

LICENSE APPEAL COMMISSION  
CITY OF CHICAGO

A & O Food & Liquor, Inc.	)	
Awad Odeh, President	)	
Application (Expansion of Use)	)	
for the premises located at	)	
6701-03 North Clark Street	)	Case No. 07 LA 59
	)	
v.	)	
	)	
Department of Business Affairs & Licensing	)	
Local Liquor Control Commission	)	
Mary Lou Eisenhauer, Acting Director	)	
	)	

ORDER

OPINION OF CHAIRMAN FLEMING JOINED BY COMMISSIONER SCHNORF

This matter comes before this Commission based on the appeal of the applicant from a decision of the Local Liquor Control Commission denying its request for an expansion of use for the premises located at 6701-03 North Clark. There is presently a grocery store with a package goods liquor license at 6703 North Clark and the application sought to expand into a storefront at 6701 North Clark. This would be approximately an additional six hundred feet. The applicant was denied originally on October 17, 2007, by then Director Scott Bruner. That initial denial was based on the fact that the issuance of this license would have a deleterious impact on the health, safety and welfare of the surrounding community. The applicant was advised that pursuant to Section 4-60-040 of the Municipal Code of the City of Chicago, it had twenty days from the October 17, 2007, date of denial to devise and submit a plan of operation to the Director of the Local Liquor Control Commission that would provide reasonable assurances that the

issuance of this license would not have a deleterious impact on the surrounding community. If the plan was not approved, the denial would become final and it could be appealed to the License Appeal Commission. If no plan was submitted, a final denial letter would be sent to the applicant. While there may be a dispute as to whether City Exhibit #9, which is a letter faxed to the Local Liquor Control Commission on November 5, 2007, was a plan of operation, it appears that the Local Liquor Control Commission felt it was and proceeded as it was such a plan. On December 10, 2007, a letter of denial was sent to the applicant again stating the ground for denial was deleterious impact. On March 20, 2008, an amended final denial was sent to the applicant by Acting Director Mary Lou Eisenhauer. It asserts that the plan of operation did not address any of the negative quality of life issues outlined in the original denial letter of October 17, 2007, and does not provide reasonable assurance that the issuance of the expanded liquor license will not have a deleterious impact on the surrounding community. The appeal was filed on December 27, 2007, prior to the issuance of the amended denial notice. No one objected to this matter proceeding to hearing on the issues set out in the original denial and the amended final denial letters. This matter was heard de novo by the License Appeal Commission.

This case is governed by the amended Chapter 4-60 of the Municipal Code. In the definition section, 4-60-010 - "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. The City must first establish this element before it is necessary to address issues of whether a plan of abatement sufficiently addresses issues relating to deleterious impact.

In this case neither Alderman Moore or the Police District Commander testified in favor or in opposition to the expansion of use. Several neighborhood residents did testify in opposition and it is appropriate to summarize that testimony.

Jill Kempson lives a block and a half from the premises and is involved with CAPS and is a community representative for the Sullivan High School Local School Council. She has never been a customer of the store and has never spoken to the owner. She opposes the issuance of this expansion since there is a “hot corner” with loitering and gangs. While she acknowledges liquor will still be sold and the denial of the expansion would not limit the amount of liquor sold, the problems in the area will be worse if expansion is allowed.

Gus Alexandrakis lives four doors around the corner from the store. He has lived in the area thirteen years and is involved with CAPS. He complained of public drinking and urination and people sleeping on the lawn, but he related these problems on “Hispanics” and gang bangers congregating in the alley. He did not relate these problems to the applicant and added these people had nothing to do with the applicant. He feels the area does not need another liquor store.

Richard Jones lives a block and a half from the premises and is President of the North Ravenswood Council as well as being involved with court advocacy through CAPS. He opposed the issuance of the original license two years ago and opposes the expansion. The corner is a problem with high arrests and now has a police camera. He has seen loitering by people he identified as Latin Kings by their clothing and has observed prostitution in the area and also

witnessed a drug deal in front of the store two years ago. Expansion would make these problems worse and another license would be like gas added to the fire.

Julie Kilzer-Izquierdo has lived in the neighborhood 43 years and is now one block away from the store. Her husband is the Hispanic Beat Facilitator for the 24<sup>th</sup> District and they operate the Taste of Peru Restaurant about a half-block away. He knows the store and has spoken to the licensee. Her concerns are the concentration of liquor stores in the area, the litter, public urination and drunkenness at the Metra Station in alleys and in parking lots. She is not a customer of the store and has no idea of the store's clientele. She is aware the location will exist even if expansion is not allowed. She observed drug dealing two and a half years ago.

Patrick Kenny lives one block away and is a CAPS member. His concerns over expansion include the fact there are too many package goods stores on Clark Street and higher square footage here means higher sales. The area is filthy and close to schools. There is loitering and he has observed a police tactical car or blue and white car on a regular basis on the 6600-6700 block of Clark Street.

Richard Mayszak lives one block away and was a regular at this store until last Fall when he observed the owner smoking by the produce section. He has observed this location sell single cans that were consumed by individuals causing problems by congregating in the area. He has seen public drinking weekly. He opposes sales of single cans.

Jim Ginderske lives four blocks away and is President of Neighbors for a Healthy Rogers Park. His concern deals with lack of control on homeless and mentally ill people on Rogers Park. There is also concern of many people with addiction problems. The problems are worse with sales of small cans and single cans of beer and small bottles of liquor. The owner has not lived up to a previous agreement with the Alderman's office that would have limited the sale of certain liquor containers.

Ashraf Odeh testified he is the manager of the store. Their clientele basis is 100% Mexican and they sell grocery, package liquor and have a delicatessen and meat sales. They employ three butchers. The present store is crowded and the expansion of 600 feet would alleviate congestion. It would allow him to separate the liquor section from the other areas of the store. Since this store received its liquor license it has not received any citations for violations of liquor laws. The police installed a camera at the corner. There are twelve apartments in the building and ten are occupied. He identified City Exhibit #9, as a letter sent to the Local Liquor Control Commission but did not define it as a plan of operation. He stated there are problems with drugs and intoxicated persons but those problems pre-existed their license. They call the police if criminal acts happen.

The analysis in this case is different than when the application is for a new liquor license. There is a history of this applicant operating these premises for a period of years without a history of any violations. There was no evidence presented that the applicant has a history of problems at the other establishments it operates. There was no testimony from the police or from

CAPS representatives as to the amount of crime in the area of this store or about any calls for service from this store. There was no testimony from law enforcement that the expansion of this licensed premises would cause an increased risk of violations of the law as set out in the definition of deleterious impact.

There was no evidence that the issuance of this license would cause an adverse effect on the value of the property as set out in the definitions of deleterious impact.

That leaves us with the last portion of the definition of deleterious impact. Has the City proved a risk of substantial increase in noise, litter or vehicular congestion? There was no real testimony on noise or vehicular congestion and certainly not enough to say the City proved the risk of a substantial increase. There was testimony about litter but some of the witnesses did not tie the litter problem to the licensee.

This area of Rogers Park faces problems with the homeless and mentally ill. It also faces problems with crime, gangs and litter. These problems pre-existed the issuance of the original package goods license to this licensee. The evidence presented at this hearing was insufficient for the City to have met its burden of proof that this expansion of this licensed premises would cause a deleterious impact as defined by ordinance. This opinion might have been different if this was an application for a new license but the evidence is insufficient under these facts.

The decision of the Local Liquor Control Commission is reversed.

## COMMISSIONER KOPPEL'S CONCURRING OPINION

The applicant has applied for an expansion of use liquor license and was denied. The denial was predicated on the fact that this expansion would cause a deleterious impact upon the community. It should be noted that the applicant has two other liquor licenses. Several neighbors in the area objected to the expansion. Again, the licensee is in good standing and the place will still remain open. The applicant has installed 16 cameras, 2 or 3 on the outside. Again, he has been in business in this location for 2 years. This is primarily a food store and the applicant needs more space. The location is properly zoned and has no violations. Just because the applicant wants to remodel is not a cause for the denial of the expansion of the license.

The facts in this case are similar to many of the cases that the License Appeal Commission has heard. The applicant is a decent business man. The police have not objected to the expansion. To say that the license expansion could contribute to a bad situation is not enough to say that it's a deleterious impact upon the community. If problems do exist it is the responsibility of law enforcement agencies to monitor and control the problem. The licensee is credible.

There are due process procedures to close a bad place and there are methods to prevent openings of liquor stores (local options, moratoriums) and of course any violations that may be attributed to the store. Section 4-60-190 of the City Code titled Complaint Procedure states the following:

“Any resident of the City of Chicago shall have the right to file a complaint with

the local liquor control commissioner stating that a liquor licensee has been or is violating the provisions of this chapter. The complaint shall be in writing in the form prescribed by the local liquor control commissioner and shall be signed and sworn to by the person or persons making the complaint. The complaint shall state the provisions believed to have been violated and the facts in detail upon which belief is based. If the local liquor control commissioner is satisfied that the complaint substantially charges a violation and that from the facts alleged there is reasonable cause for such belief, he shall set the matter for hearing and shall serve notice upon the licensee of the time and place of such hearing and of the particular charge or charges in the complaint.”

To deny this expansion on the testimony that something might go bad is not enough. It's a violation of due process and basically a back doorway of denying a license. The City is reversed and the expansion is granted.

**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: July 16, 2008

Dennis M. Fleming  
Chairman

Irving J. Koppel  
Commissioner

Stephen B. Schnorf  
Commissioner