

LICENSE APPEAL COMMISSION  
CITY OF CHICAGO

Busy Bee Supermarket, Inc.	)	
Ribhieh Hussein, President	)	
Applicant (Packaged Goods)	)	
for the premises located at	)	
5657-5659 South Ashland Avenue	)	Case No. 07 LA 47
	)	
v.	)	
	)	
Local Liquor Control Commission	)	
Department of Business Affairs & Licensing	)	
Mary Lou Eisenhauer, Acting Director	)	

ORDER

OPINION OF CHAIRMAN FLEMING JOINED BY COMMISSIONER SCHNORF

Busy Bee Supermarket has applied for a Package Goods liquor license for the premises located at 5657-5659 South Ashland Avenue. The application was denied based on the finding of the Local Liquor Control Commission that the issuance of this Package Goods license would have a deleterious impact on the health, safety and welfare of the surrounding community and cause a law enforcement problem. The initial denial was issued on July 5, 2007. The applicant submitted a Plan of Operation to abate concerns that the issuance of this license would cause a deleterious impact on the surrounding community. After the plan of operation was reviewed, the Local Liquor Control Commission issued a final rejection of the application on September 11, 2007. That letter again stated the grounds for rejection were deleterious impact and law enforcement problem. It also specifically stated the plan of operation submitted by the applicant was insufficient to control the public nuisance problems that would arise from the issuance of

this license. The applicant filed a timely notice of appeal with this Commission and the matter proceeded to a *de novo* hearing on February 28 and March 11, 2008.

This is the first case heard under the amended ordinance. Under the amended ordinance the Local Liquor Control Commissioner may deny an application for a liquor license if the issuance of such license would tend to create law enforcement problems or have a deleterious impact on the health, safety and welfare on the community in which the licensed premises is to be located. This amended ordinance defines "Deleterious Impact" as an adverse effect on the value of any property, an increased risk of violations of law, or a risk of substantial increase in noise, litter, or vehicular congestion. The ordinance now allows for a presumption of the existence of a deleterious impact if there has been a substantial number of arrests within 500 feet of the applicant's premises within the previous two years, unless the applicant has adopted a plan of operation that will provide reasonable assurance that the issuance of the license will not have a deleterious impact. A final change in the ordinance applicable to this case allows an applicant to present a plan of operation that will provide reasonable assurance that the issuance of a license will not cause a deleterious impact within 20 days of an original denial based on deleterious impact.

Sergeant Pat Boyle testified that he supervises a tactical team in the 7<sup>th</sup> Police District. He oversees ten police officers assigned to fight gang, narcotic and violent crimes. The boundaries of the 7<sup>th</sup> District are from 55<sup>th</sup> Street on the north to 75<sup>th</sup> on the south and the Dan Ryan on the east and Hamilton on the west. He was assigned by District Commander Joseph

Patterson to conduct an investigation relative to this application in April of 2007. He interviewed employees and examined the store and did a search of the nearby area which found five other liquor establishments in the area. He did computer research for criminal activity in the area of 55<sup>th</sup> to 59<sup>th</sup> on Ashland. Seventy-one pages of arrests were found to have accrued dating back to 1990, but there were 31 incidents in 2007 within the four blocks of the applicant's location. Boyle testified many of these arrests are drug and alcohol related. Sergeant Boyle opposed the issuance of this license because it would cause difficulty in managing police resources. His experience is that calls for service at other liquor stores cause a significant number of police resources to be used and it would prevent additional criminal activity to deny the issuance of another package goods license. His experience is that package good liquor stores attract loitering, panhandling and prostitution. These problems are not necessarily lessened by intervention from the personnel of the liquor store since such intervention can lead to confrontational problems. It is hard enough to control law enforcement as it is let alone how it might be if an additional liquor license is issued.

Joseph Patterson has been Commander of the 7<sup>th</sup> District since June of 2005. Sergeant Boyle works for him and recommended to him that the license application be denied. He opposes the issuance of this license based on his personal experiences with people congregating outside liquor stores, the Commander stated he never approved this application and has not approved any other such applications.

Mrs. Harris from Alderman Thompson's office testified on behalf of the Alderman and as an individual who lives one and a half blocks from the establishment. She testified that the Alderman is opposed to the issuance of this license. She is familiar with Busy Bee and without the sale of alcohol she has noticed litter and empty bottles and cigarettes in the area of Busy Bee. She has encountered drunk youths, public drinking and public urination in areas by other liquor stores. She admitted she tried to impose a moratorium in the 16<sup>th</sup> Ward which failed.

Several other neighborhood residents testified in opposition to the issuance of this license. In general, they felt the store itself is clean but there is litter and bottles in the area around the store. One witness specifically testified to loitering around the Busy Bee location.

Joy Adelizzi from the Department of Business Affairs and Licensing testified that after the original denial was issued the applicant submitted a plan of operation to address the department's concerns. That plan was not approved since it did not adequately address the issues at hand.

Ribhieh Hussein testified she is the President and operator of Busy Bee Supermarket. She testified to over 24 years experience in retail and that she has operated this store since last year. She has had no violations or police problems and has never been shut down. She presented into evidence petitions from the community in support of her application. The petitions are referred to as affidavits but are not sworn to before a notary. The petitions are all signed on a form prepared by the applicant. When questioned about the plan of operation,

supposedly prepared by her to address the issues on deleterious impact, the applicant did not seem to have a grasp on what was in the plan or the costs involved in putting the plan into action.

The first issue to be addressed is whether the City proved by a preponderance of the evidence whether the issuance of this license would “tend to create a law enforcement problem.”

4-60-040 (h) It is important to distinguish between cases dealing with applicants for liquor licenses and cases dealing with the suspension or revocation of an existing liquor license establishment. In the latter it is incumbent for the City to prove the actions which are the bases if the revocation or suspension are related to the licensee. A licensee has a property right in that license. An applicant for a liquor license does not have the same property rights. The applicant has only the rights set out in the City of Chicago Municipal Code and State of Illinois Statute. It is not necessary that the City prove a specific history of crimes or law enforcement problems relating to the particular applicant since denial is allowed if there is sufficient evidence to prove by a preponderance of the evidence that the issuance of this license would “tend to create a law enforcement problem”. The evidence in this case shows that this is a high crime area and has been a high crime area for Sgt. Boyle and Commander Patterson who testified that liquor stores are a problem in general because they tend to attract loitering and drinking. They were described as being personnel intensive. The law enforcement problems are hard to control as is and the issuance of this license would make it more difficult to manage police resources. Based on this evidence as well as evidence from the citizens that there is already loitering and litter in the area of Busy Bee, the City of Chicago did prove that the issuance of the package goods license to Busy Bee would “tend to create a law enforcement problem.”

That finding would be sufficient in itself to uphold the denial of this license but for judicial economy in case that finding should be reversed the issue of deleterious impact will also be addressed. The question to be reviewed under the ordinance in effect for this application must be analyzed in light of the definition of deleterious impact in this ordinance. "Deleterious impact" means an adverse effect on the value of any property, an increased risk of violations of law, or a risk of a substantial increase in noise, litter, or vehicular congestion. 4-60-010 (Definitions). If one or more of these matters are proven by a preponderance of the evidence the City will have sustained its burden of proof.

The evidence previously set out that was sufficient to prove the issuance of this license would tend to create a law enforcement problem also suffices to prove that the issuance of this license would cause an increased risk of violations of the law. In reality, the evidence is even stronger on this ground. The City does not need to show that this establishment and its agents would violate the law. The City does not need to prove the issuance of this license would increase violations of law. It need only prove and did prove by a preponderance of the evidence that the issuance of this license would cause an increased risk of violations of law.

The next sections of the ordinance deal with whether the issuance of this particular license would adversely effect the value of any property or cause the risk of a substantial increase in noise, litter or vehicular congestion. There was no evidence introduced on property value and insufficient evidence presented to show the issuance of this license would case a risk of substantial increase in noise, litter or vehicular congestion. Both of these portions of the

deleterious impact ordinance were not proved by a preponderance of the evidence.

The final matter to be discussed deals with the Plan of Operation filed by the applicant. The new ordinance allows an applicant 20 days after the initial denial of an application to file a plan of operation that will provide reasonable assurance that the issuance of the license will not have a deleterious impact. Joy Adelizzi testified that the plan of operation did not provide such reasonable assurance. There was limited cross-examination on this point and the cross that did occur did not challenge her position. In addition, the testimony of the applicant relative to the plan of operation revealed little insight into what was in that plan or how much it would cost to implement it. It should be noted the provision for this plan of operation addresses the deleterious impact denial but is not material to this denial on the ground that issuance would tend to create a law enforcement problem.

The City has proved by a preponderance of the evidence that the issuance of this package goods liquor license would tend to create a law enforcement problem and would have a deleterious impact in that it would cause an increased risk of violations of the law. The denial of the license is affirmed.

#### COMMISSIONER KOPPEL'S DISSENTING OPINION

The facts in this case are similar to many of the cases the Commission has heard. The applicant owns a food store and wishes to obtain a package goods liquor license. This location is properly zoned. The applicant is a decent business woman with no marks against her.

Originally, the commander approved the license. The City denied the license predicated on the fact that it would cause a deleterious impact upon the community. A sergeant for the police department indicated that there are four licenses in a two block area and that the area has problems of loitering, prostitution, drugs, etc. The Alderman through her assistant said people in the community do not want anymore liquor licenses in her ward. The officer said it was his choice that no more licenses should be issued in this area.

As stated before the applicant is qualified, the establishment is open from 9:00am to 8:00pm and on Sundays it closes at 6:00pm. It should be further noted that there was an election to vote the area dry which was not successful. The applicant has surveillance cameras inside and outside the store and personnel to keep the area safe. Upon review of the record it appears that this applicant is qualified to hold a liquor license. If the licensee fails in their responsibility to operate a good place then there are legal ways to take away a license (as previously stated there was a vote to make the area dry and it failed). There are due process ways to take away a license, but to deny a license it would punish the applicant whose record will reflect for no legitimate reason that she has been denied a retail liquor license. To say that the license could contribute to a bad situation is not enough to say it's a deleterious impact upon the community. If problems do exist, it is the responsibility of law enforcement agencies to monitor and control this problem. Again, this place is properly zoned and the applicant is credible. The Mayor's License Commission denying this license is a back doorway of revoking. There are due process procedures to close a bad place and there are methods to prevent openings of liquor stores (local options, moratoriums). To deny this license on the testimony that "we have enough" or



something might go awry is not due process. The City should have been 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 AFFIRMED.**

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: July 10, 2008

Dennis M. Fleming  
Chairman

Stephen B. Schnorf  
Commissioner

Irving J. Koppel  
Commissioner – In Dissent

