

1 GOVERNMENT OF THE DISTRICT OF COLUMBIA  
2 ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION  
3 ALCOHOLIC BEVERAGE CONTROL BOARD

4 - - - - - X

5 IN THE MATTER OF: :

6 R & A Restaurant Group, LLC. :

7 t/a Five Guys :

8 1335 Wisconsin Ave. NW :

9 License #71127 : Fact Finding

10 Retailer CR : Hearing

11 ANC 2E, :

12 Request to Extend Safekeeping:

13 - - - - - X

14 Wednesday, November 4, 2015

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17               Whereupon, the above-referenced matter  
18    came on for hearing at the Alcoholic Beverage  
19    Control Board, Reeves Center, 2000 14th Street,  
20    N.W., Suite 400S, Washington, D.C. 20009.

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1 CHAIRPERSON:

2 DONOVAN W. ANDERSON, Presiding

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4 BOARD MEMBERS:

5 JAMES SHORT

6 MICHAEL SILVERSTEIN

7 RUTHANNE MILLER

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10 ALSO PRESENT:

11 STEPHEN O'BRIEN

12 On Behalf of the Licensee

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

2 [2:39 p.m.]

3 MS. MILLER: And we have another fact  
4 finding hearing on Five Guys, located at 1335  
5 Wisconsin Avenue Northwest, License No. 71127 in  
6 ANC 2E. And this is a request to extend  
7 safekeeping.

8 MR. O'BRIEN: Stephen O'Brien for the  
9 licensee. Madam Chair, Robert Roeper, R-O-E-P-R.

10 MS. MILLER: Uh-huh.

11 MR. O'BRIEN: Who has appeared before the  
12 Board previously with respect to this license.

13 MS. MILLER: Okay.

14 MR. O'BRIEN: Had to be in Florida today.  
15 But I have representations to make which I think  
16 will satisfy the purpose of the inquiry.

17 MS. MILLER: Okay.

18 MR. O'BRIEN: Do you want me to start?

19 MS. MILLER: Yes, because you're very  
20 well aware of what the subject of the hearing is,  
21 correct?

22 MR. O'BRIEN: Yes, I'm very well aware.

1 MS. MILLER: Okay.

2 MR. O'BRIEN: This is a safekeeping  
3 license as opposed to a 405.1 license.

4 MS. MILLER: Correct.

5 MR. O'BRIEN: All right. The licensee --  
6 let me go back a step. RMR Capital, which owns  
7 the property purchased it in 2005 for purposes of  
8 operating a Five Guys franchise at this site  
9 under a commonly owned LLC, which is the  
10 licensee. I believe it's R & A Restaurant.  
11 Okay? They in fact operated the Five Guys  
12 franchise until a point in 2008. The license  
13 reviewed.

14 In 2008 the franchise was terminated and  
15 Five Guys, the company, took over. And it's been  
16 operating the store since then but did not care  
17 to offer alcohol.

18 MS. MILLER: Right.

19 MR. O'BRIEN: So the license has been in  
20 safekeeping since 2008.

21 MS. MILLER: Okay.

22 MR. O'BRIEN: So Five Guys' lease expires

1 in January and is not going to be renewed. So  
2 the owner of the property, which is once again  
3 commonly with the owner of the license, is  
4 marketing the property now for a new tenant  
5 beginning in January for restaurant use.

6 MS. MILLER: Okay.

7 MR. O'BRIEN: Okay? And the availability  
8 of the license is an essential component of  
9 marketing restaurant space in Georgetown. So  
10 that's the status of the matter.

11 MS. MILLER: But there's not a big demand  
12 for them, right?

13 MR. O'BRIEN: Excuse me?

14 MS. MILLER: There's not a big demand for  
15 those licenses anymore, right?

16 MR. O'BRIEN: There's not, but in this  
17 particular case -- of course we don't know  
18 what --

19 MS. MILLER: No, I'm kidding.

20 MR. O'BRIEN: The market can swing and we  
21 don't know what this Board will do in February.

22 MS. MILLER: Okay.

1           MR. O'BRIEN: But to be able to attract a  
2 restaurant tenant they need to be able -- and  
3 that's what the building is configured for,  
4 restaurant use. They need to be able to say,  
5 yes, and we have a license available for you.

6           MS. MILLER: Okay. So is there --  
7 there's exploration going on right now for a new  
8 tenant?

9           MR. O'BRIEN: I'm told that they are  
10 seeking a tenant; that it's on the -- the  
11 property is on the market for lease because it  
12 has been --

13          MS. MILLER: Okay.

14          MR. O'BRIEN: -- agreed with the present  
15 tenant, Five Guys Corporate, that Five Guys will  
16 depart at the end of January when the lease is  
17 up.

18          MS. MILLER: Okay. Questions by others?

19          MR. O'BRIEN: So I guess that -- I  
20 wouldn't say I guess. The request in this  
21 instance is for a six month extension of  
22 safekeeping.

1 MS. MILLER: Okay.

2 MR. O'BRIEN: Up to -- so everyone can  
3 keep track but I think March 31st.

4 MS. MILLER: That's correct. That's the  
5 date we've been using. Okay.

6 MR. O'BRIEN: Which is actually five  
7 months from now, but that's fine.

8 MS. MILLER: So you anticipate by then  
9 that there will be a new tenant?

10 MR. O'BRIEN: I don't know the answer to  
11 that.

12 MS. MILLER: Okay.

13 MR. O'BRIEN: And it is entirely possibly  
14 if there is a new tenant then you will see a  
15 transfer application file. If there's not then I  
16 think it would be perfectly appropriate at the  
17 end of the five remaining months of a six month  
18 extension to ask the landlords the exact same  
19 questions that you asked the previous client.

20 MS. MILLER: But Five Guys has the  
21 license. Is that it?

22 MR. O'BRIEN: Now the license is owned

1 RMR Capital owns the real estate.

2 MS. MILLER: Okay.

3 MR. O'BRIEN: R & A Restaurant  
4 Development holds the license, but they are  
5 commonly owned. In other words the building was  
6 owner occupied from 2005 to 2008.

7 MS. MILLER: Okay.

8 MR. O'BRIEN: And the license was used.  
9 When Five Guys Corporate came in and took over  
10 and negated the franchise, Five Guys says, well  
11 we don't want to serve alcohol, so that's why the  
12 license has been on the shelf. And once again,  
13 kept current as far as the --

14 MS. MILLER: Okay. Thank you.

15 MR. O'BRIEN: And we are aware that  
16 there's now a safekeeping fee that will kick in.

17 MS. MILLER: Okay. Okay. Others have  
18 questions?

19 MR. ALBERTI: Yeah. I was just -- Mr.  
20 O'Brien, so in March would you be willing to, in  
21 a letter to the Board, describe the progress, and  
22 then we could assess whether we want to hold a



1 subsequent hearing.

2 MR. O'BRIEN: Yes.

3 MR. ALBERTI: To hear from this owner.

4 MR. O'BRIEN: Yes. I know from several  
5 other of the Georgetown licenses where the Board  
6 has now extended safekeeping, that there's been a  
7 requirement of written communication to the Board  
8 at least 10 days prior to March 31st.

9 MR. ALBERTI: Yeah.

10 MR. O'BRIEN: As to a status report.

11 MR. ALBERTI: And then --

12 MR. O'BRIEN: Yes, we can certainly  
13 commit to that, yes.

14 MR. ALBERTI: And then I'll discuss this  
15 with the Chair, but we could then -- we can  
16 discuss amongst ourselves whether or not to have  
17 another hearing.

18 MR. O'BRIEN: Okay.

19 MR. ALBERTI: But thank you.

20 MR. O'BRIEN: Yes.

21 MS. MILLER: Others? Okay, then. I  
22 would move that we approve this license for an

1 extension until March 31st. And if another  
2 extension is going to be sought after March 31st  
3 that the license holder submit a written  
4 statement documenting the progress of finding  
5 another tenant and putting the license in use.

6 Do I have a second?

7 MR. ALBERTI: I'll second that motion.

8 MS. MILLER: Okay. Mr. Alberti seconded  
9 the motion.

10 [Vote taken.]

11 MS. MILLER: Motion passes five, zero,  
12 zero.

13 MR. O'BRIEN: Thank you very much.

14 MS. MILLER: Okay. Thank you, Mr.  
15 O'Brien. Have a good day.

16 MR. O'BRIEN: Thanks.

17 [Whereupon, the above-entitled matter  
18 concluded at 2:46 p.m.]

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