DISTRICT OF COLUMBIA

ALCOHOLIC BEVERAGE CONTROL BOARD

MEETING

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IN THE MATTER OF:               :
                                :
2461 Corporation                :
t/a Madam's Organ               :
2461 18th Street, NW            :
Retailer CT                     :  Protest
License No. 25273               :  Hearing
ANC 1C                          :  (Status)
Case No. 12-PRO-00073           :
Substantial Change              :
(Sidewalk cafe)                 :
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October 10, 2012

The Alcoholic Beverage Control

Board met in the Alcoholic Beverage Control Hearing Room, Reeves Building, 2000 14th Street, N.W., Washington, D.C., Ruthanne Miller, Chairperson, presiding.

PRESENT
RUTHANNE MILLER, Chairperson
NICK ALBERTI, Member
DONALD BROOKS, Member
HERMAN JONES, Member
CALVIN NOPHLIN, Member
MIKE SILVERSTEIN, Member

2

1 P R O C E E D I N G S
2 9:55 a.m.
3 CHAIRPERSON MILLER: The next case on our
4 calendar is also a protest status hearing. It's Case
5 No. 12-PRO-00073, Madam's Organ, 2461 18th Street,
6 N.W., License No. 025273, in ANC 1C. Good morning.
7 MR. DUGGAN: Good morning.
8 CHAIRPERSON MILLER: When you're ready, would
9 you introduce yourselves for the record, please?
10 MR. BIANCO: Sure. Richard Bianco on behalf
11 of the applicant, 2461 Corp., Madam's Organ, trading as
12 Madam's Organ.
13 MR. DUGGAN: Bill Duggan, president of 2461
14 Corp.
15 CHAIRPERSON MILLER: Good morning.
16 MR. JAMES: Good morning. Denis James
17 representing the Kalorama Citizens Association.
18 CHAIRPERSON MILLER: Okay.
19 MS. AUBRUN: Good morning. My name is
20 Benedicte Aubrun. I'm the secretary and the ABC
21 liaison for Reed Cooke Neighborhood Association.
22 CHAIRPERSON MILLER: All right. Are there

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1 any preliminary issues in this case?
2 MR. BIANCO: I don't think we have any
3 pending motions or preliminary matters in this case.
4 Just to update the Board as to where we are, we've held
5 mediation. We haven't reached an agreement. I don't
6 think it's likely that we're going to reach an
7 agreement between now and protest. What we have is a
8 side -- an application for a sidewalk cafe of four
9 seats. The sidewalk cafe's built and operating.
10 We're just dealing with the issue of service
11 of alcoholic beverages --
12 CHAIRPERSON MILLER: Okay.
13 MR. BIANCO: -- in the sidewalk cafe. I
14 think similar to Mr. Kline's request moments ago, we're
15 about 150 days from our initial roll call hearing in
16 terms of the protest date. And we would request that
17 the Board reschedule in accordance in with its policy
18 of holding hearings within 60 days of the roll call
19 hearing.
20 CHAIRPERSON MILLER: Okay. I hear you on
21 that. We're looking into it. Mr. James?
22 MR. JAMES: Yes. We attended mediation and

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1 proferred a draft voluntary agreement to settle the
2 case. The applicant indicated a lack of desire for a
3 voluntary agreement. So that was the basis of the
4 discussion.
5 CHAIRPERSON MILLER: Okay. But I don't want
6 to get into too much contact with --
7 MR. JAMES: Yeah, I'm not -- I wasn't going
8 any further than that.
9 CHAIRPERSON MILLER: Okay.
10 MR. JAMES: There is -- just for a bit of
11 clarity, there had been an existing summer garden and
12 they're adding sidewalk cafe to it. So on the placard,
13 there was no indication of how many seats. This is new
14 information since the placarding of the number of seats
15 that was just referenced by Mr. Bianco. So --
16 CHAIRPERSON MILLER: And that was four seats;
17 is that correct?
18 MR. DUGGAN: Yes. Originally it was -- I
19 think the -- the one that went in to the Board, I
20 think, was ten.
21 MR. JAMES: Nothing --
22 MR. DUGGAN: Just measuring everything we

5

1 had. The hearing -- public space, they gave it to us
2 for up to six. And we opted for the lower number four
3 just to have the space.
4 CHAIRPERSON MILLER: Okay, okay. Anything
5 else?
6 MR. JAMES: We were unaware of the number of
7 seats that were being requested through ABRA.
8 CHAIRPERSON MILLER: Okay. Sure. Mr.
9 Alberti has a question.
10 MR. ALBERTI: Mr. Duggan?
11 MR. DUGGAN: Yes.
12 MR. ALBERTI: It seems to me that you now
13 have settled on four seats. And maybe I'm wrong.
14 MR. DUGGAN: Correct, we have.
15 MR. ALBERTI: But I'm assuming that from what
16 -- would you -- would you have to take --
17 MR. DUGGAN: I actually provided the plans to
18 you.
19 MR. ALBERTI: Wait, wait. Let me -- let me
20 finish.
21 MR. DUGGAN: Oh, I'm sorry.
22 MR. ALBERTI: Please, let me -- let me ask my

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1 question.
2 MR. DUGGAN: Okay.
3 MR. ALBERTI: Would you entertain changing
4 your application to say four seats? And that may --
5 MR. DUGGAN: No. They're not protesting the --
6 MR. ALBERTI: -- help to resolve the issue.
7 MR. DUGGAN: -- number of seats. They wanted
8 -- they're protesting the hours and saying that it's
9 going to impact the vehicular traffic.
10 MR. ALBERTI: I understand. But my question
11 is, would you entertain changing your application to
12 four seats?
13 MR. DUGGAN: Is it going to delay the
14 process?
15 MR. ALBERTI: I don't know. I don't know.
16 MR. DUGGAN: I mean, our application and our
17 -- and our permit for our sidewalk cafe says, "Four
18 seats." So it's already -- it's already in there. My
19 sidewalk cafe permit per public space --
20 MR. ALBERTI: Per public space says --
21 MR. DUGGAN: -- says --
22 MR. ALBERTI: -- "Four seats."

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1 MR. DUGGAN: -- "Four seats." And --
2 MR. ALBERTI: But your application to -- your
3 application to ABRA said, "Ten seats;" is that correct?
4 PARTICIPANT: That's correct.
5 MR. DUGGAN: Correct. So we -- I have no
6 problem with changing it. And in fact, I gave this
7 woman here a copy of the sidewalk cafe permit and any
8 of the pertinent information. After our mediation
9 hearing I got it for her that afternoon.
10 MR. ALBERTI: Okay.
11 MR. DUGGAN: So I think they are aware of
12 exactly what the seats are and where they are, et
13 cetera.
14 MR. ALBERTI: Thank you. I mean --
15 MR. DUGGAN: Sorry.
16 MR. ALBERTI: -- it may help -- it may help
17 in your discussions with the protestants. Thank you.
18 CHAIRPERSON MILLER: Okay. Our legal counsel
19 says you can change it without delaying your process.
20 MR. DUGGAN: Great. I have no problem with
21 changing it to --
22 CHAIRPERSON MILLER: Okay.

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1 MR. DUGGAN: -- the four seats.
2 CHAIRPERSON MILLER: Because that's all you
3 can do, right?
4 MR. BIANCO: We'll do -- we'll bring it into
5 conformity with the public space permit.
6 CHAIRPERSON MILLER: Okay. Okay. Anything
7 else?
8 MR. BIANCO: There was another matter I
9 wanted to briefly address with the Board. It deals
10 with the same parties but it's slightly unrelated, and
11 it's the issue of a voluntary agreement. And I bring
12 it up now because of the holiday weekend. Based on the
13 present situation with my client's voluntary, they
14 weren't able to take advantage of the holiday hour
15 extension.
16 There has been an Order of the Board which
17 has issue with regard to the existence or non-existence
18 of a voluntary agreement, which we have challenged.
19 It's been several months. We haven't -- it's -- the
20 motion has been opposed. We have neither received a
21 hearing date, nor a ruling on that. And I wanted to
22 see if the Board could add that to the agenda to do --

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1 at least schedule a hearing on our motion with regard --
2 CHAIRPERSON MILLER: Is --
3 MR. BIANCO: -- to the voluntary agreement?
4 CHAIRPERSON MILLER: Okay. This is -- this
5 is a separate issue from this protest --
6 MR. BIANCO: Completely --
7 CHAIRPERSON MILLER: -- correct?
8 MR. BIANCO: It is a completely separate
9 issue.
10 CHAIRPERSON MILLER: Okay.
11 MR. BIANCO: It does deal with the same
12 parties. And given the recent events this week, I did
13 want to take this opportunity to bring it up.
14 CHAIRPERSON MILLER: Okay, okay. So what I
15 hear then is that -- we'll look for this motion and see
16 what the status of the -- and, you know, take a look at
17 it. But that's about all I can say at this point
18 because I -- it's not in this case. It's not in the
19 record in this case.
20 MR. BIANCO: That's correct. And that's
21 really all we're asking for at this point.
22 CHAIRPERSON MILLER: Okay.

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1 MR. BIANCO: I appreciate that, Madam Chair.
2 Thank you.
3 CHAIRPERSON MILLER: Okay. When was it
4 filed?
5 MR. BIANCO: I believe it was filed back in
6 May.
7 CHAIRPERSON MILLER: Okay.
8 MR. BIANCO: It's been opposed by the KCA.
9 CHAIRPERSON MILLER: All right.
10 MR. JAMES: Actually as in -- and as an end -
11 - well, actually may I?
12 CHAIRPERSON MILLER: Yes, briefly.
13 MR. JAMES: Is this an appropriate time to
14 speak? Yeah, actually it has not. There were two
15 existing voluntary agreements in this.
16 CHAIRPERSON MILLER: You'll get to -- don't
17 address the substance of it because it's not in this
18 record of this case. All I was accepting was a
19 statement --
20 MR. JAMES: Okay. So --
21 CHAIRPERSON MILLER: -- the motion out there
22 relating to your parties and we'll look for it.

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1 MR. BIANCO: That's all we're asking.
2 CHAIRPERSON MILLER: Okay? Yeah, okay.
3 MR. BIANCO: Thank you.
4 CHAIRPERSON MILLER: Really, we're not going
5 to hear anything about it in this -- this morning. So
6 -- you understand?
7 MR. JAMES: I understand. I'm just trying to
8 -- something has been said that is inaccurate.
9 CHAIRPERSON MILLER: Okay.
10 MR. JAMES: And, you know, I just wish to --
11 CHAIRPERSON MILLER: Okay. All I'm saying is
12 that if you want to address this, I can't --
13 MR. BIANCO: This won't be anything to the --
14 to the merits of what (inaudible).
15 CHAIRPERSON MILLER: Right. I just heard
16 there's a motion there that we --
17 MR. JAMES: I've seen no such motion.
18 CHAIRPERSON MILLER: You haven't seen it?
19 MR. JAMES: The Kalorama Citizens Association
20 does not claim to have a voluntary agreement with this
21 establishment. And -- but we believe there is one with
22 the ANC.

12

1 CHAIRPERSON MILLER: Okay. So we'll look for
2 that motion.
3 MR. BIANCO: Thank you, Madam Chair.
4 CHAIRPERSON MILLER: Okay. Anything else?
5 MR. JAMES: That's all we have.
6 CHAIRPERSON MILLER: All right. I'm going to
7 -- so now this case is scheduled for a protest hearing
8 January 9th, 2013. I've heard your concerns about the
9 desiring of an earlier date. And we'll see what we can
10 do. As of now, it is scheduled for January 9th, 2013.
11 I'm going to read similar instructions that I
12 read in the last case for the record. You should have
13 received in a mailing from Adjudication Assistant Sarah
14 Fashbaugh a letter explaining the protest process and a
15 copy of the protest information form. If you do not
16 have these documents, please see Ms. Fashbaugh at the
17 conclusion of this hearing.
18 You're required to complete and submit a
19 protest information form seven days before the date of
20 the hearing. The document needs to be submitted to
21 ABRA and to the opposing parties in this matter. If we
22 do not receive a copy of your PIF, your application or

13

1 your protest, whichever side you're representing may be
2 subject to dismissal.
3 This form is important to the Board in
4 narrowing protest issues, facilitating the process, and
5 keeping parties on point during a hearing. If you have
6 any questions today or any time leading up to the
7 hearing, please do not hesitate to contact Ms.
8 Fashbaugh at 202- 397-3971. Okay. Thank you very
9 much.
10 MR. BIANCO: Thank you very much.
11 MR. JAMES: Thank you.
12 (WHEREUPON, at 10:04 a.m., the hearing was
13 concluded.)
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1 CERTIFICATE OF NOTARY PUBLIC
2
3 I, BRADLEY ANGLIN, the officer before whom the
4 foregoing hearing was taken, do hereby certify that the
5 testimony appearing in the foregoing transcript was
6 recorded by me and thereafter reduced to typewriting
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8 record of the testimony given by said parties; that I
9 am neither counsel for, related to, nor employed by any
10 of the parties to the action in which this was taken;
11 and, further, that I am not a relative or employee of
12 any counsel or attorney employed by the parties hereto,
13 nor financially or otherwise interested in the outcome
14 of this action.
15
16
17
18 _____
19 BRADLEY ANGLIN
20 Notary Public in and for the
21 District of Columbia
22

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6 proceeding using the Court Reporter's notes and
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