible sign in the Enclosed Café stating, "Please be respectful of the Peace and Quiet that is required by our residential neighbors."

(f) The Establishment shall not produce any sound, noise, or music of such intensity that it may be heard in any premises outside the Premises in accordance with DC Official Code Title 25-725 and or 20 DCMR §§ 2700 et seq and 2800 et seq., as amended

(g) Notwithstanding the previous paragraph, if noise from the Establishment is a source of complaint by neighbors living and working near the Premises, the Establishment shall meet with the Protestors, and all parties shall act in good faith and use reasonable judgment, to attempt to find an acceptable solution to resolve the concerns of the parties within fifteen (15) business days from written notice of the noise complaint to discuss possible steps to ameliorate the problem. Steps agreed to in writing will be implemented within ten (10) business days following the meeting or as agreed to by the parties.

(h) The Establishment will not extend its hours of operation, its hours of alcoholic beverage sales, or operate conversely to this Agreement without the support of the adjacent neighbor.

(i) The Establishment will implement measures to ensure that during hours of operations its sidewalk café is used only by patrons.

(j) When the unenclosed outside café is closed, the Establishment will move and stack the tables and chairs into the enclosed portion of its sidewalk café in order to restore the promenade.

7. Cooperation with Interested Parties.

The Establishment agrees to work with the Protestors, ANC 6C, the ABC Board, MPD, the Commissioner for the Single Member District within whose boundaries the Premises is located, the Downtown Neighborhood Association, the Pennsylvania Condominium Association to resolve issues arising from the Establishment's failure to fulfill its obligations

under this Voluntary Agreement. If there are legitimate and reasonable issues raised by the community, the Establishment shall meet with the Protestors, and all parties shall act in good faith and use reasonable judgment, to attempt to find an acceptable solution to resolve the concerns of the parties within fifteen (15) business days from written notice of the noise complaint to discuss possible steps to ameliorate the problem. Steps agreed to in writing will be implemented within ten (10) business days following the meeting or as agreed to by the parties.

8. Modifications. The Establishment will notify ANC 6C of any application to the ABC Board for any substantial change in operations or for a change in ownership 30 days prior to the application.

9. Miscellaneous.

(a) The Establishment shall keep on premises, a copy of this Voluntary Agreement in the Premises in conjunction with the posting of its alcoholic beverage license. The Establishment shall include an appropriately sized sign indicating that a copy of this Voluntary Agreement is kept on the Premises.

(b) The Establishment shall file a written report with the Protestors by January 15th and July 15th of each year which summarizes its operations and the procedures to be followed to continue compliance with the terms and conditions of this Agreement. If the report includes information which, in the reasonable judgment of the Protestors, causes them to believe that the Establishment is in violation or will violate the terms and conditions of this Agreement, then the Establishment shall meet with the Protestors to discuss the questions or concerns. Participation by the Protestors in such a meeting will in no way limit any of their rights and remedies under this Agreement.

(c) The Establishment will operate in compliance with all applicable laws and regulations.

10. Enforcement.

The Establishment and ANC 6C agree to enter into this Voluntary Agreement and recognize that upon their joint filing of this Voluntary Agreement with the Alcoholic Beverage Regulatory Administration this Voluntary Agreement shall be incorporated into the Establishment's License and constitute a part thereof. If the Establishment should breach the conditions of this Voluntary Agreement, it is understood by all parties that the ANC6C, and/or its committees, or others shall seek self mediation within fifteen (15) business days of said notice and attempt civil resolution before petitioning the ABC Board for a "show cause" hearing pursuant to 23 DCMR 1513.5.

This Voluntary Agreement is binding on the Establishment, but not on any unrelated successors, transferees, or assigns of the Establishment. Any subsequent successors, transferees, or assigns will be required to negotiate with the Protestors if they desire a change to any of the terms of this Voluntary Agreement.

In witness whereof, the parties, acting through their authorized representatives have signed and sealed this Voluntary Agreement.

Establishment:

Signature: 
Printed Name: MICHAEL BRUNI Date: 8/8/08
Title: owner

Advisory Neighborhood Commission 6C Representative:

Signature: 
Printed Name: KAREN WIRT Date: 9.10.08
Title: Chair, ANC 6C

Dominick Cardella, adjacent neighbor

Signature: 
Printed Name: DOMINICK CARDELLA Date: 8/11/08
Title: ADJACENT NEIGHBOR

ABC Board-Licensed Manager:

Signature: _____
Printed Name: _____ Date: _____