

DISTRICT OF COLUMBIA

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ALCOHOLIC BEVERAGE CONTROL BOARD

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ROLL CALL HEARING

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IN THE MATTER OF:

B Washington, LLC  
t/a Plan B Burger Bar  
801 Pennsylvania Avenue NW  
License #ABRA-095796  
Class CR  
New Application  
Case #14-PRO-00062

Monday, September 8, 2014

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The Alcoholic Beverage Control Board met in Alcoholic Beverage Control Hearing Room, Reeves Building, 2000 14th Street N.W., Washington, D.C., Ms. La Verne Fletcher, Agent, presiding.

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P-R-O-C-E-E-D-I-N-G-S

10:05 a.m.

AGENT FLETCHER: Would the parties in the matter of Plan B Burger Bar please come forward, the parties in the matter of Plan B Burger Bar please come forward?

This is Case No. 14-PRO-00062, B Washington, LLC trading as Plan B Burger Bar, 801 Pennsylvania Avenue, Northwest, License No. ABRA-095796. This is a Class CR new application.

The protest issues are adverse impact on peace, order, and quiet, real property values, and pedestrian safety.

My name is La Verne Fletcher and I'm conducting the roll call hearing as the Board's agent pursuant to D.C. Official Code 1601.2.

Introductions beginning with the Applicant.

MR. MOLLOY: Good morning. I'm Brian Molloy from the firm of Mallios and

1 O'Brien, representing B Washington, LLC which  
2 is trading as Plan B Burger Bar.

3 With me is Thor Kritsky, Chief  
4 Operating Officer of Plan B Burger Bar.

5 AGENT FLETCHER: Mr. Molloy, would  
6 you spell your name for the record please?

7 MR. MOLLOY: Yes. It's Molloy, M-  
8 O-L-L-O-Y.

9 AGENT FLETCHER: And the first  
10 name was Brian?

11 MR. MOLLOY: Brian, B-R-I-A-N.

12 AGENT FLETCHER: Could you state  
13 your name again, sir, and spell it for the  
14 record?

15 MR. KRITSKY: Yes, ma'am. First  
16 name is Thor, T-H-O-R, last name is Kritsky,  
17 K-R-I-T-S-K-Y.

18 AGENT FLETCHER: Thank you very  
19 much.

20 Is anyone present on behalf of  
21 ANC-2C?

22 MR. WILSEY: Good morning, Ms.

1 Fletcher.

2 AGENT FLETCHER: Good morning, Mr.  
3 Wilsey.

4 MR. WILSEY: Kevin Wilsey on  
5 behalf on ANC-2C, K-E-V-I-N W-I-L-S-E-Y.

6 AGENT FLETCHER: Thank you, Mr.  
7 Wilsey.

8 And then we have a group of?

9 MS. O'BRIEN: I think we have 10  
10 or 11 people here.

11 AGENT FLETCHER: Could you state  
12 your name for the record please?

13 MS. O'BRIEN: Karen O'Brien.

14 AGENT FLETCHER: Thank you. Would  
15 you spell that for the record?

16 MS. O'BRIEN: K-A-R-E-N O'B-R-I-E-  
17 N.

18 AGENT FLETCHER: Thank you very  
19 much.

20 MS. O'BRIEN: Would you like the  
21 protestors to introduce themselves?

22 AGENT FLETCHER: In a moment.

1                   Your name, please?

2                   MS. PENA: My name is Ada Pena, A-  
3                   D-A P-E-N-A.

4                   AGENT FLETCHER: Ms. Pena, you  
5                   signed the protest letter?

6                   MS. PENA: Yes.

7                   AGENT FLETCHER: Ms. O'Brien, this  
8                   would be a good time for everyone present to  
9                   line up behind the table, state your name and  
10                  spell it for the record. Just line up right  
11                  behind Ms. Pena.

12                  MS. O'BRIEN: Okay. We have a  
13                  couple of people that are older. Could they  
14                  do it from their seats?

15                  AGENT FLETCHER: No. It has to be  
16                  into the microphone.

17                  MS. O'BRIEN: Okay. All right.

18                  AGENT FLETCHER: Unless you want  
19                  to do it for them on their behalf.

20                  COURT REPORTER: I apologize. For  
21                  today this one microphone standing up on the  
22                  table is what we're going to use. If you

1 could just point your head in the direction of  
2 it and speak clearly, I should be able to pick  
3 it up. I'm sorry for any inconvenience.

4 Thank you.

5 AGENT FLETCHER: Okay. So your  
6 name?

7 MS. TROUM: Diane Troum, T as in  
8 Tom-R-O-U-M as in Mary.

9 AGENT FLETCHER: Could you hear  
10 that okay?

11 COURT REPORTER: Could you say it  
12 one more time, please?

13 MS. TROUM: Diane Troum, T as in  
14 Tom-R-O-U-M as in Mary.

15 COURT REPORTER: Thank you.

16 MR. FALATO: Adam Falato, F like  
17 in Frank-A-L-A-T like in Tom-O.

18 AGENT FLETCHER: Thank you, Mr.  
19 Falato.

20 MS. FALATO: Betty Falato, F-A-L-  
21 A-T-O.

22 MS. NOVAK: Geraldine Novak, N-O-

1 V-A-K.

2 COURT REPORTER: Could you repeat  
3 that, ma'am?

4 MS. NOVAK: Geraldine Novak, N-O-  
5 V-A-K.

6 COURT REPORTER: Thank you.

7 MR. BOTHA: Darlow, D-A-R-L-O-W,  
8 is my first name, Botha, B-O-T-H-A.

9 MS. BOTHA: And my name is  
10 Beverly, B-E-V-E-R-L-Y, Botha, B-O-T-H-A.

11 AGENT FLETCHER: If you want you  
12 can just line up and stand behind Mr. Wilsey  
13 and just speak your name from right here. I  
14 think if you stand right beside Mr. Wilsey --

15 MR. WILSEY: Right here.

16 AGENT FLETCHER: -- and speak your  
17 name from there, that will work. Right into  
18 that microphone.

19 MS. LIEBSCHER: Miranda Liebscher,  
20 L-I-E-B-S-C-H-E-R.

21 AGENT FLETCHER: And Ms.  
22 Liebscher, you're also representing Robert

1 Liebscher today?

2 MS. LIEBSCHER: I am.

3 MS. BATEMAN: Pamela Bateman, B as  
4 in boy-A-T-E-M-A-N.

5 AGENT FLETCHER: B-E-T-M-A? Oh,  
6 B-A?

7 MS. BATEMAN: T-E-M-A-N.

8 AGENT FLETCHER: What's the first  
9 name again?

10 MS. BATEMAN: Pamela, P-A-M-E-L-A.

11 AGENT FLETCHER: Pamela, what I'm  
12 going to need for you to do, if you could step  
13 forward for a moment. Your name may be on the  
14 list and not legible. I have a list. If you  
15 can check this list, there is more than one  
16 page, and see if your name is on there.

17 Did you sign the protest letter?

18 MS. BATEMAN: I did.

19 AGENT FLETCHER: That's the last  
20 page. You don't see your signature? Can you  
21 just double check? Spell your name for me  
22 again?

1 MS. BATEMAN: B-A-T-E-M-A-N.

2 AGENT FLETCHER: That's the last  
3 name?

4 MS. BATEMAN: Yes.

5 AGENT FLETCHER: What's the first  
6 name?

7 MS. BATEMAN: Pamela, P-A-M-E-L-A.

8 AGENT FLETCHER: Okay. Ms.  
9 Bateman, thank you very much.

10 That's Pamela Bateman. Ms.

11 Bateman, I don't -- at this moment I don't see  
12 your name. Neither one of us see your name on  
13 the list that was mailed in.

14 So what I'm going to need to do at  
15 least for the purpose of roll call is not to  
16 recognize you as a protestant at this moment  
17 because I don't see your name on the protest  
18 letter. But if we discover beyond today that  
19 you did sign and I can get -- maybe there's a  
20 page missing, then we'll resolve it at that  
21 point.

22 MS. BATEMAN: Okay.

1                   AGENT FLETCHER:  So there's a  
2                   record that Pamela Bateman was present today  
3                   but not recognized as a protestant because we  
4                   didn't see your signature.  If we discover  
5                   later that you did, I'll contact you.

6                   MS. BASHAM:  My name is Doris  
7                   Basham.

8                   AGENT FLETCHER:  Could you spell  
9                   that please?

10                  MS. BASHAM:  B-A-S-H-A-M.

11                  AGENT FLETCHER:  B-A-S like Sam?

12                  MS. BASHAM:  Yes.

13                  AGENT FLETCHER:  And Doris is the  
14                  first name?

15                  MS. BASHAM:  Yes.

16                  AGENT FLETCHER:  Okay.  Thank you.  
17                  Is anyone else present from your  
18                  group?

19                  MS. O'BRIEN:  I think that's  
20                  everyone that signed the protest letter.  That  
21                  should be all the signatures.  We have other  
22                  people who signed who didn't show up today.

1                   AGENT FLETCHER: Did anyone from  
2 your group designate a representative?

3                   MS. O'BRIEN: Yes. Robert  
4 Liebscher. There's a letter. Robert  
5 Liebscher.

6                   AGENT FLETCHER: Robert Liebscher  
7 designated Miranda Liebscher as his  
8 representative. I do have that one letter.

9                   MS. O'BRIEN: Yes. And then going  
10 forward all of them have designated Ada as  
11 their representative. Ms. Pena is the backup.

12                   AGENT FLETCHER: So everyone  
13 present has designated Ms. Pena and Ms.  
14 O'Brien as their representative?

15                   MS. O'BRIEN: Yes.

16                   AGENT FLETCHER: Okay. For the  
17 individuals present today Ms. Pena and Ms.  
18 O'Brien are designated as their  
19 representatives?

20                   MS. O'BRIEN: Yes.

21                   AGENT FLETCHER: Ms. O'Brien, you  
22 did not sign the protest letter?

1 MS. O'BRIEN: I rent my unit out  
2 so I'm not eligible to sign the protest  
3 letter.

4 AGENT FLETCHER: Okay. So Ms.  
5 O'Brien is not a protestant. She is a  
6 designated representative on behalf of the  
7 group.

8 I'm going to count the number of  
9 people that are present today from the protest  
10 group that signed the protest letter.

11 There are 10 individuals present  
12 from the protest group. Those 10 individuals  
13 have designated Ms. O'Brien and Ms. Pena, P-E-  
14 N-A, as their designated representatives.

15 The remainder of the protestants  
16 in the protest group are dismissed because  
17 they are not present and did not designate a  
18 representative.

19 So we have a group of -- I'm  
20 standing up. I just realized the microphone  
21 is -- our microphone is not working properly  
22 today.

1                   There are 10 people present who  
2                   have designated Ms. O'Brien and Ms. Pena as  
3                   their representative. So that group of 10 is  
4                   granted standing today.

5                   The individuals who are not  
6                   present who did not designate a representative  
7                   are dismissed, but their letters tell them  
8                   that. In the roll call hearing notice it says  
9                   that you either need to appear in person or  
10                  designate a representative in writing, or your  
11                  protest will be dismissed.

12                  So we now have a group of 10  
13                  granted standing. You're granted full  
14                  standing because at least five of you are  
15                  present. So this group of 10 is granted full  
16                  standing.

17                  What that means is that at the  
18                  upcoming status hearing only Ms. Pena or Ms.  
19                  O'Brien need to appear. You will not need to  
20                  come back for the status hearing, which I'm  
21                  going to give you a date for in a moment.

22                  That also means that at the

1 mediation either Ms. Pena or Ms. O'Brien need  
2 only appear. You all will not have to  
3 reappear for the status or the mediation.

4 Any questions?

5 MR. CLINE: Are we permitted to  
6 appear?

7 AGENT FLETCHER: You'll actually  
8 need to come back to the microphone. You'll  
9 need to come back to the microphone.

10 MS. O'BRIEN: The question was,  
11 are they permitted to appear?

12 AGENT FLETCHER: For the record we  
13 have to know who is speaking at all times.

14 Ms. O'Brien, are you speaking on  
15 behalf of --

16 MS. O'BRIEN: I'm speaking on  
17 behalf of Bill Cline. His question is, are  
18 they permitted to attend even though they're  
19 not required to?

20 AGENT FLETCHER: Yes. Mr. Cline,  
21 actually -- one second please. Your being  
22 present actually makes this a group of 11.

1       Somehow I missed your name.

2                   MR. CLINE:   I'm not on that list.

3                   MS. O'BRIEN:   That's okay.  We're  
4       not going to count him.

5                   AGENT FLETCHER:   Okay.  So Mr.  
6       Cline, you don't want to be counted as a  
7       protestant?

8                   MR. CLINE:   (No audible response).

9                   AGENT FLETCHER:   Okay.  Let me  
10      make that clear.  Because Mr. Cline signed the  
11      protest letter and he's present.

12                   But you're saying that you'd  
13      prefer to not be a protestant at this time?

14                   MR. CLINE:   (No audible response).

15                   AGENT FLETCHER:   That's fine.  Am  
16      I right?

17                   MS. O'BRIEN:   That's correct.

18                   AGENT FLETCHER:   Am I right, Mr.  
19      Cline?

20                   MR. CLINE:   Yes.

21                   AGENT FLETCHER:   One second, Mr.  
22      Molloy.

1 MR. MOLLOY: All right.

2 AGENT FLETCHER: So that means,  
3 Mr. Cline, that you're withdrawing your  
4 protest today?

5 MR. CLINE: Yes.

6 AGENT FLETCHER: Okay. So Mr.  
7 Cline is withdrawing his protest today.

8 Any other questions from the  
9 protestants?

10 Okay. Mr. Molloy?

11 MR. MOLLOY: Could you read off  
12 the list of 10 names that make up the group?

13 AGENT FLETCHER: Yes. The 10  
14 protestants are -- Mr. Molloy, I will actually  
15 check them off for you on a list and give it  
16 to you.

17 MR. MOLLOY: Okay.

18 AGENT FLETCHER: I'll read them  
19 into the record anyway.

20 We have Doris Basham, Ada Pena,  
21 Diane Troum, Geraldine Novak, Robert  
22 Liebscher, Miranda Liebscher, Adam Falato,

1 Betty Falato, Beverly Botha, Darlow Botha.

2 Mr. Molloy, I'll give you those  
3 names on a list.

4 MR. MOLLOY: I appreciate it.  
5 Also could I get a copy of the letter of  
6 designation for Ms. Pena and O'Brien?

7 AGENT FLETCHER: They will  
8 actually need to submit that for the record.

9 MR. MOLLOY: Okay.

10 MS. O'BRIEN: I gave you a copy.

11 AGENT FLETCHER: You gave me a  
12 copy? Is that what this is?

13 MS. O'BRIEN: Yes. The only  
14 person who hasn't signed that is Robert  
15 Liebscher because he's not here today.

16 AGENT FLETCHER: Yes. He  
17 designated a representative so that's okay.

18 MS. O'BRIEN: He designated his  
19 wife for now.

20 AGENT FLETCHER: Mr. Molloy, I'll  
21 give you a copy of this.

22 MR. MOLLOY: Okay.

1                   AGENT FLETCHER: This is a copy of  
2 a letter designating Ms. Pena and Karen  
3 O'Brien as the representatives for the  
4 individuals that are present today. The 10  
5 individuals that are present today did sign  
6 this statement.

7                   So we've got two protestants, ANC-  
8 2C and a group of 10 being represented by Ada  
9 Pena and Karen O'Brien.

10                   Ms. Pena and Ms. O'Brien, would  
11 you please on that sheet on the table write  
12 your daytime telephone number and email  
13 address?

14                   MS. O'BRIEN: Yes.

15                   MS. PENA: Yes.

16                   AGENT FLETCHER: We need to set a  
17 date for a mediation, a status hearing, and a  
18 protest hearing. I'll give you the date for  
19 the status and protest hearings first.

20                   You'll receive written notice of  
21 these dates as well.

22                   The status hearing is scheduled

1 for September 24 at 9:30 a.m.

2 The protest hearing is scheduled  
3 for October 29 at 1:30.

4 MR. WILSEY: Can that be repeated?

5 AGENT FLETCHER: Yes. The status  
6 hearing is scheduled for September 24 at 9:30,  
7 that's September 24 at 9:30 a.m for the status  
8 hearing.

9 The protest hearing is set for  
10 October 29, October 29 at 1:30.

11 MR. WILSEY: Are both here in this  
12 room?

13 AGENT FLETCHER: Yes. The  
14 mediation will probably be held in this room  
15 as well.

16 Now that Ms. Pena and Ms. O'Brien  
17 have been designated as the representatives,  
18 they're the ones that receive the scheduling  
19 notice. So now that representatives have been  
20 designated, you two will receive the  
21 scheduling notice and then you would be in  
22 communication with your group.

1                   We now need to set a date for  
2 mediation to occur prior to September 24.  
3 I'll give you some dates that are available.

4                   Is anyone available on September  
5 11? That's real short notice but it's  
6 available so I'm just checking.

7                   MS. O'BRIEN: What day of the week  
8 is that?

9                   AGENT FLETCHER: That's this  
10 Thursday.

11                   MS. O'BRIEN: At what time?

12                   AGENT FLETCHER: It could be at  
13 9:00, 10:00, 11:00.

14                   MR. MOLLOY: We'd like to avoid  
15 morning appointments.

16                   AGENT FLETCHER: Okay. We could  
17 do 1:00.

18                   MR. MOLLOY: At 1:00 p.m.?

19                   AGENT FLETCHER: Yes.

20                   MR. MOLLOY: We're available  
21 anytime in the afternoon.

22                   MS. O'BRIEN: Could it be later?

1 AGENT FLETCHER: It could be 2:00.

2 MS. O'BRIEN: Could it be maybe  
3 3:00?

4 AGENT FLETCHER: We could do 3:00.  
5 Does that work for you, Mr.  
6 Wilsey?

7 MR. WILSEY: Yes. I'm open that  
8 afternoon.

9 MS. O'BRIEN: How long are these  
10 usually?

11 AGENT FLETCHER: It sort of  
12 depends on you. But I would say at least one  
13 to two hours.

14 MR. WILSEY: At least an hour,  
15 yes.

16 AGENT FLETCHER: One to two hours.  
17 If you have a time restriction we could --

18 MS. O'BRIEN: Could we do  
19 noontime?

20 AGENT FLETCHER: Mr. Molloy, you  
21 need after midday?

22 MR. MOLLOY: Yes. But 1:00, 2:00,

1 or 3:00 works. We're flexible in that range.

2 MR. WILSEY: Could we do 1:00?

3 AGENT FLETCHER: We can do 1:00.

4 MS. O'BRIEN: Okay. I just have a  
5 staff meeting but that's okay.

6 AGENT FLETCHER: What time is --

7 MS. O'BRIEN: I'll get out of it.

8 AGENT FLETCHER: Well, I was going  
9 to say because we could -- okay. So we're  
10 going to make it 1:00?

11 MS. O'BRIEN: Yes.

12 MR. GOTTLIEB: Could we be told  
13 what the purpose of the mediation meeting is?

14 AGENT FLETCHER: Yes. The purpose  
15 of the mediation is to give the parties an  
16 opportunity to resolve your concerns. If  
17 you're able to do that, you enter into a  
18 settlement agreement with the establishment.  
19 You get a chance to address your concerns.  
20 The whole purpose is to try to reach an  
21 agreement of some sort.

22 I'm sorry. I need to --

1 COURT REPORTER: Who is speaking?

2 AGENT FLETCHER: Who is speaking?

3 You'll need to come to the microphone and  
4 state your name.

5 MR. GOTTLIEB: Do you want me to  
6 ask the question?

7 AGENT FLETCHER: Yes. If you  
8 could state your name first and then just ask  
9 the question again.

10 MR. GOTTLIEB: Kevin Gottlieb,  
11 Market Square West.

12 AGENT FLETCHER: Mr. Gottlieb?  
13 Okay. You're here as a member of the public,  
14 you're not a protestant?

15 MR. GOTTLIEB: I'm not a  
16 protestant.

17 AGENT FLETCHER: Okay. Let me  
18 make a note of that.

19 MR. GOTTLIEB: I've been in the  
20 building for 22 years.

21 AGENT FLETCHER: Thank you. Mr.  
22 Gottlieb, could you please spell your name for

1 the record?

2 MR. GOTTLIEB: G-O-T-T-L-I-E-B,  
3 first name Kevin, K-E-V-I-N.

4 AGENT FLETCHER: Thank you. Mr.  
5 Gottlieb, what was your question again please?

6 MR. GOTTLIEB: I wanted to know  
7 what was included in the concept of mediation  
8 and you then explained it.

9 If I heard it correctly, that is  
10 something that's going to require more time on  
11 the part of us to be prepared for the  
12 mediation. So the idea of holding that on the  
13 11th would be impossible.

14 Is that not true, Karen?

15 AGENT FLETCHER: I can just  
16 respond to that. The purpose of the mediation  
17 is to give you an opportunity to say what your  
18 concerns are. I've read the protest letters  
19 so I understand what your concerns are.

20 MS. O'BRIEN: What would be the  
21 next date that would be available?

22 AGENT FLETCHER: The next

1 available date?

2 MS. O'BRIEN: Yes.

3 AGENT FLETCHER: The next  
4 available date would be September 18.

5 MR. MOLLOY: That's better.

6 MR. WILSEY: It's a week later.

7 MS. O'BRIEN: Yes. That actually  
8 would be great for me because my schedule  
9 opens up after the 16th.

10 AGENT FLETCHER: Would that be  
11 good for you, Mr. Wilsey?

12 MR. WILSEY: That would be better.

13 AGENT FLETCHER: And you, Ms.  
14 Pena?

15 MS. PENA: Yes.

16 MR. WILSEY: Let me look if I have  
17 something going on.

18 MS. O'BRIEN: It's a Wednesday, is  
19 that right?

20 AGENT FLETCHER: The 18th is a  
21 Thursday.

22 MR. WILSEY: Thursday.

1 MS. O'BRIEN: Thursday? Okay.

2 AGENT FLETCHER: Mr. Molloy, would  
3 that work for you if it's at 1:00?

4 MR. MOLLOY: Yes, 1:00 on the 18th  
5 is fine.

6 MR. WILSEY: Yes. It has to be in  
7 the afternoon too.

8 AGENT FLETCHER: Okay.

9 MR. WILSEY: We can change that.  
10 That's fine.

11 MR. GOTTLIEB: So if I understood  
12 what you just said a minute ago, the purpose  
13 is for the two sides to get together and to  
14 state what their concerns are. But at that  
15 meeting or on that date they do not have to  
16 come to a final judgement on the issues.

17 Kevin is answering that already.

18 MR. WILSEY: They do not.

19 AGENT FLETCHER: Yes.

20 MR. GOTTLIEB: Thank you very  
21 much.

22 AGENT FLETCHER: There is no

1 judgement. It's an informal procedure where  
2 the parties just try to reach an agreement.

3 MR. GOTTLIEB: But it can extend  
4 to other dates at a later time?

5 AGENT FLETCHER: Yes.

6 MR. GOTTLIEB: Thank you. I  
7 appreciate it.

8 AGENT FLETCHER: You're welcome.

9 So the mediation is scheduled for  
10 Thursday, September 18 at 1:00.

11 MS. O'BRIEN: That's true. Thank  
12 you.

13 MR. MOLLOY: At the same time,  
14 right?

15 AGENT FLETCHER: Is 1:00 still  
16 good?

17 MS. O'BRIEN: Yes. It's great.

18 AGENT FLETCHER: Just to make a  
19 clarification on the record, Kevin Gottlieb is  
20 present because he is a nearby resident but he  
21 is not a protestant.

22 Any other questions?

1                   My card is on the table if you  
2                   have any questions.

3                   The mediation normally is held  
4                   here in this room. You can just check in with  
5                   the receptionist.

6                   You can see from the cards that  
7                   I'm also the Board's mediator so the mediation  
8                   will be with me. It'll be us here in this  
9                   room trying to resolve the protest issues.

10                  Okay. No other questions?

11                  Roll call hearing is concluded.

12                  (Whereupon, the above-entitled  
13                  matter went off the record at 10:31 a.m.)

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