

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

In the Matter of:)
)
Capitol City Brewing Company, LLC,)
t/a Penthouse Pool & Lounge)
)
Applicant for a Substantial Change)
to Retailer's Class CN License)
)
at premises)
1612 U Street, N.W.)
Washington, D.C. 20009)
)

Case No. 14-PRO-00046
License No. ABRA-086789
Order No. 2014-528

Capitol City Brewing Company, LLC t/a Penthouse Pool & Lounge (Applicant)

William Stephens, Chair, Advisory Neighborhood Commission (ANC) 2B

William Schulz, on behalf of Protestant Group of 5

BEFORE: Ruthanne Miller, Chairperson
Nick Alberti, Member
Donald Brooks, Member
Herman Jones, Member
Hector Rodriguez, Member
James Short, Member
Mike Silverstein, Member

**ORDER ON AMENDMENT TO SETTLEMENT AGREEMENT AND WITHDRAWAL
OF
PROTESTS OF ANC 2B AND THE PROTESTANT GROUP OF 5**

The Application filed by Capital City Brewing Company, LLC t/a Penthouse Pool & Lounge, for a Substantial Change to its Retailer's Class CT License, having been protested, came before the Alcoholic Beverage Control Board (Board) for a Roll Call Hearing on July 21, 2014, in accordance with D.C. Official Code § 25-601 (2001).

The official records of the Board reflect that the Applicant, ANC 2B, the Schultz Protestant Group of 5, and the Smith Protestant Group of 7¹ have entered into a Settlement Agreement (Agreement), dated October 2014, 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; Chair Williams Stephens, on behalf of ANC 2B; William Schulz, on behalf of Protestant Group of 5; and Ralph Allen Smith on behalf of Protestant Group of 7; are signatories to the Agreement.

This Agreement constitutes a withdrawal of the Protests filed by ANC 2B and Schulz Protestant Group of 5.

Accordingly, it is this 17th day of December, 2014, **ORDERED** that:

1. The Application filed by Capitol City Brewing Company, LLC t/a Penthouse Pool & Lounge for a Substantial Change to its Retailer's Class CT License, located at 1612 U Street, N.W., Washington, D.C., is **GRANTED**;
2. The Protests of ANC 2B and Schulz Protestant Group of 5 in this matter are hereby **WITHDRAWN**;
3. The above-referenced Amendment to Settlement Agreement submitted by the Parties to govern the operations of the Applicant's establishment is **APPROVED** and **INCORPORATED**; and
4. Copies of this Order shall be sent to the Applicant, ANC 2B, and William Schulz, on behalf of Protestant Group of 5.

¹ The Board takes administrative notice that this Protest Group of 7, represented by Ralph Allen Smith, is not a recognized Protestant with standing in Protest No. 14-PRO-00046. Rather, this Group is solely a signatory of the Settlement Agreement reached by the Parties.

District of Columbia
Alcoholic Beverage Control Board

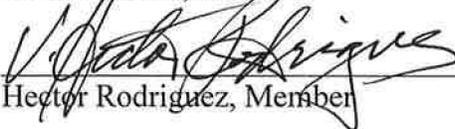


Ruthanne Miller, Chairperson

Nick Alberti, Member

Donald Brooks, Member

Herman Jones, Member



Hector Rodriguez, Member

James Short, Member



Mike Silverstein, Member

Pursuant to D.C. Official Code § 25-433, 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. However, the timely filing of a Motion for Reconsideration pursuant to D.C. Official Code § 25-433, 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).

AMENDMENT TO ABC SETTLEMENT AGREEMENT

THIS AMENDMENT TO ABC SETTLEMENT AGREEMENT (the "Amendment") is made and entered into this ____ day of October 2014 by and among Capitol City Brewing Company, LLC, t/a Penthouse Bar ("Applicant"), Advisory Neighborhood Commission 2B ("ANC 2B"), and William Schultz on behalf of a Group of Seven individual protestants ("Schultz Protestants") (ANC 2B, and the Schultz Protestants are hereinafter sometimes referred to collectively as the "Protestants"), and Ralph Allen Smith, on behalf of himself and six other individuals who protested the initial license application ("Smith Protestants").

RECITALS

WHEREAS, Applicant operates the health club and fitness facility (the "Facility") known as Vida located at 1612 U Street, NW;

WHEREAS, Applicant is the holder of a Retailer's Alcoholic Beverage License Class CT (the "License") for the sale of alcoholic beverages in the rooftop pool area;

WHEREAS, in connection with the original approval and issuance of the license, the parties entered into an ABC Settlement Agreement dated September 11, 2014 (The "Agreement") which Agreement was approved by Order on Voluntary Agreement and Withdrawal of Protests entered by the Alcoholic Beverage Control Board (the "Board") on December 14, 2011.

WHEREAS, Applicant has filed a request and approval of an Entertainment Endorsement ("EE"), and for expansion of the premises to include the fourth floor of the building where the Premises is located.

WHEREAS, Protestants have filed a protest with the Alcoholic Beverage Control Board (the "Board") opposing the approval of the EE;

WHEREAS, the parties desire to enter into this Amendment to resolve the protest of the license application;

WHEREAS, the Smith Protestants wish to join in and agree to the Amendment;

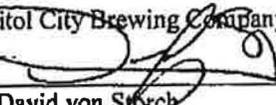
NOW, THEREFORE, in consideration of the mutual covenants and agreements contained in this Amendment, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Recitals Incorporated. The recitals set forth above are incorporated herein by reference.
2. Limitation on Entertainment. Notwithstanding the Board's approval of an EE, Applicant's entertainment shall be limited to use of a disc jockey or music programmer ("MP"), who shall select and play recorded ambient, background music through the Applicant's existing sound system. The MP shall not do "shout-outs," conduct contests, make use of a microphone or otherwise provide entertainment or amusement other than the playing of recorded music. There shall be no live music offered in the premises. All music shall be subject to the conditions and restrictions set forth in section 6 of the Agreement.
3. Use of Fourth Floor. Applicant may make use of the fourth floor of the building under its License, provided such use is in accordance with section 4 and all other provisions of the Agreement.

4. Use of Inner Fitness Studio. The Inner Fitness Studio shall not be used as a venue for a private event that includes a DJ/Music Programmer and alcoholic beverage service more than 15 times per year.
5. Withdrawal of Protest. Protestants agree to the withdrawal of their protest provided that this Amendment is incorporated into the Board's order approving issuance of the substantial change and compliance with this Agreement by Applicant is required by such Order.
6. Entire Agreement. This Amendment and the Agreement, set forth the entire understanding of the parties with respect to Applicant's alcoholic beverage application and issuance of the License. There are no other warranties or representations which have been made or shall be relied upon by any of the parties to this Agreement other than those expressly set forth herein.
7. Counterparts. This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

APPLICANT:

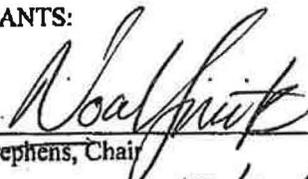
~~Capitol City Brewing Company, LLC~~

By: 
David von Storch

Date Signed: 10/25/14

PROTESTANTS:

ANC 2B:

By: 
NOAH SMITH Will Stephens, Chair

Date Signed: 12/17/14

Schultz Protestants

William Schultz, on behalf of himself and six other individuals

Date Signed: _____

Smith Protestants

Ralph Allen Smith, on behalf of himself and six other individuals

Date Signed: _____

APPLICANT:

Capitol City Brewing Company, LLC

By: David von Storch

Date Signed: _____

PROTESTANTS:

ANC 2B:

By: Will Stephens, Chair

Date Signed: _____

Schultz Protestants

William Schultz
William Schultz, on behalf of himself and six other individuals

Date Signed: 10/17/14

Smith Protestants

Ralph Allen Smith
Ralph Allen Smith, on behalf of himself and six other individuals

Date Signed: _____

APPLICANT:

Capitol City Brewing Company, LLC

By: David von Storch

Date Signed: _____

PROTESTANTS:

ANC 2B

By: Will Stephens, Chair

Date Signed: _____

Schultz Protestants

William Schultz, on behalf of himself and six other individuals

Date Signed: _____

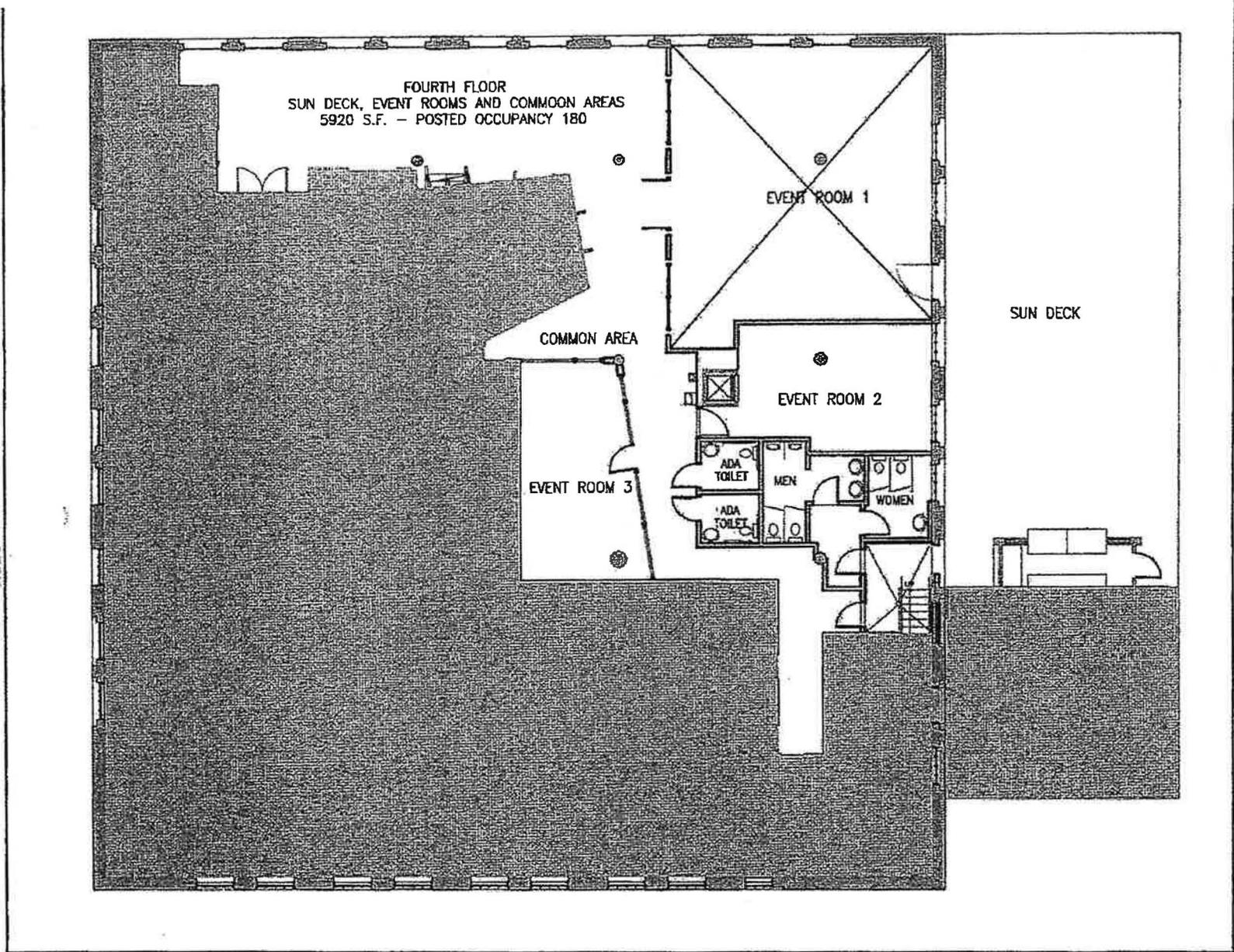
Smith Protestants

Ralph Allen Smith, on behalf of himself and six other individuals

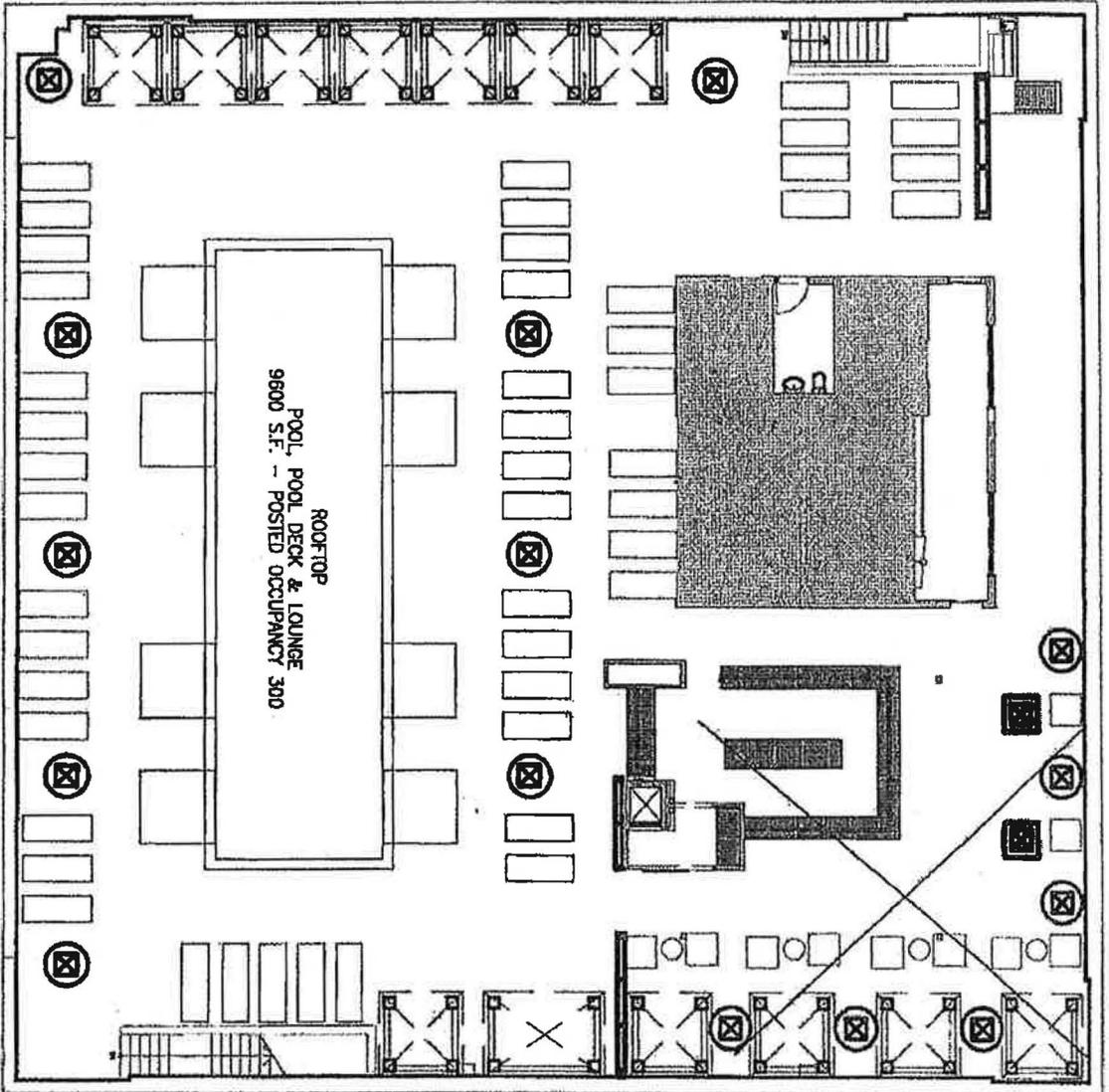
Date Signed: Oct 22, 2014

EXHIBIT A

DRAWING



1612 U STREET NW - FOURTH FLOOR



1612 U STREET NW - FIFTH FLOOR/PENTHOUSE