

LICENSE APPEAL COMMISSION
CITY OF CHICAGO

108 Kinzie LLC)	
Derrel McDavid, Member)	
Applicant (Tavern))	
for the premises located at)	
108-110 West Kinzie Street)	Case No. 06 LA 09
)	
vs.)	
)	
Department of Business Affairs & Licensing)	
Local Liquor Control Commission)	
Scott V. Bruner, Director)	
)	

ORDER

COMMISSIONER KOPPEL'S OPINION

This matter comes before the License Appeal Commission for a liquor license denial. The allegation was that a place previously occupying this location caused a deleterious impact upon the community.

The denial was predicated upon the fact that the previous occupant of that location was revoked two years prior because after nuisance complaints as to the operation of the business, that license was revoked. There were complaints suggesting that the approval of another restaurant/bar would create the same problem.

It should be noted that this place is properly zoned and the applicant had been approved by the police department. The facts showed that the new applicant was the owner of this building

and made extensive repairs in remodeling the building. He spent a large amount of money in remodeling the restaurant to create a high end establishment at this location. The Alderman could have created a moratorium in this area to prevent another place coming into existence. This was not done. It should be noted that liquor licenses were in existence at this location prior to the place that was revoked.

The courts are quite clear that if the applicant is qualified and the place is properly zoned then under the law the license should be issued.

While I agree that it is important to protect the public health, welfare and safety, I believe that due process remedies exist that protect the community. Such a process is available. Under Section 4-60-142, a licensee is responsible to the community surrounding the licensed premises. If this establishment creates a nuisance or violates the law then the license can be revoked. Since the City has a due process remedy it should proceed in that fashion (and not in conjecture of what might happen). This is a back door way of revocation by disallowing the application of a legitimate businessman. He has made a substantial investment and if he violates the law and creates a nuisance he can be revoked. But to deny him on conjecture is unfair and would in effect not only cause him to lose his investment, but he would be prevented from ever again getting a license. To deny a license on conjecture is extreme and an abuse of discretion.

To say that the licensee 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 is zoned properly. The licensee is credible and responsible. The police have approved the application. 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 of conjecture is not enough. The City is reversed.

OPINION OF COMMISSIONER ADAMS

We have been called upon frequently in the past to resolve issues of competing uses of closely connected properties. Frequently, those issues have revolved around the conflict between the business community versus home owners. In this case, we are called on to resolve conflict principally between competing commercial interests. The applicant applied for a liquor license in an area that is home to a number of businesses involving the arts and some private residences. A badly run liquor licensed establishment in the same area had previously caused great problems to its business and residential neighbors. That establishment is no longer in business. Based upon that bad experience, those neighbors expressed opposition to the new application. The City cited the past problems in the area as a reason for the denial, but also in its denial letter referred to the area 'as more specially designated for artistic exhibitors and art related schools and research institutions' than for a liquor license. The applicant appeals that ruling.

During our hearing, we heard testimony from proprietors of an art school, the owner of an oriental rug business and an antique store owner. They testified to the unique nature of the business community on that block. We heard additionally from Alderman Natarus and residents principally testifying to the problems that existed in the past when a previous liquor establishment was poorly operated in the area. As a result of that bad experience, they stood in opposition to the license. The witnesses also took great pride in the unique business character of their block and wished to preserve that special flavor.

In opposition the applicant while sharing displeasure of the manner in which the previous licensed establishment operated, took great efforts to demonstrate why he would operate in a responsible manner. The architect of the new establishment, the chef who would serve the establishment, and the conceptual designer of the establishment all testified credibly. The applicant testified extensively of the renovations made to the property and to the extraordinary expense he incurred in making his prospective business first rate. There is no question that an exceptional amount of thought, expense and preparation have gone into the applicant's premises.

While I can appreciate the desire of the current business owners that the area remain quaint, the City to sustain its denial must prove not that the applicant's premises would be different than its neighbors, but rather than it would have a deleterious impact upon the community. There is no question that the applicant's premises might be different in its business mission than its neighbors, but the City did not prove that it would have a deleterious impact

upon the community. They did prove quite clearly that a poorly run previous establishment had such an impact. However, I am convinced after hearing the testimony that based on the applicant's business plan, design and investment that no such deleterious impact has been proved. As a result, the denial of the application for the reasons expressed is contrary to the evidence presented at hearing and we therefore reverse.

OPINION OF CHAIRMAN CALABRESE IN DISSENT

Whether a licensed premises would likely cause a deleterious impact upon a community must often be based upon conjecture. On rare occasion, we have the ability to predict that future based upon the track record of the immediate past. This case presents such a rare occasion.

The City denied the application for a liquor license at this location as it would likely cause a deleterious impact to the surrounding community. At hearing, the City proved the likelihood of that deleterious impact. We heard the testimony of the local Alderman, business community and residents all steadfastly united in opposition to the license.

That opposition was based on the history of a 'dessert bar' called Sugar. The manner in which that business was run wrought havoc upon the community - public urination, intoxication, vomiting, littering, noise pollution and physical confrontation were a byproduct of the 'dessert bar'. There was a connection established at hearing between those who established and ran Sugar and those who were instrumental in the creation of the applicant's premises.

While a great deal of money and thought was placed into the creation of the new enterprise, and no doubt the result would be a pleasurable experience for those who drink inside, the byproduct for those who live and work outside would be deleterious. The City was well within its rights to deny the application for license and the proof at hearing supported the reasonableness of that denial. I would have affirmed the City's denial of the application for liquor license.

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 10, 2007

Irving J. Koppel
Commissioner

Don W. Adams
Commissioner

Anthony J. Calabrese
Chairman – IN DISSENT

