

DISTRICT OF COLUMBIA  
 + + + + +  
 ALCOHOLIC BEVERAGE CONTROL BOARD  
 + + + + +  
 ROLL CALL HEARING

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 IN THE MATTER OF:                   :  
   :  
 5K Baller, LLC,                     :  
 t/a Play Off Pizza                 : Roll Call  
 924 5th Street, NW               : Hearing  
 License #ABRA-116268             :  
 Retailer Class CT                 :  
 ANC 6E                             :  
 Case #20-PRO-00020               :  
 (New Application)                 :  
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Monday  
 September 14, 2020

The Alcoholic Beverage Control Board  
 met via Video Teleconference, LaVerne Fletcher,  
 Board's Agent, presiding.

**PRESENT:**

**LAVERNE FLETCHER, ABRA Board's Agent**

**ALSO PRESENT:**

**MARK BRODY, Applicant**  
**JENNIFER SMITH, Protestant**  
**GREGORIO VELUZ, Protestant**

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

2 11:30 a.m.

3 MS. FLETCHER: Good morning. Thank  
4 you everyone for joining the Alcoholic Beverage  
5 Regulation Administration's public roll call  
6 hearings. My name is LaVerne Fletcher. I'll be  
7 conducting the roll call hearing as the Board's  
8 agent.

9 Today's hearing is being conducted  
10 through a WebEx account provided by the D.C.  
11 Office of Open Government. Once your case is  
12 called, I will elevate the rights of each party  
13 to enable their camera and microphone. Then, and  
14 only then, will you have the ability to enable  
15 your equipment. If your case is not being heard,  
16 you will remain mute and your camera will be  
17 disabled.

18 At the conclusion of each case, the  
19 parties will have the option to leave. If the  
20 party chooses to stay, all cameras and  
21 microphones for the concluded case will be  
22 disabled. I will now take a moment to elevate  
23 the rights of each party to this case to enable  
24 your camera and microphone.

25 Good morning. This is Case Number 20-

1 PRO-00020, 5K Baller, LLC, trading as Play Off  
2 Pizza, 924 5th Street NW, license number ABRA-  
3 116268. This is Retailer Class CT new  
4 application.

5 The protest issues are adverse effect  
6 on peace, order, and quiet, residential parking  
7 and vehicular and pedestrian safety, and real  
8 property values.

9 Is anyone present on behalf of the  
10 group of 18? Who's present on behalf of the  
11 applicant, please?

12 MR. BRODY: Me, Mark Brody.

13 MS. FLETCHER: Thank you, Mr. Brody.  
14 Would you spell your name for the record?

15 MR. BRODY: M-A-R-K, Brody, B-R-O-D-Y.

16 MS. FLETCHER: Thank you very much.  
17 Jennifer Smith?

18 MS. SMITH: Yes, I'm here.

19 MS. FLETCHER: You filed to protest as  
20 an abutting property owner?

21 MS. SMITH: Yes.

22 MS. FLETCHER: Could you please spell  
23 your name for the record?

24 MS. SMITH: J-E-N-N-I-F-E-R S-M-I-T-  
25 H.

1 MS. FLETCHER: Okay, thank you very  
2 much. Is Todd Rubin present? T-O-D-D R-U-B-I-  
3 N. Is anyone present on behalf of the group of  
4 18?

5 MS. SMITH: My husband and I are. I  
6 don't know about any others, but we signed onto  
7 that petition.

8 MS. FLETCHER: Okay, thank you. And  
9 who was that with you, Ms. Smith?

10 MS. SMITH: My husband, Gregorio  
11 Veluz.

12 MR. VELUZ: Yes, Gregorio Veluz.

13 MS. FLETCHER: Could you spell that  
14 for the record?

15 MR. VELUZ: Sure. G-R-E-G-O-R-I-O and  
16 V-E-L-U-Z.

17 MS. FLETCHER: I think I missed  
18 something. How do you spell the last name again?

19 MR. VELUZ: V as in Victor, E-L-U-Z.

20 MS. FLETCHER: Thank you very much.

21 MR. VELUZ: You're welcome.

22 MS. FLETCHER: And Mr. Veluz, you  
23 didn't sign as a protestant but you're just  
24 present with your wife who did sign to protest as  
25 an abutting property owner?

1 MS. SMITH: Yes, I --

2 MS. FLETCHER: You didn't sign the  
3 protest order, right?

4 MS. SMITH: Yes, the abutting property  
5 owner, I'm the sole owner of the property so I  
6 only signed that, but both of us signed on to the  
7 resident petition submitted by residents of 555  
8 Mass.

9 MS. FLETCHER: Okay, thank you. Ms.  
10 Smith and Mr. Veluz, right now you're the only  
11 two present from the group of 18. I'm going to  
12 proceed with the hearing, and by the time I'm  
13 done perhaps some more individuals from your  
14 group will have appeared.

15 According to the record, Todd Rubin is  
16 the designated representative for your group. Is  
17 that your understanding as well, Ms. Smith?

18 MS. SMITH: That was my understanding,  
19 yes. I haven't heard from him since the protest  
20 notice came out, so I don't know whether he  
21 received it or what's going on with him.

22 MS. FLETCHER: Okay, thank you. So,  
23 let's move to the abutting property owners that  
24 filed the protest. Ms. Smith, you filed as an  
25 abutting property owner so let me start by

1 reading the definition of an abutting property  
2 owner for the record.

3 Pursuant to D.C. Official Code 25,  
4 Section 1601, the definition of an abutting  
5 property owner is where the property line has a  
6 boundary or boundary point in common with the  
7 property line of the licensed establishment.

8 Can you hear me okay? I hear some  
9 noise in the background, but I make it so you can  
10 hear me okay.

11 MS. SMITH: Hold on just a sec. Yeah,  
12 we can hear you all right. We're getting rid of  
13 the background noise.

14 MS. FLETCHER: That's okay. Well, Ms.  
15 Smith, would you like me to read the definition  
16 of an abutting property owner again or did you  
17 hear me okay?

18 MS. SMITH: Yes, please proceed.

19 MS. FLETCHER: Okay. Ms. Smith, so I  
20 have your address, and you live in unit 413?

21 MS. SMITH: Yes, I do.

22 MS. FLETCHER: What floor is that on?

23 MS. SMITH: It's on the fourth floor.

24 MS. FLETCHER: It's on the fourth  
25 floor?

1 MS. SMITH: Yes.

2 MS. FLETCHER: And on what floor is  
3 the establishment located? Is it on the ground  
4 floor, second floor, what floor is the  
5 establishment located on Mr. Brody?

6 MR. BRODY: The establishment is on  
7 the first floor, second floor, and -- first floor  
8 mezzanine and second floor, sorry.

9 MS. FLETCHER: First floor mezzanine  
10 and second floor?

11 MR. BRODY: Yes.

12 MS. FLETCHER: Thank you. Ms. Smith,  
13 does your -- does the fourth floor abut the  
14 second? What I'm trying to determine is whether  
15 or not your property's abutted. Do they touch  
16 each other at any point?

17 MS. SMITH: It abuts his building on  
18 a -- you know, the window here is directly up  
19 against the building.

20 MS. FLETCHER: You're absolutely  
21 right, the buildings do abut. The buildings  
22 actually do abut. We have to determine whether  
23 or not the properties actually abut. The  
24 buildings to abut. That's not saying that the  
25 unit 414 touches the second floor. Would that be

1 --

2 MS. SMITH: I don't know which floor  
3 it touches on his.

4 MS. FLETCHER: Okay. So you're on the  
5 fourth floor. Mr. Brody, you're on the second  
6 floor?

7 MR. BRODY: Yes.

8 MS. FLETCHER: I mean the second floor  
9 would be the floor. There's a third floor  
10 between you and the applicant. There's a second  
11 floor, third floor and a fourth floor.

12 MR. BRODY: So I don't have a fourth  
13 floor. My third floor is currently laid out as a  
14 residential unit, my third floor.

15 MS. FLETCHER: Your third floor is a  
16 residential unit?

17 MR. BRODY: Yes.

18 MS. FLETCHER: So, Mr. Brody, to your  
19 knowledge, does your property abut the property  
20 of Ms. Smith's in that the ceiling on your second  
21 floor touches her floor on the fourth floor? I'm  
22 trying to determine if your properties touch at  
23 any point.

24 Based on the map that I generated  
25 using the D.C. Geographic Information System, I



1 can see that the buildings abut. We have to  
2 determine if Ms. Smith's unit, number 413,  
3 touches your establishment.

4 MR. BRODY: So, we actually have had  
5 some settlement discussions, and I did walk her  
6 into my building and walked into her space. And,  
7 I mean, it looked like and she said that it abuts  
8 my third floor residential unit.

9 I do have a stairway in between their  
10 building and my first floor mezzanine and second  
11 floor. So it may not actually abut the space  
12 that we're talking about.

13 MS. FLETCHER: So we would need it to  
14 abut the establishment. You have a residential  
15 property on the third floor, but that's not where  
16 you operate -- that's not where you're licensed  
17 to operate.

18 MR. BRODY: That's correct.

19 MS. FLETCHER: You're licensed to  
20 operate on the second floor, not the third floor,  
21 so Ms. Smith's unit would need to abut the second  
22 floor. Okay, do you have any comment that you  
23 would like to make, Ms. Smith, at all?

24 To your understanding based on what  
25 we've discussed so far, it does not appear that

1 unit 413 actually abuts the establishment. It  
2 may abut residential property but not the  
3 property that was licensed for an alcohol  
4 license. And so Ms. Smith, would you agree with  
5 that or not?

6 MS. SMITH: I mean I'm not entirely in  
7 a position to ensure -- to know whether that's  
8 correct. But even if true, would there be a way  
9 to ensure that none of the noise or the security  
10 issues from the establishment travel up to my  
11 unit? Or would it be prohibited for him to  
12 operate on that floor?

13 MS. FLETCHER: So what's going to  
14 happen is this. This is the roll call hearing  
15 where we have to determine who has standing as a  
16 protestant, and I'll answer your question also  
17 Ms. Smith. But at this point, I have to  
18 determine who the parties are that have standing  
19 to file a protest.

20 I'm going to dismiss your protest Ms.  
21 Smith as a protestant because it does not appear  
22 that your property abuts the establishment.

23 We also had a Jose Guevara file a  
24 protest as an abutting property owner. I'm going  
25 to spell his name for the record. That's J-O-S-E

1 G-U-E-V-A-R-A.

2 Mr. Guevara is not present for the  
3 roll call hearing. I'm going to dismiss his  
4 protest because he's not present. I'm also going  
5 to dismiss it because his unit number is 515 and  
6 it does not appear to abut the establishment.

7 There is also a third person who filed  
8 a protest as an abutting property owner. Her  
9 name is Jyl Martin. That's spelled J-Y-L, her  
10 last name is spelled M-A-R-T-I-N. Ms. Martin's  
11 unit is number 412.

12 I'm dismissing Ms. Martin's protest  
13 because she's not present today and because it  
14 does not appear that her unit abuts the  
15 establishment.

16 But Ms. Smith, to answer your question  
17 though in terms of whether or not any security  
18 concerns that you have can be addressed, even  
19 though you're not in standing as a protestant,  
20 that doesn't mean that you can't meet with Mr.  
21 Brody and you all come to some sort of an  
22 understanding. Just be able to it by way of  
23 mediation through ABRA.

24 And so Mr. Brody, you mentioned that  
25 you had been in communication with Ms. Smith at

1 some point?

2 MR. BRODY: Yes.

3 MS. FLETCHER: And so maybe there's  
4 some understanding you can come to related to her  
5 concern. But for the purpose of the roll call  
6 hearing, Ms. Smith is not granted standing as a  
7 protestant. But if there's something that you  
8 want to discuss with her, maybe you can address  
9 some of her concerns, please feel free to do  
10 that.

11 MR. BRODY: Yes, I mean we have spoken  
12 about I do plan to do noise abatement to ensure  
13 it doesn't come into her unit. And we are  
14 separated by a stairway as she noticed. And even  
15 in our conversations she had said that she feels  
16 much better about it because she saw the stairway  
17 in-between where the main business is going to be  
18 on the first floor and ground floor.

19 So, I mean I'm still working and I'm  
20 still offering to do certain things.

21 MS. FLETCHER: Well, Mr. Brody, I  
22 will, I would say just to continue down that  
23 path. That's a good thing. For the purpose of  
24 the roll call hearing, you won't need to state  
25 any of that on the record. But, just continue

1 down that path and hopefully Ms. Smith's concerns  
2 can be addressed.

3 MR. BRODY: Okay.

4 MS. FLETCHER: Ms. Smith, with respect  
5 to -- there was a group of 18 that you signed  
6 onto Ms. Smith, and I saw your name on that  
7 protest letter.

8 Mr. Rubin, R-U-B-I-N, had signed on as  
9 a designated representative for this group. He's  
10 not present, but you and Mr. Veluz are present  
11 today. And so, I don't know what your  
12 understanding is in your group.

13 This is a group that I would normally  
14 dismiss because the designated representative is  
15 not present. But because you're present, Ms.  
16 Smith, I would be willing to consider not  
17 dismissing your group because you're present if  
18 you want to assume responsibility as the  
19 designated representative for the group.

20 MS. SMITH: I can do that, yes.

21 MS. FLETCHER: And so would you be --

22 MR. BRODY: Can I say something first?

23 MS. FLETCHER: Yes.

24 MR. BRODY: Just a point of  
25 clarification. I got a note, a letter from ABRA

1 saying that group of 18 was dismissed because of  
2 the ANC. Typically a group of five or more gets  
3 dismissed because an ANC had approved it.

4 MS. FLETCHER: That's correct. I was  
5 going to get to that next. You are correct, Mr.  
6 Brody, that ANC 6E incident to a settlement  
7 agreement with Play Off Pizza.

8 Once the Board approves the settlement  
9 agreement, the Board would automatically dismiss  
10 any group of five or more. Just for the record,  
11 that is pursuant to D.C. Official Code 25,  
12 Section 25609-B like boy, I'm not aware the Board  
13 has issued an order approving that settlement  
14 agreement yet. Are you aware of that, Mr. Brody?

15 MR. BRODY: I'm not. I'm not, no.

16 MS. FLETCHER: So, I am aware of the  
17 settlement agreement. A copy of the settlement  
18 agreement is in the record, Mr. Brody, just so  
19 you know that I actually have it.

20 MR. BRODY: Okay.

21 MS. FLETCHER: Once the Board approves  
22 it, if they approve it, then the group of five or  
23 more is automatically dismissed. So that is  
24 correct. I was going to get to that next.

25 So, Ms. Smith, that is the case. If

1 the Board approves that settlement agreement  
2 between the ANC and the applicant, then any group  
3 of five or more is automatically dismissed.

4 MR. VELUZ: Yes, now you're good.

5 MS. FLETCHER: I'm sorry, what did you  
6 say, Mr. Veluz?

7 MR. VELUZ: You can talk now.

8 MS. SMITH: Yes, I understand that  
9 point.

10 MS. FLETCHER: Okay, thank you. What  
11 I'm going to do today for the group of 18, I'm  
12 going to grant conditional standing to the group  
13 of 18, Ms. Smith, because you're present. Which  
14 means that one individual is present from that  
15 group.

16 At the upcoming status hearing, four  
17 more people that are not present today would need  
18 to appear for an upcoming status hearing. It  
19 will be scheduled at a later time. But as of  
20 today, Ms. Smith because you're present, I'm  
21 granting conditional standing to your group. Any  
22 questions about that?

23 MS. SMITH: No, I don't think so.

24 Thank you.

25 MS. FLETCHER: Any questions about

1 that, Mr. Brody?

2 MR. BRODY: No, I understand.

3 MS. FLETCHER: So we're going to go  
4 ahead and set a date for a mediation. I would  
5 normally be setting a date for a status hearing  
6 and a protest hearing as well, but I'm not able  
7 to set a date for the status and protest hearing  
8 today. I'm not sure right now of the Board's  
9 availability for those two hearings, but I'm  
10 going to set a date for mediation.

11 I'll give you the next available day  
12 for mediation. If the Board approves the ANC  
13 settlement agreement with the applicant prior to  
14 mediation, then the mediation will be canceled,  
15 but I'll give you the next available day.

16 And Ms. Smith, have you had an  
17 opportunity to review, to see the settlement  
18 agreement entered into with the ANC?

19 MS. SMITH: No, I have not.

20 MS. FLETCHER: Once it's approved by  
21 the Board, it will become public knowledge. It  
22 may address some concerns that you have. I don't  
23 know what the provisions are right now, but maybe  
24 it will address any concerns that you have.

25 The next day available for mediation



1 is October the 6th, that's on a Tuesday. October  
2 6th on a Tuesday at 9:00, 9:30, 10:00, 10:30,  
3 11:00 or 1:00 or 2:00 in the afternoon.

4 MR. BRODY: 10:00 is good for me.

5 MS. FLETCHER: Will that work for you,  
6 Ms. Smith?

7 MS. SMITH: That's fine.

8 MS. FLETCHER: Mediation is set for  
9 October 5 at 10:00 o'clock.

10 MR. BRODY: October 6th.

11 MS. FLETCHER: October 6th, thank you.  
12 October 6th at 10 o'clock a.m. It will take  
13 place via WebEx just like today, and you'll  
14 receive notification of the date of notice and  
15 how to link the same way you did today for roll  
16 call.

17 MR. BRODY: And will you be there as  
18 well?

19 MS. FLETCHER: Yes, Mr. Brody, I'm the  
20 Board's mediator and so I will be present on that  
21 day as well.

22 MR. BRODY: Okay.

23 MS. FLETCHER: And like I said, if the  
24 Board approves that settlement agreement between  
25 you and the ANC prior to October 5, then that

1 mediation will be canceled.

2 MR. BRODY: Okay.

3 MS. FLETCHER: Okay, if there are no  
4 other questions then I will conclude the roll  
5 call hearing. Thank you for participating.

6 MR. BRODY: Okay, thank you.

7 MS. FLETCHER: Okay, have a good day.

8 MR. VELUZ: Thank you.

9 MS. FLETCHER: Bye Ms. Smith.

10 MS. SMITH: Bye.

11 (Whereupon, the above-entitled matter  
12 went off the record at 11:54 a.m.)

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This is to certify that the foregoing transcript

In the matter of: Play Off Pizza

Before: DCABRA

Date: 09-14-20

Place: teleconference

was duly recorded and accurately transcribed under my direction; further, that said transcript is a true and accurate record of the proceedings.



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