

LICENSE APPEAL COMMISSION
CITY OF CHICAGO

Drink and Ink, Inc.)
Paul Collurafici, President)
Applicant (Tavern))
for the premises located at)
4443 North Broadway) Case No. 12 LA 20
)
v.)
)
Department of Business Affairs and Consumer Protection)
Local Liquor Control Commission)
Gregory Steadman, Commissioner)

ORDER

DECISION OF CHAIRMAN FLEMING

Drink and Ink, Inc., applied for a Tavern license for the premises located at 4443 North Broadway, 1st Floor. That application was denied because the location of the business violated the Illinois Liquor Control Act in that it was within 100 feet of a church. The applicant filed a timely Notice of Appeal and this matter was heard de novo by the License Appeal Commission on October 4, 2012, December 12, 2012, and January 31, 2013. Since this matter involves the denial of an application for a tavern license, this Commission is to determine de novo the propriety of the denial.

A synopsis of the evidence will assist in understanding this decision.

Adam Weller has been a Revenue Investigator for the City of Chicago’s Department of Business Affairs and Consumer Protection for six years. As part of his responsibilities, he takes

measurements for new liquor licenses. On March 15, 2012, he went to 4443 N. Broadway to do measurements for the license inspection for Drink and Ink, Inc. He looked for buildings that would restrict the issuance of a liquor license such as a school, church, hospital, library, or a military station. He observed a church named Temple of Victory two storefronts to the north of the applicant at 4447 N. Broadway. He did a measurement from the northernmost part of the applicant's property line with an ending point of the southernmost point of the church building. That measurement was 23 feet, 7 inches and was done by a laser measure. City's Exhibit 3, in evidence, marked the measurement spots with an X for the applicant's property line and a square for the church property.

Investigator Weller contacted Anthony Brookman by phone from a number listed on the side of the building. Brookman identified himself as the Reverend for the church and he told Weller the church was operational and active with services having been held several times a week for four to five years. The Reverend also stated the entire building was used for religious and worship service and no part of the building was used for any activity outside of religious purposes. Based on his measurement, Weller recommended the application be denied as being within 100 feet of a church. He did not check zoning since it is not considered for licensing purposes.

The church was not open and operational at the time of the investigation and the Pastor was not at the property. Weller did not investigate the zoning of the church or the building permit history for 4447 N. Broadway.

Anthony Brookman has been a Pastor for seventeen years and has been the Pastor of the Victory Assembly Church of God d/b/a Temple of Victory Ministries for seven years. That church has been located at 4447 N. Broadway for the last five years. The Pastor went to bible school in his home country of Ghana and also received training from St. Mark's Baptist Church. The church's mission is to make sure people who are destitute, cast out and from the community, to learn the principles of the doctrines of Christ to lead exemplary lives in this society. The congregation is about eighty to one hundred. Services are held on days throughout the week and at different times. These services include prayer meetings, counseling sessions, and special services such as baptisms.

The Church has a main room with a pulpit where the services are held. There are other rooms for offices and an area where children receive computer training and religious education. The City introduced into evidence without objection Group Exhibit 6, which was composed of pictures taken at a Sunday service two weeks prior.

Pastor Brookman agreed that the church had not obtained a sign permit or a building permit. The church did build a pulpit. He had no knowledge whether his organization had a Certificate of Occupancy. He was told by the owner that there had been a church in that space before and that it was zoned for a church and that he could use the space for church services. The parties stipulated through respective counsels that the church had not obtained a special use permit. In response to a question from Chairman Fleming, the Pastor testified the church is incorporated with the State of Illinois and a 501(c)(3) organization.

The parties through counsel entered into a stipulation that there were ten members of the congregation present at the hearing and if called to testify they would testify they are members of the congregation, that they regularly attend church services at 4447 N. Broadway, and that weekly services are held there six days a week with Monday off as described by Pastor Tony.

James Cappleman is the Alderman of the 46th Ward and is familiar with the property located at 4447 N. Broadway. He is aware that Paul Collurafici is seeking a tavern license for the property at 4443 N. Broadway, and that this application was denied due to its proximity to what the City has determined to be a church at 4447 N. Broadway. The Alderman was concerned about that decision since it prevents a business from being established because of a church that did not have a special use to exist. The church in question shows no activity during the day with closed scissor gates and a pad lock. He requested an inspection from the Department of Zoning. The report of that inspection was allowed in evidence without objection as Applicant's Exhibit 2. In relevant part, that report revealed the building was use for a church which was not a permitted use. There was no parking plan on record and insufficient parking for a church. There was no Certificate of Occupancy. There were also building code violations. The Alderman also testified there was substantial construction work ongoing without a building permit. He would not support a special use for this church and supports the applicant's proposal to operate a tavern.

While he has not noted services at this location when he passes by it three or four times a week, he did see church services on Wednesday night about a month and a half before his testimony. The day before his testimony at 2:00 p.m. was when he noticed the construction.

He has checked at the times listed on the church's sign and have not often seen services. While the Alderman does not attribute the public drinking to members of the congregation, he does feel the fact that the windows are covered and there are no eyes on the street from the church's address contributes to public loitering, drinking, and drug sales.

Juan Hernandez has been employed as a Zoning Inspector for the City of Chicago for six months. He was assigned to do a field investigation at 4447 N. Broadway on August 30, and October 9, 2012. He prepared a report of these investigations which is in evidence as Applicant's Exhibit 2. That report cited code section 1730204, which reflects the use of the property at that location as a church is not permitted. The report also noted lack of a parking plan and no certificate of occupancy, and signs without permit. That report was submitted to law. He never gained entry to the building and his statement that the location was a church was from looking through the window and seeing the layout with chairs, posters, and banners.

Paul Woznicki is now a professional land planning consultant who worked in zoning and planning for twenty-five years with the City of Chicago. From 1990 through 2001, he served as the assistant zoning administrator. He served as a member of the 2000 redraft of the Chicago Zoning Ordinance. He is familiar with the building at 4443 N. Broadway. That is located in a B3-3 zoning district which is termed community shopping district. A tavern is not allowed in this type of district, but the applicant applied for and was granted a special use. The Chicago Zoning Code does not define the term "church" but according to the dictionary, the definition of church is a business for public worship services. Religious Assemblies under the Zoning Ordinance which would include a church are not permitted in a B3-3 community shopping

district except by special use. He has not seen any documents that a special use application had been filed with the Zoning Board of Appeals. That process would need to be followed for a Certificate of Occupancy to issue for the church.

Woznicki admitted he is retained by applicant's law firm and was paid to give testimony in this case. In his past experience with the City, one of his duties was to initiate zoning prosecutions by referring the case to the law department. Unless there was a life safety issue, the business could usually be allowed to operate. In that capacity, he was familiar with Section 17-1-1002, of the zoning code which stated if the provisions of the zoning ordinance conflicted with other regulations the more restricted provision controlled.

Paul Collurafici is the applicant in this case. He owns 4441-4443 N. Broadway and has operated a tattoo shop for eight years at 4441 N. Broadway. He has been in this are for over thirty years. He has been active in the local business community by serving as co-chair of the Broadway Merchants Association and president of the Chamber of Commerce. The storefront at 4443 N. Broadway has been vacant and he came up with a plan to open a small neighborhood tavern. He went to the Chamber of Commerce and then Alderman Schiller, as well as the current Alderman James Cappleman, all supported him. He hired a lawyer and received a special use permit. The tavern license was denied because there was a church within one hundred feet. He was not, previous to the denial letter, aware of the presence of the Temple of Victory church at 4447 N. Broadway despite the fact he is at his property at 4441-4443 N. Broadway four to six days a week, and 50 to 60 hours a week.

RELEVANT STATUTES/ORDINANCES

235 ILCS 5/6-11(a) – No license shall be issued for the sale at retail of any alcoholic liquor within 100 feet of any church, school... In the case of a church, the distance of 100 feet shall be measured to the nearest part of any building used for worship services...

Since this deals with the denial of an application for a liquor license it is the mission of this Commission to determine de novo the propriety of the denial of the application.

The first issue to be addressed is whether there is sufficient evidence in the record to establish by a preponderance of the evidence that the location at 4447 N. Broadway is a church under the state statute. Neither the Chicago Municipal Code nor the Illinois Liquor Control Act defines the term church. The 4th District of the Illinois Appellate Court defined the term “church” as a “building consecrated to God regularly used for worship.” Twin-City Bible Church v. The Zoning Board of Appeals of the City of Urbana, 50 Ill.App.3d 924.

A dictionary definition of church would be a place where persons regularly assemble for worship. The case of Szczyenpniak v. The License Appeal Commission of the City of Chicago, (1956) Ill.App.2d 193, 136 N.E. 2d 562, suggests that church is synonymous with a place for public worship.

There is conflicting evidence in the record as to whether the activities conducted at 4447 N. Broadway establish that location as a building regularly used for worship. The Alderman and applicant testified they saw sporadic religious events. The zoning inspector could not gain access to the interior of the premises on the two dates of his inspection. He characterized the

building as a church based on what he saw through the windows. The fact that there is a sign setting out the dates and times for religious events does not prove that such events occur on a regular basis. Reverend Brookman testified to the religious activities occurring on a regular basis. The parties stipulated that ten members of congregation would testify that they were members of the congregation that regularly attend church services at 4447 N. Broadway, and that weekly services are held at that location as described in the Pastor's testimony. After reviewing this testimony, the City proved by a preponderance of the evidence that the property located at 4447 N. Broadway operated as a church.

The City's position is that once that determination has been made, there is nothing left for this Commission to decide and the denial of the license must be affirmed. In support of that position, the city has referenced precedential case law as well as a non-precedential order from Judge Mason in Cook County Circuit Court Case 09 CH 36011. The applicant argues that the proper way to address the legislative intent in the Liquor Control Act is to require that a church whose location is being used to deny an applicant must be a legal church according to the ordinances of the city issuing the license.

While this Commissioner is well aware that this Commission does not act as a court of equity, it is my decision that the undisputed facts of this case is that the zoning ordinance of the City of Chicago does not allow a church at this location. Since it is not an approved use it is illegal and its existence as an illegal church cannot be the basis to deny this license.

It should be noted that the Twin-City Bible Church case cited by the City was a case dealing with a permitted use under the zoning ordinance of the City of Urbana. The zoning ordinance in that case allowed churches and the issue was whether the building in question was a church. In that opinion the Illinois Supreme Court opinion in Columbus Park Congregation of Jehovah's Witnesses, Inc. v. Board of Appeals (1962), 25 Ill.2d 65, 182 N.E.2d 722, was cited for the assertion that location of churches could be regulated in a proper case.

It was stipulated to by the City that a church at 4447 N. Broadway is not a permitted use under the Chicago Zoning Code. The evidence is clear that there had been no application for a special use filed which might allow for a church in the future. There is no evidence that the operation of this church constitutes a legal non-conforming use. The testimony from the zoning inspector was clear that the use of the building as a church was improper, that there was no parking plan on record, and there was insufficient parking. It was clear no Certificate of Occupancy had issued for the use of this location as a church. Unlike Judge Mason's interpretation that it was unclear whether the Missionary Baptist Church's operation in the Suga Ray's case was permitted, it is absolutely clear that the operations of the Temple of Victory church at 4447 N. Broadway are not permitted. The only way to legitimize these operations is for the church to obtain a special use. That is unlikely since the church has not applied for the special use and the Alderman would oppose such an application. It is also relevant that the findings of the zoning investigator were forwarded to law which, according to the testimony of Paul Woznicki, would start the process of the law department filing a case against the church.

This Commissioner is aware of the case law relative to legislative intent. While the Illinois Liquor Control Act does not use the term legal church, a common sense approach to statutory interpretation allows one to assume it means legal churches. To be a legal church it must be properly zoned. Whether Pastor Brookman did or did not know the use of this location as a church is not permitted is not relevant.

The decision of the Local Liquor Control Commission denying the application for a tavern license to Drink and Ink, Inc., for the premises located at 4443 N. Broadway is reversed.

COMMISSIONER O'CONNELL'S CONCURRING OPINION

It is the City's own proposition that there is no special use permit for the property identified as a church, and so this is not a use allowed by the City. Therefore, a legally zoned church does not exist at that location. Because of this, the charge fails and I concur with Chairman Fleming's opinion to reverse the denial in this instance.

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 3, 2013

Dennis M. Fleming
Chairman

Donald O'Connell
Member