

LICENSE APPEAL COMMISSION
CITY OF CHICAGO

FAB 4, Inc.)
Matthew Imig, President)
Applicant (Expansion of Use))
for the premises located at) LAC Case No. 06 LA 05
2249 North Lincoln Avenue)
)
vs.)
)
Local Liquor Control Commission)
Department of Business Affairs & Licensing)
Scott V. Bruner, Director)
)

ORDER

OPINION OF COMMISSIONER KOPPEL

This matter comes before the License Appeal Commission on the refusal of the Mayor's License Commission to grant an expansion of use to an applicant who has been in business for many years without violation. The expansion of the premises would allow a private party room on the second floor. It should be noted again that no violations have been issued. This place serves food, but the Alderman and some area residents are opposed to the expansion of business because it will add to the existing problems of the district. The Mayor's License Commission is aware that this place has an incidental liquor license but is concerned that the expansion will be a problem. They are concerned that the establishment will serve more liquor than food and that this will cause a deleterious impact upon the community.

The denial is predicated upon conjecture. The law is quite clear. This is a question of due process. The City is aware of the procedure, if a licensee with an incidental liquor license sells more liquor than food, then his license is subject to revocation. In the charging document the City was aware of the law. They indicated that it is the intent of this department to investigate the applicant's liquor versus food sales. That is the remedy for selling more alcohol than food. To deny the expansion, when it met every criteria and with no violations as long as they have been in business is unjust.

There are many ways to revoke a license. This is called due process. The City is aware of the many reasons to revoke a license predicated upon violations of the law. There are no violations in this case. To deny a legitimate business owner on conjecture is improper. The City is hereby reversed.

OPINION OF COMMISSIONER ADAMS

While the City's witnesses were credible and concerned citizens, very few, if any, testified about area problems that were directly tied to the licensed premises - O'Malley's.

In fact, the evidence showed that the applicants are responsible businessmen who have made sincere efforts to reach out to the community. They have had no violations since obtaining the business in 2000 and have passed every police check (6 of them) for underage sales. Great weight should be given to the testimony of the City authority closest to the scene, Beat Officer Parada, who spoke well of the business and did not feel a liquor license extension for the second

floor would have any negative or deleterious impact on the community.

The Local Liquor Control Commission's denial was not proven by any bad acts attributed to the applicants. The City's primary argument of "let's draw the line" on alcohol sales is not proof of a deleterious impact.

Good intentions of the City should not be considered a substitute for evidence. The denial of the application is reversed.

OPINION OF CHAIRMAN CALABRESE IN DISSENT

The licensee applicant seeks to expand his currently licensed liquor establishment. The applicant's establishment is one of 14 liquor establishments located within a 2 block radius. Six of these licenses are tavern licenses, while eight are consumption on premises incidental activity licenses. The City denied the expansion on the grounds of deleterious impact, citing opposition by the Alderman and community residents, as a result of existing problems in the neighborhood.

The local Alderman testified in opposition to the expansion of the license. She pointed out problems of public rowdiness and public urination already existing as a result of the over saturation of liquor licenses in the two block area of the applicant's establishment. An applicant witness, a Chicago Police Officer, testified that 'lines of kids' are already waiting to be admitted to the premises.

The City presented many local residents who strongly objected to the expansion of the license. The citizens complained of littering, noise, public urination, fist fights and criminal damage to property, as a result of what one witness referred to as the 'alcohol tourism' of bar hopping revelers. Citizens complained that the applicants have not been considerate neighbors, dumping refuse water out their back door into the alley and causing an odoriferous nuisance. One neighbor complained that she has found underpants, condoms, liquor bottles and cans on her lawn. Parking was described as an enormous problem. Citizens were very afraid that if this expansion is allowed that it will set a precedent for the expansion of the other liquor establishments allowing the problem as they suggested to 'go vertical'.

The decision by the Local Liquor Control Commission simply denies the expansion of a license in an area that has proven to be over saturated with liquor emporiums and is reeling with the impact of rampant alcohol abuse by young people visiting the neighborhood. The evidence presented at the hearing of the abuses being suffered by the residents was as clear as can be. There is no doubt that the expansion of this license would clearly contribute to an already existing deleterious impact. If the Local Liquor Control Commission is not allowed to deny expansion in this case, then when can, as the witness and Corporation Counsel rightly argued, the line be drawn? I would have affirmed the City's denial of the expansion.

THEREFORE, IT IS HEREBY ORDERED That the said order or action of the Local
Liquor Control Commissioner of the City of Chicago be and the same hereby is REVERSED.

Pursuant to Section 154 of the Illinois Liquor Control Act, a Petition for Rehearing may be filed with this Commission within TWENTY (20) days after service of this order. The date of the mailing of this order is deemed to be the date of service. If any party wishes to pursue an administrative review action in the Circuit Court, the Petition for Rehearing must be filed with this Commission within TWENTY (20) days after service of this order, as such petition is a jurisdictional prerequisite to the administrative review.

Dated: April 10, 2007

Irving J. Koppel
Commissioner

Don W. Adams
Commissioner

Anthony J. Calabrese
Chairman – IN DISSENT