

LICENSE APPEAL COMMISSION
CITY OF CHICAGO

R N Food Wine & Spirit, Inc.)
Rajanikant Patel, President)
Applicant (Packaged Goods))
for the premises located at) Case No. 13 LA 23
6601 South Halsted Street)
)
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

On April 19, 2013, the Local Liquor Control Commissioner sent a letter to the applicant advising that its application for a Packaged Goods liquor license for 6601 S. Halsted was denied. The decision was based on the Commission's determination that granting a liquor license for the premises would have a deleterious impact on the health, safety, and welfare of the surrounding community. Section 4-60-040 of the Municipal Code of Chicago defines deleterious impact as having an adverse effect on the value of property, an increased risk of violations of the law, or a risk of a substantial increase in noise, litter, or vehicular traffic.

The applicant was advised in the denial letter that it had 20 days from the date of the denial to devise and submit a plan of operation to the Commissioner of the Local Liquor Control Commission that would provide reasonable assurance that the issuance of the liquor license will not have a deleterious impact on the surrounding community. The applicant was also advised

that the burden is on the business owner to prove that their establishment will not negatively impact the surrounding community. In response, the applicant tendered a proposed plan of operation to the Local Liquor Control Commission on April 24, 2013.

On May 24, 2013, in response to the proposed plan of operation, Commissioner Steadman sent the applicant a Final Denial Letter disapproving the plan because it did not provide reasonable assurance that the issuance of a liquor license will not have a deleterious impact on the surrounding community. It added that the applicant's plan of operation simply does not provide reasonable assurances that the issuance of a liquor license will not increase the risk of violations of the law in the area and that a plan of operation is not appropriate for locations where the local police district is alleging law enforcement issues.

The final denial letter also referenced as a basis for denying the liquor license that the proposed location was within 100 feet of The God's Gift Ministry Church at 6459 S. Halsted. This allegation was withdrawn prior to the start of the hearing on the case.

The applicant filed a timely appeal of the denial of the packaged goods license with this Commission.

A review of the relevant portions of the record will assist in understanding this decision.

Hal Baskin has lived at 6448 S. Green Avenue for 53 years which is about a block and a half from the applicant location. He is in real estate management and is also the Executive Director of the Peace Organization that deals with youth delinquency on a daily basis. The Peace Center was established in 1991 to get young people off the street and its mission is anti-violence. There are about 150 young people involved on any given day, Monday through Friday from 3:00 p.m. until 9:00 p.m.

There is a liquor store named Chaz at 6647 S. Halsted. There are problems in the area surrounding Chaz. Four individuals were shot outside last year and there are regular calls to the police to address people selling loose cigarettes, selling drugs, or violations in general.

He is opposed to the issuance of the license because of the violence he sees on a regular basis. In the parking lot adjacent to the applicant location, people are working on their cars and selling loose cigarettes and narcotics. There is an influence of gangbangers in the area and there are gang war factions. There was a shooting on December 27, 2011, at the Church's Chicken across the street where four people were shot and two were killed. There is a parking lot to service some existing stores like Family Dollar and O'Reilly's. The applicant location was a laundromat which closed several years ago. It is vacant and is used as a harboring place to hide out. He knows this is gang related violence because his nephew was killed about a half block away.

He is opposed to the issuance of this license because it would exacerbate the situation. When you have a liquor establishment you have people hanging out and congregating outside. The fact that RN Food plans to sell grocery items does not change his decision because where liquor is sold there is panhandling to buy liquor. People congregate to sell drugs and gang bangers congregate. It happens at Chaz. He expressed his opposition to the Alderman.

The witness indicated the closest major grocery store is an Aldi's at 63rd and Lowe. He does not feel an armed security guard at the applicant location would help because it has not deterred problems at locations nearby that have armed security. The witness admitted he was not aware the applicant would have armed security and did not know the internal details about the liquor. He objected to the liquor license without knowing the full details as to the application. The details did not change his position because liquor is liquor. Several stores like Chaz sell food but have problems at their location.

Sophia Carey is a supervisor at the Department of Business Affairs and Consumer Protection with the responsibility of overseeing liquor license applications. She reviewed the application for a packaged goods license for RN Food Wine & Spirits located at 6601 S. Halsted for law enforcement concerns and also deleterious impact to the community. The Department received letters from the community about crime and gang activity and received 220 such petitions or letters.

She identified City's Exhibit 4, in evidence, as the original denial letter signed by Commissioner Steadman. The applicant did submit a plan of operation which is in evidence as

City's Exhibit 3. That plan was not found acceptable to the Local Liquor Control Commissioner because it did not provide reasonable assurance that it would deal with the issue of law enforcement concerns and not cause a deleterious impact to the community. She then identified City's Exhibit 2, in evidence, as the final denial letter.

Ms. Carey was not aware of any discussion with either the applicant or the applicant's attorney with respect to the Plan of Operation. The Plan of Operation did include a provision for a security system covering the interior and exterior of the store, an armed security guard seven days a week from open to close, restricted hours of operation, attendance at CAPS meetings, clean-up and police login, sufficient lighting, no loitering signs, and would restrict sale of alcoholic beverages by not selling half pint wine bottles, Night Train wines, and single cans of beer under \$2.00. Mr. Steadman reviewed the plan of operation and issued a final denial letter.

Darryl Smith has lived five blocks away from the applicant location for 16 years and has lived in the neighborhood for 43 years. He is a union laborer and also owns a tow truck business. He is involved in community organizations as the President of the Englewood Political Task Force, a member of the 16th Ward Political Task Force, and a member of the Peace Organization. He opposes the liquor license application for 6601 S. Halsted. Englewood does not need another liquor store, as the Chaz liquor store is 200 to 250 feet away from the proposed site. Chaz is a haven for crime, loitering, and violence. There is loitering with 10 to 15 guys standing in front at any time of the day. Seniors cannot walk down the street because they need to cross through 10 or 15 guys hanging out. He sees drug sales and sale of loose cigarettes. He was not aware the applicant would be selling grocery items in addition to liquor, but that does

not change his opposition. The problem is the opening of a liquor store in a place already plagued with problems. Any liquor store is a magnet for loitering. The larger the liquor store, the more people hang out. You will see cars and people hanging out in the parking lot. The license would not benefit seniors because they would need to walk through the people loitering. He is opposed to new liquor stores. He was not aware this site would have limited liquor and that 70% of the store would be grocery. He was not aware the applicant would have an armed security guard on premises at all times. These facts do not change his mind as an armed security guard has no chance in that neighborhood.

Keith Harris has lived on the 6500 S. Morgan block all his life. He is President of the 16th Ward Political Task Force, and a member of the Peace Organization and St. Stevens Lutheran Church in Englewood. He opposes the issuance of the liquor license because it would be a magnet for a criminal element. That location has had numerous criminal incidents over the last two or three years. There are numerous shootings, as well as loitering and narcotic activity that he observes as he walks the streets every day. The narcotics activity takes place all along a stretch of Halsted throughout the community and in the parking lot of the proposed liquor store. This liquor license would make this area a bigger magnet for activity with more loitering and more traffic. The liquor store 200 feet away has a problem with loitering. He was not aware the applicant plans on selling food and grocery items but that does not change his opinion. The liquor would still attract that certain element not needed in that community. Armed security might control some of what goes on the applicant's side, but outside the store the armed security has little or no authority.

The witness indicated he was not aware the location would be a grocery store with some liquor sales and his objection was based on a liquor license. He objects to the liquor license being issued at this location.

Clarence Britten lives at 6432 S. Green which is about a block and a half from the applicant location. He objects to the issuance of this license because it would bring more violence, robberies, and murders. The fact that groceries will be sold does not make a difference. The fact that the applicant would have a security guard does not change his position.

Mary K. Davis lives 50 feet away from the applicant location at 6553 S. Emerald. She opposes this liquor license application because a liquor store would bring all kinds of transient traffic with people hanging around out front. That is the situation with the liquor store a half block away. There is enough people standing around and loitering at this location. It would bring in an influx of loitering. The fact it would sell groceries does not change her opposition because it is still a liquor store. An armed security guard would be for the store but not the whole area.

Douglas Davis Jr. lives 25 to 30 feet from the applicant location at 6553 S. Emerald. He objects to the issuance of this liquor license because the area does not need extra foot and vehicle traffic which leads to the loitering and hanging out. There is an already huge problem with drugs that brings in such traffic. Liquor would add to that traffic. The liquor license would exacerbate the existing conditions. He was not aware this store intended to sell grocery items, but that fact

as well as the fact the store plans to hire an armed security guard would not change his opposition.

Ronald Domingue has lived a block and a half from 6601 S. Halsted for almost forty years. He objects to the issuance of this liquor license because this is a high crime area. He observes illegal activity on a daily basis and has seen seniors being intimidated. There is no need for any kind of liquor. A security guard will not be a deterrent to what is going on in the neighborhood. A liquor store draws a certain nefarious crowd that hangs to sell cigarettes to people that buy liquor. That is not seen in front of restaurants or grocery stores.

Kirklyn Jameson has lived a half a block from 6601 S. Halsted since October, 1985. She objects to the issuance of the license because there is a lot of drug dealing and cigarette selling. It would have more gang violence and people drinking, and would lead to conflict. She was not aware there would be groceries with limited liquor but she would still object because she does not want any liquor.

Gus Guirguis is a member of God Ministries Church at 6549 S. Halsted. He objects to this liquor license because of people hanging out on the corner and this license would make the crime worse.

William A. Ballard lives six blocks away from the applicant location and has lived in the area around 6601 S. Halsted for 53 years. He objects to this license because there is already one liquor store on Halsted. There is riff-raff in the parking lot already and a liquor store will bring

in more riff-raff. By riff-raff he means selling loose cigarettes and gangbangers and dope friends hanging out. A liquor store would make it worse.

Derrick Abdullah has lived in the community since the late 1950's and has lived a block and a half away from the applicant location for five years. He objects to the issuance of this liquor license because liquor provides an intoxicant to an unruly community that could only increase crimes of various natures like robberies and homicides. Issuing the license would definitely increase the crime. He was not aware the applicant planned to sell grocery items but that does not change his opinion because of the presence of liquor. He feels an armed security guard would not change his objection because security is limited to protection of the property and the people they work for.

Deborah Payne has lived in Englewood for 41 years and has lived less than a mile from the applicant premises for 33 years. She opposes the license because Englewood is a community with problems and violence and putting a liquor store at that location would add to the violence, loitering, and unsafety. Senior citizens are afraid to go into the parking lot to shop at the Family Dollar because people are hanging around and take advantage of them. The fact the applicant would sell grocery items with limited liquor did not change her opinion because there are reputable places in the area that sell food and liquor. Having a security guard would not change her objection. She has witnessed firsthand at 6601 S. Halsted people hanging around and doing nothing. The parking lot is not clean. If the applicant was a Walgreen's she would not oppose a liquor license. She would not oppose a Whole Foods. She has never met the applicant, Mr. Patel, but she does not feel he is notable like Walgreen's or Whole Foods.

Bonnie Roby has lived in Englewood over 30 years and now lives a mile away from 6601 S. Halsted. She serves as the 4th District court advocate chairperson and she attends court to support victims. She also attends local community police CAPS meetings. She opposes the issuance of the license because there are too many liquor stores in the area from 74th Street to 55th Street. This would be another haven for people to loiter. She objects to any liquor license going into that location.

Kevin Chambers has been a Chicago Police Officer for almost 23 years and has been a lieutenant in the 7th District for five years and nine months. He was asked by Deputy Chief/District Commander Schmitz to testify on his behalf at this hearing. One of his duties is to advise the Deputy Chief on liquor license applications in the 7th District. Deputy Chief Schmitz and the witness both object to the issuance of the liquor license.

The location of 67th and Halsted is in the cross hairs of a gang war between the Gangster Disciples and Black Disciples. The applicant location is in the direct center of this gang turf. There was a shooting last night at 6659 S. Halsted, which is less than a block away from the applicant location. The problems encountered daily in regards to the gang conflict include gang loitering, fights, and narcotic sales within the one block area from 66th to 67th. The earliest narcotic loitering is about 10:00 in the morning and the latest about 2:00 in the morning. An additional packaged goods liquor license would add to the problems and make it worse. The witness is personally aware of narcotics sales taking place at or around 6601 S. Halsted on a daily basis. The same is true with selling loose cigarettes. Shootings occur in the area quite frequently.

There are problems regarding a nearby existing liquor store named Chaz including narcotic sales of cannabis and some rock. The area around the closed Church's Chicken directly across the applicant location is a gang narcotic hot spot and 6601 S. Halsted is at the epicenter of that problem.

The fact that the applicant plans to sell food and has stated they will hire armed security does not change the opinion of the witness or Deputy Chief Schmitz.

The witness identified City's Exhibit 6b, in evidence, as a list of calls for service from January 1 through August 6, 2013, for the area from 6500 to 6700 S. Halsted. This list totals 1286 calls with the majority of calls involving selling narcotics, persons with a gun, and gang loitering. Most of these calls were from Beat 723, which is staffed with two primary beat cars on the afternoon and midnight shifts. In addition, tactical officers, rapid response cars, and gang units focus in this area. If a call also contains an R.D. number, it means a formal report was prepared and an arrest probably made. The witness opined that 1286 calls in seven months for a two-block range is significant.

City's Exhibit 6a, in evidence, lists reported crimes with R.D. numbers for the applicant location at 6601 S. Halsted for the time frame from March 26 through April 8, 2013. There were 34 reported crimes. The witness opined that is a significant amount of arrests within a two-week period. Deputy Chief Schmitz reviewed these crime statistics and they helped to form the basis of his objection to the liquor license.

Lieutenant Chambers and Deputy Chief Schmitz reviewed the applicant's proposed Plan of Operation, City's Exhibit 3. The witness testified he does not feel the plan adequately addressed his and the Deputy Chief's concerns about the issuance of the license. He could not tell if the security guard was for theft or to keep people off the property. There is already an alcohol store 200 feet away and the area does not need another. The 2:00 closing coincides with the time most of the problems do occur. The community will be impacted if this packaged goods license is issued because there will be more gang problems as the gangs will try to take over the premises. If this leads to more calls for service, more police officers will be sent. The witness and Deputy Chief Schmitz hold the opinion that issuing the license would impact police resources as far as the health, welfare, and safety of the community.

Lieutenant Chambers admitted that City's Exhibit 6a does not identify any calls for service for 6601 S. Halsted. He is aware the applicant location was formerly a laundromat and is currently vacant. Next to the location is a Family Dollar Store which has gang loitering issues, and is why the zone from 65 to 6659 is a gang loitering hot spot. The witness indicated that police presence is always a good thing but the license could cause a bigger drain on the police department by putting more resources there. That would in return cause a benefit by having less people hanging out there. The city is currently pushing more police into that community to subdue the violence even without the liquor store. The witness could not state off the top of his head with respect to Exhibit 6b and how many R.D. numbers were issued out of the 1286 calls. It is less than 50%. Gang loitering calls make up over 12% of the calls. He admitted an armed security guard patrolling the exterior of the premises could possibly deter gang loitering. He also

said security cameras are a good idea. Exhibits 6a and 6b do not reference if alcohol was involved in the disturbances listed.

The City rested its case.

Brian Sleet has been the Chief of Staff for 6th Ward Alderman Roderick Sawyer since May of 2011. He testified at the hearing on behalf of Alderman Sawyer, and Alderman Sawyer is aware of his testimony and is 100% with his statements. He is aware that an application for a grocery store with incidental liquor was applied for by RN Food Wine & Spirit for the location at 6601 S. Halsted. The Alderman is aware the licenses applied for are a food license, a tobacco license, and a packaged goods license. The Alderman did not take a position strictly on the application, but after meeting with the proposed applicant and getting his plan, the Alderman is in support of that application. At the multiple meetings between the Alderman and the applicant, meetings the witness also attended, the Alderman expressed his standard that all businesses inside the 6th Ward be clean, be safe, and be responsible to the community. The responses from the applicant were satisfying to the Alderman. The store has been vacant the entire time he has been in office. While this vacancy does not cause the blight in the area, it does not assist it. It is the Alderman's belief that having a responsible store owner helps to eliminate some of the blight. The Alderman's belief is that a responsible investment inside a troubled area is what is necessary to help turn it around and bring growth. Having the promised security cameras and armed security guards would help curb or reduce crime. This position is based on past situations in the ward where active cameras and security has a major effect on moving along the loitering traffic that tend to bring other sorts of criminal activity. The applicant has also committed to attending

CAPS meetings and to be active with the community. Provided the applicant follows these guidelines, the Alderman feels the store owner would be an improvement and betterment to the neighborhood. The applicant has been told if they do not meet any of the standard promises that the Alderman would be the first one in line to try to shut them down.

The witness admitted neither he nor the Alderman has law enforcement backgrounds and they are both aware the deputy chief and the lieutenant of the police district objected to the license. In opposition to these law enforcement experts, the Alderman's opinion is that crime will be reduced by the issuance of the license. To the Alderman it was not about crime, but economic development. Economic development will reduce crime and they go hand in hand. There was a meeting with Deputy Chief Schmitz where the Deputy Chief stated the numbers were high and the location was hot. The Deputy Chief added he does not drink and his thinking was that he would shut them all down.

The witness admitted the 6600 block currently has problems with people hanging out, drug trafficking, and violence in the area. The Alderman has met with community groups and is aware of concerns about the impact of issuing a license at this location. Some groups agree with the Alderman and some disagree. The number one agenda is doing what's best for the community and in this situation economic development is important because more people can get jobs which can lead to more businesses in the area which will bring down the violence. The cameras themselves will not deter loitering but a responsible owner who is willing to use the camera to work with the police can help deter crime. The Alderman understands the

community's position on the license but a lot of the complaints have been based on what might happen and misinformation.

The witness added that the police have an interest in arresting people and crime, and an interest in helping crime down. The police does not look at other community concerns as a top priority. The Alderman's concern is the total picture of quality of life which means businesses, churches, family, police and schools working together. In this case, with a responsible owner, the Alderman does not believe issuing the license will be a negative. The Alderman would not support issuance of only a liquor license and it is the total package proposed for the location the Alderman supports. The assumption that a responsible owner can alleviate problems around vacant stores is based on the fact that it has worked in the past.

Rajanikant Patel is the owner of RN Food Wine & Spirit that has applied for a food license, a tobacco license, and a packaged goods license for 6601 S. Halsted. The location is 5000 square feet and will be composed of grocery store shelves and four coolers of beer. There would be no liquor in the main floor area. He met with the Alderman to discuss concerns. To cure some of those issues he promised a well-lit parking lot, armed security guards, and a security system.

The witness admitted he has never owned a store in the past but has liquor experience working at Binny's as an assistant manager and store manager. In those positions, he was head of the whole store with the responsibility of hiring and firing, ordering, and customer service. He also worked at his brother-in-law's liquor store in Barrington for one year. He now works at

Quick Stop Food and Market where he is a manger of a 3000 square feet liquor and grocery store. He feels based on his experience he's equipped to open up a store of this size.

The witness stated his application was denied and he and his attorney proposed a plan of action. It included a security guard, an in and outside camera system, cleanliness in the parking lot, and appearing at the CAPS meetings. He plans to have ten to twelve people and he intends to hire from the community. He has seen the loitering, narcotics, and crime problems and plans to be at the store open to close, six days a week. The hours of operation will be 9:00 a.m. until 1:00 a.m. He has not yet attended CAPS meetings and has not met with community groups or anyone from the police. The outside security guard will be moving people hanging out and keeping the outside clean. He has not yet conceived strategies to deal with the issues in the surrounding community. Based on testimony at the hearing, he will now have two security guards and would add a third if necessary.

The first matter to be decided is what is the specific basis or bases alleged by the City as the reason or reasons why this license was denied. The Chicago Municipal Code allows the Local Liquor Control Commissioner to deny a license if its issuance would tend to create a law enforcement and if the issuance of a liquor license would tend to create a deleterious impact on the health, safety, and welfare of the community. Included in the definition of deleterious impact is that issuing the license would cause an increased risk of violations of the law. The Local Liquor Control Commissioner can and has in the past cited both reasons in its denial letter.

The original denial of April 19, 2013, states that “the application is denied because of deleterious impact issues raised by the community.” It does not reference law enforcement objections. It is only in the May 24, 2013, Final Denial Letter that law enforcement concerns of the police is mentioned and that is in the context of the city’s decision that the proposed plan of operation does not provide reasonable assurance that the issuance of the liquor license will not have a deleterious impact on the surrounding community. Nothing in the final denial letter sets out that the Local Liquor Control Commissioner was amending its initial denial.

Due process requires at a minimum that an applicant be given notice of the reasons for the denial of the liquor license application. The only basis for denial given to the applicant was deleterious impact and that is the only basis that can be considered by this Commission.

The City has argued the concept of law enforcement under two theories. The first theory is derived from the holding in the Vino Fino case. The theory focuses on the background of the specific applicant to see if the applicant has a history of violating liquor laws or the law in general. There is no evidence in the record to suggest this particular applicant has a history of violating liquor laws or the law in general.

The second theory or approach is derived from the MJ Ontario case. Under this approach, the focus is not the specific applicant, but on the existing conditions in the surrounding community and whether a liquor license at that establishment will cause an increase in violations of the law. This can include an exacerbation of existing violations of the law.

The evidence in this case shows that Englewood, and in particular the area surrounding and abutting the applicant location, has extensive and varied law enforcement problems. No one disagrees that this is a hot zone area with gang activity, drug sales, public drinking of alcohol, and loitering. No one disagrees with the fact that violent crime, as well as other crime occurs in the area on a daily basis. Since this area is already plagued with law enforcement problems, the analysis must drift to whether this license would exacerbate these existing law enforcement problems. The community members who testified against the license support this position on the concept that any additional alcohol sales will contribute to the existing law enforcement problems. This community's opposition must be viewed in the light that certain witnesses believed the applicant was opening a liquor store as opposed to a grocery store with liquor. Other community witnesses tempered their stand against any liquor licenses being issued if the applicant was Whole Foods or a similarly known national company.

The testimony of Lieutenant Chambers, which he gave individually as a Lieutenant for the 7th District and on behalf of District Commander/Deputy Chief Schmitz opposing the issuance of this license, was based on the location of the store being in a hot zone of gang conflict and the issues the police currently have with existing liquor establishments. His opinion is that liquor at this location will lead to more calls for service which would require more police officers responding and that would lead to a greater focus on the area than now.

The testimony and documents in the record are sufficient evidence to find that the issuance of a liquor license at this location would lead to additional law enforcement problems such that it would cause a deleterious impact on the health, safety, and welfare of the

community. The simple fact is that based on the conditions of the area any liquor license issued to any applicant would lead to a deleterious impact on the community.

The applicant submitted a plan of operation to abate the deleterious impact. The Local Liquor Control Commissioner felt this plan did not provide reasonable assurances that the issuance of the liquor license will not increase the risk of violations of the law. The burden is on the applicant with respect to this issue at this de novo hearing.

The applicant testified to the matters set out in the proposed plan of operation and Brian Sleet, Chief of Staff for Alderman Sawyer, gave testimony as to why the proposed plan was sufficient to provide reasonable assurances this applicant receiving this license under the restrictions of the plan of operation. The Alderman's Chief of Staff did not deny the existing law enforcement problems but asserted, based on personal past experience, that a responsible owner such as the applicant operating the store under the agreed terms of the plan of operation can operate this liquor store without causing a deleterious impact on the community.

This Commissioner feels that the testimony of Alderman Sawyer's Chief of Staff, in conjunction with the testimony of the applicant, was sufficient to hold that the Plan of Operation provides reasonable assurances that the issuance of this license will not increase the risk of violations of the law.

The denial of the packaged goods license for the premises located at 6601 S. Halsted is reversed and it is ordered the license shall issue subject to the terms of the applicant's Plan of Operation.

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: March 7, 2014

Dennis M. Fleming
Chairman

Donald O'Connell
Member