

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

In the Matter of:)
)
B Washington, LLC)
t/a Plan B Burger Bar)
)
Applicant for a New)
Retailer's Class CR License)
)
at premises)
801 Pennsylvania Avenue, N.W.)
Washington, D.C. 20004)
)

Case No. 14-PRO-00062
License No. ABRA-095796
Order No. 2014-422

B Washington, LLC, t/a Plan B Burger Bar (Applicant)

Kevin Wilsey, Chairperson, Advisory Neighborhood Commission (ANC) 2C

Karen O'Brien, on behalf of A Group of Five or More Individuals

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

**ORDER ON SETTLEMENT AGREEMENT AND WITHDRAWAL OF
PROTESTS OF ANC 2C AND A GROUP OF FIVE OR MORE INDIVIDUALS**

The Application filed by B Washington, LLC, t/a Plan B Burger Bar, for a new Retailer's Class CR License, having been protested, came before the Alcoholic Beverage Control Board (Board) for a Roll Call Hearing on September 8, 2014, in accordance with D.C. Official Code § 25-601 (2001).

The official records of the Board reflect that the Applicant, ANC 2C, and A Group of Five or More Individuals have entered into a Settlement Agreement (Agreement), dated September 23, 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; Chairperson Kevin Wilsey, on behalf of ANC 2C; and Karen O'Brien, on behalf of the Group of Five or More Individuals; are signatories to the Agreement.

This Agreement constitutes a withdrawal of the Protests filed by ANC 2C and the Group of Five or More Individuals.

Accordingly, it is this 8th day of October, 2014, **ORDERED** that:

1. The Application filed by B Washington, LLC, t/a Plan B Burger Bar, for a new Retailer's Class CR License, located at 801 Pennsylvania Avenue, N.W., Washington, D.C., is **GRANTED**;
2. The Protests of ANC 2C and the Group of Five or More Individuals in this matter are hereby **WITHDRAWN**;
3. The above-referenced Settlement Agreement submitted by the Parties to govern the operations of the Applicant's establishment is **APPROVED** and **INCORPORATED** as part of this Order, except for the following modification:

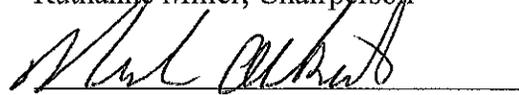
Section 4 – The following language shall be removed: “The noise level inside the Premises shall not exceed 85dBA. To that end, Applicant shall install a SLARM sound alarm system manufactured by ACO-Pacific, or similar system, so as to alert Applicant in the event interior noise levels exceed 85dBA (in which event, Applicant shall undertake immediate measures to reduce the level of noise so as not to exceed 85dBA).”

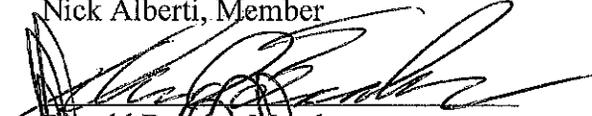
The parties have agreed to this modification.

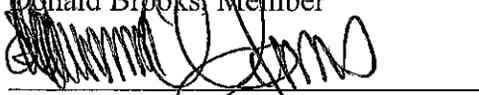
4. Copies of this Order shall be sent to the Applicant, ANC 2C, and Karen O'Brien, on behalf of the Group of Five or More Individuals.

District of Columbia
Alcoholic Beverage Control Board

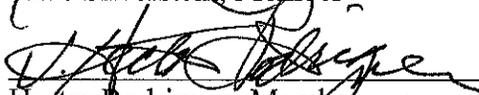

Ruthanne Miller, Chairperson

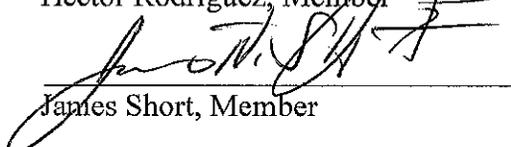

Nick Alberti, Member


Donald Brooks, Member


Herman Jones, Member


Mike Silverstein, Member


Hector Rodriguez, Member


James Short, 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, 500 Indiana Avenue, 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).

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT ("Agreement") is made on this 23 day of September, 2014 by and between B Washington L.L.C., t/a Plan B Burger Bar ("Applicant"), and Advisory Neighborhood Commission (ANC) 2C and Karen O'Brien or Ada Pena, designated representative of a group of 5 or more residents of the District of Columbia (together "Protestants").

WITNESSETH

WHEREAS, Applicant's application for a Retailer's Class CR license for a portion of the building at 801 Pennsylvania Avenue, NW, Washington, DC ("the Premises") is pending before the District of Columbia Alcoholic Beverage Control (ABC) Board, and,

WHEREAS, the Premises is within the boundaries of the ANC, and the individual Protestants reside in close proximity to said Premises, and,

WHEREAS, the Protestants have protested the pending application; and,

WHEREAS, the parties are desirous of entering into a Settlement Agreement pursuant to D.C. Code §25-446 governing the operation and maintenance of the Applicant's Premises in such a manner as to promote the peace, order and quiet of the adjacent neighborhood and minimize disruption to nearby residential uses, pursuant to which Agreement Protestants' protests of Applicant's ABC license application are to be deemed withdrawn;

NOW, THEREFORE, the parties agree as follows:

1. Applicant will cease interior hours of operation at 12:00 a.m. weekdays (Sunday-Thursday) and 1:00 a.m. on weekends (Friday and Saturday); provided, that on days before holidays designated by the ABC Board as "Extended Hours for ABC Establishments" Applicant may operate for one (1) additional hour. It is understood that at closing hours no patrons shall remain on the Premises.
2. Applicant's outdoor seating will be limited to the Southern "curve" of the building at 801 Pennsylvania Avenue, N.W., as depicted on the attached Exhibit A. Applicant's outdoor seating will close at 11:00 p.m. weekdays and 12:00 a.m. weekends. It is understood that at closing hour no patrons shall remain on Applicant's outdoor seating area. Applicant shall not seat patrons outdoors within one hour of it's outdoor closing hour
3. Applicant shall not present any form of entertainment outdoors, including outdoor sound speakers. Applicant shall post signage on its outdoor seating area alerting its patrons to the proximity of the Premises to residences and soliciting noise restraint. In the event excessive customer noise emanates from Applicant's outdoor seating area, Applicant will undertake such reasonable measures as may be appropriate to abate such excessive noise

4. Applicant shall comply with the noise control provisions set forth at D.C. Code §25-725 (a), without reference to the exclusions set forth at §25-725 (b). The noise level inside the Premises shall not exceed 85dBA. To that end, Applicant shall install a SLARM sound alarm system manufactured by ACO-Pacific, or similar system, so as to alert Applicant in the event interior noise levels exceed 85dBA (in which event, Applicant shall undertake immediate measures to reduce the level of noise so as not to exceed 85dBA).
5. Applicant's principal customer entrance shall be within the "curve" of the building at 801 Pennsylvania Avenue, N.W. Applicant will not operate any form of takeout window whereby product may be purchased by a patron without entering the interior of the Premises. Any customer queuing which may be required shall be limited to the plaza fronting on the building curve.
6. To the extent that Applicant has the ability to control operation of rooftop ventilation fans, Applicant will cease operation of such fans during periods when its business is not operating.
7. Applicant will operate its business, particularly its outdoor seating, with due regard to the dignity of the adjacent Navy Memorial. To that end, the applicant will police on a daily basis, or more often as reasonably necessary, an area extending ten (10) feet from its exterior perimeter (including its outdoor seating area when in use), and remove trash, cigarettes and chewing gum from such area.
8. Applicant shall not offer valet parking. Applicant shall feature the proximity and convenience of Metro in the "Directions" portion of its website.
9. Applicant shall maintain pest control contracts with established vendors, providing for monthly service (or more frequent service as reasonably may be necessary), to the end that rodent or insect problems emanating from the Premises be avoided. Trash removal shall be through the program operated by management of the 801 Pennsylvania Avenue, N.W. building. All trash removal shall be through interior back corridors and loading dock of Market Square West. Grease will be contained in a "closed system" consisting of two holding tanks within the kitchen area - one for clean grease, the other for dirty grease with remote monitoring by recycling vendor. The tanks will connect to an interior conduit to the loading dock area where the recycling vendor will pump in new grease and vacuum out old grease as reasonably may be necessary to prevent overflow or discharge. No grease or trash removal shall be made via the open plaza at Market Square West. Applicant will accept vendor deliveries only by access through the loading dock and will direct and encourage its vendors to unload at the loading dock and not illegally park on D Street, NW.

10. Applicant agrees that it shall take all necessary reasonable steps to minimize neighborhood disruption, including, without limitation, providing a sufficient number of employees to assure adequate security and to preclude unruly patrons, whether inside the Premises or in the immediate outside area. Applicant shall to the full extent permissible by law discourage loitering in the vicinity of the Premises.
11. In the event that any of the parties is in breach of this Agreement, it shall be entitled to reasonable notice (including a copy at 484 Farmington Avenue, Hartford, CT 06105) and opportunity to cure, as a condition precedent to seeking enforcement of the Agreement. Unless the breach is of an emergency nature or is a repetition of a prior breach, reasonable notice and opportunity shall provide for a cure within 5 days of the date of such notice. If Applicant or the licensee fails to cure within the 5 day period (or, with respect to a breach which reasonably requires more than 5 days to cure, fails to commence cure of such breach and diligently pursue such cure) such failure shall constitute grounds for filing a complaint for investigation with the ABC Board pursuant to D.C. Official Code §25- 446(3).
12. In consideration of the foregoing commitments by the Applicant, and incorporation of this Agreement into an ABC Board order approving the pending license application, Protestants withdraw their protests of said application.

IN WITNESS WHEREOF, the parties have affixed hereunto their signatures.

B WASHINGTON L.L.C.

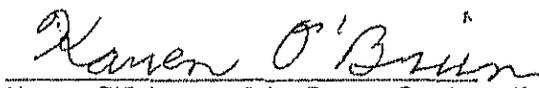
By:


Shawn Skehan, Managing Member

ADVISORY NEIGHBORHOOD COMMISSION 2C

By:


Kevin Wilsey, Chairman


Karen O'Brien or Ada Pena, On behalf of a group of 5 or more residents of the District of Columbia

PLAN BURGER

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Checker	FRANK
Designer	FRANK
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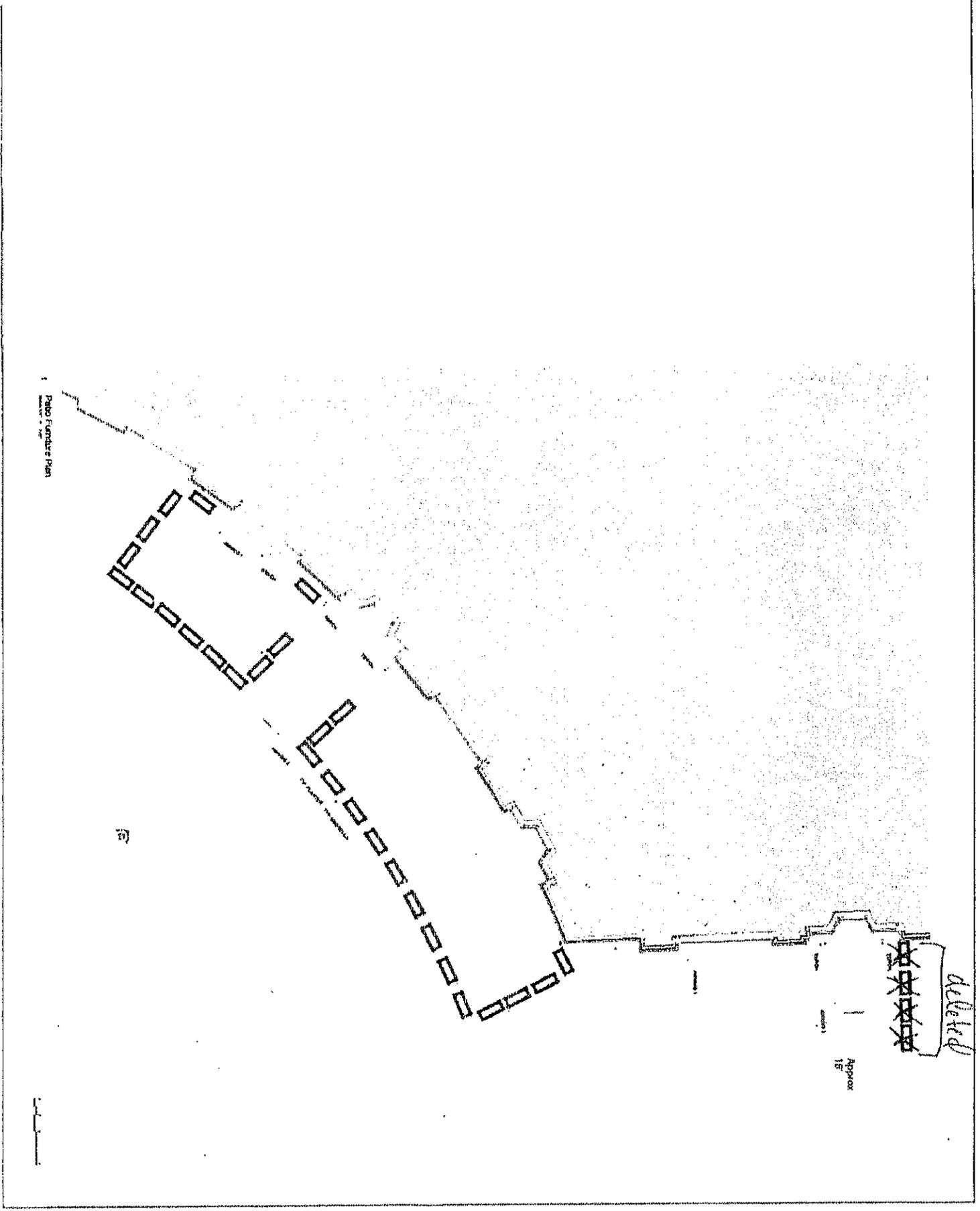


Photo Furniture Plan