

LICENSE APPEAL COMMISSION
CITY OF CHICAGO

Walgreen Co.)	
d/b/a Walgreens #15004)	
Applicant (Packaged Goods))	
for the premises located at)	
953 West Irving Park Road)	Case No. 12 LA 17
)	
v.)	
)	
Department of Business Affairs and Consumer Protection)	
Local Liquor Control Commission)	
Gregory Steadman, Commissioner)	

ORDER

DECISION OF CHAIRMAN FLEMING JOINED BY COMMISSIONER O'CONNELL

The Local Liquor Control Commission denied Walgreen Co.'s application for a Packaged Goods liquor license for the premises located at 953 West Irving Park Road because the applicant premises is located 73 feet from the property line located at 850 West Irving Park Road, in violation of the Chicago Municipal Code 4-60-20 and Section 6-11 of the Illinois Liquor Control Act. The applicant filed a timely appeal of that denial with the License Appeal Commission of the City of Chicago.

Prior to the hearing, the parties entered into a Stipulation of Facts which regaled the need for live testimony. In essence, pursuant to this stipulation, the parties agreed to the following facts:

- a. That with respect to the properties referred under the street addressed 931-967 W. Cuyler Avenue, 900-924 W. Irving Park, and 4000 N. Broadway Street, Chicago, there are 19 separate parcels of property.

- b. That with respect to Parcels 2, 3, 5, 6, 8, 9, 10, 11, 12, and 13 the named grantee in the last deed of record is Thorek Hospital and Medical Center.
- c. That with respect to Parcel 4, the named grantee in the last deed of record is Thorek Hospital and Medical Center, Inc.
- d. That with respect to Parcel 7, the named grantee in the last deed of record is Harris Bank Hinsdale, as Trustee under the provisions of the trust agreement dated May 15, 1986, and known as Trust Number L-11241.
- e. That with respect to Parcel 14, the named grantee on the last deed of record is Thorek Memorial Hospital.
- f. That with respect to Parcel 1, the named grantee in the deed of record is Thorek Medical Center.
- g. That with respect to Parcels 15, 16, 17, 18, and 19 (Parcels 17, 18, 19, 20, and 21 respectively, on the survey by National Survey Service, Inc.) the named grantee on the last deed of record is American Hospital of Chicago.
- h. That the applicant premises with a street address of 953 W. Irving Park Road is located on the south side of Irving Park Road and the east side of North Sheridan Road.
- i. That the Hospital Building sits on Parcel nos. 19, 20, 21, 13, 6, 15, 16, 22, and 23 (collectively, the "Hospital Building Parcels").
- j. That on the remaining parcels including parcels nos. 14, 10, 9, 12, 11, 17, and 18 (collectively, "the Hospital Parking Lot Parcels") several parking lots have been constructed and are used regularly by the employees of Thorek Hospital and nearby offices, as well as, by medial patients and hospital visitors.
- k. Of the Hospital Building Parcels, Parcel No. 19 is located nearest to the applicant's premises.
- l. The distance from the applicant premises to the nearest Hospital Building Parcels (as measured from the property line of the northeast corner of the applicant premises to the property line of the southwest corner of Parcel 19) is 453.85 feet.
- m. Of the Hospital Parking Lot Parcels, Parcel No. 14 is located nearest to the applicant premises.
- n. The distance from the applicant premises to the nearest point of the Hospital Parking Lot Parcels (as measured from the northernmost property line of the applicant premises to the southernmost property line of Parcel No. 14) is 73 feet.

RELEVANT STATUTES AND ORDINANCES:

210 ILSCS 85/3 – As used in this Act:

- A. “Hospital” means any institution, place, building, building, buildings on a campus, or agency, public or private, whether organized for profit or not, devoted primarily to the maintenance and operation of facilities for the diagnosis and treatment or care of 2 or more unrelated persons admitted for overnight stay or longer in order to obtain medical, including obstetric, psychiatric and nursing, care of illness, disease, injury, infirmity or deformity.

ILCS 5/6-11(a) – No licenses shall be issued for sale at retail of any alcoholic liquor within 100 feet of any church, hospital...

Chicago Municipal Code: In addition to the restrictions cited in Section 6-11 of the Illinois Liquor Control Act of 1934, as amended, no license shall be issued for the sale of retail alcoholic liquor within 100 feet of any library...

At the time oral argument was held in this case, neither party nor this Commissioner was aware of the statutory definition of hospital. That is unfortunate because it seems to this Commissioner that the state statute defining hospital is the controlling statute in this case. A hospital under the statute refers to a specific building or other area devoted primarily to treatment and care of 2 or more people. The statute does not encompass parking lots used by employees of the hospital and nearby offices, as well as, medical patients and hospital visitors. The statute does not support a theory that the fact that a parcel of land is owned by a hospital is sufficient to use the lot line of that parcel to measure distance to the hospital. The fact that Thorek Memorial Hospital owns Parcel 14, and the fact that Parcel 14 is 73 feet from the applicant’s property is not a basis under the state statute to deny this license. Since the Municipal Code adopts the language of the state statute, the ordinance does not set forth a basis to deny this license.

Applying the plain language of the state statute, the property line of the parcel of real estate on which the hospital building sits is 453.85 feet from the property line of the applicant's property.

The decision of the Local Liquor Control Commissioner denying a Packaged Goods license to Walgreens for the premises located at 953 W. Irving Park Road is reversed.

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: September 17, 2013

Dennis M. Fleming
Chairman

Donald O'Connell
Member