

LICENSE APPEAL COMMISSION
CITY OF CHICAGO

Bond Drug Company of Illinois, LLC)
d/b/a Walgreens)
Applicant (Packaged Goods))
for the premises located at) Case No. 11 LA 02
6140 North Western Avenue)
)
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

This matter comes before the Commission after Walgreens filed a timely appeal of the decision of the Local Liquor Control Commissioner denying its application for a Packaged Goods license at this location. The date of the original denial was November 5, 2010, and the basis of the denial was that the issuance of this license would have a deleterious impact on the health, safety, and welfare of the surrounding community. A license application may be denied if its issuance would lead to a deleterious impact which is defined per Section 4-60-040 of the Municipal Code of the City of Chicago, as having an adverse effect on the value of any property, an increased risk of violations of the law, or a risk of a substantial increase in noise, litter or vehicular congestion. This letter advised the applicant that it had twenty days to devise and submit a plan of operation, which would provide reasonable assurance that the issuance of the liquor license will not have a deleterious impact on the surrounding community. If the plan of operation is not

approved the denial will become final and the applicant can appeal to the License Appeal Commission.

A plan of operation was presented to the Local Liquor Control Commission and it was not approved. On December 27, 2010, the applicant was advised by a letter from Gregory Steadman, in his position as the Local Liquor Control Commissioner, that the plan of operation submitted did not provide reasonable assurances that the issuance of the liquor license would not have a deleterious impact on the surrounding community. This letter stated the primary concerns expressed by the community were that the issuance of the license would adversely affect the surrounding neighborhood by an increase in traffic, litter, noise and illegal consumption of alcohol by people on the public way. Specifically, it was noted the plan of operation did not address the community concern that the issuance of a liquor license will increase commercial traffic from Walgreens that will be routed westbound on Glenlake. This would cause an increase of traffic, noise and safety issues.

Subsequent to the filing of this appeal, the applicant was allowed to file an amended plan of operation. While there was no written amended denial letter addressing this plan, testimony at the hearing established this amended plan of operation did not satisfy the Local Liquor Control Commissioner that the issuance of this liquor license, at this location, would not cause a deleterious impact on the surrounding community.

Since this is a denial of an application of a Packaged Goods license the issue before this Commission is to determine de novo the propriety of that decision. This Commission must first determine if the City has met its burden that the issuance of the license would cause a deleterious impact. If the City does not meet that burden, the denial would be reversed outright. If the Commission determines that the City has met its burden that the issuance of this license would cause a deleterious impact, the Commission must then address if the decision that the proposed amended plan of operation did not adequately address the issues causing the deleterious impact on the community.

A synopsis of the evidence will help understand this decision.

Debra Silverstein has been the Alderman of the 50th Ward since May of 2011. Since then her focus has been working on cleaning up the neighborhood and working with the police to try to get crime off the street. She is familiar with the Walgreens business that has applied for a license to sell packaged liquor goods at that location. That area is one of her ward's hot spots. There are a couple of buildings that are involved with the Troubled Buildings Program. There are gangs and drugs going on in that area, and it is her belief that having a liquor store around the corner would enhance the negative activity in that area. She opposes a liquor license in that particular area because it is a "hot spot area." Her opinion is based on the fact there are gang members and drug dealing not too far away from the Walgreens. Having the chance to buy liquor would increase problems in that area. There is also problems with garbage and littering in the area. There are also concerns from residents with added traffic going down on Glenlake.

Alderman Silverstein met with representatives of Walgreens a month before testifying. They were unable to satisfactorily address her concerns.

The Alderman stated she has put a moratorium on all packaged goods licenses in the ward but that does not mean she is opposed to all such licenses. The moratorium can be lifted in two block areas with her approval. She imposed the moratorium to have more control as to how and under what circumstances liquor licenses are issued in the 50th Ward.

She could not recall the exact date she met with the representatives of Walgreens. Donovan Pepper and a Tom Murphy were at the meeting, as was some people from her office. The objections expressed were not as to Walgreens as a business entity, but with this location. She expressed her overall support for Walgreens and how it conducts business in her ward. She believes Walgreens to be a good corporate citizen and she welcomes them in the 50th Ward. She does believe that if Walgreens has packaged goods its operation of business could possibly result in an increase in crime in her ward. She has not done any study or investigation to determine if Walgreens is a contributor to crime in her ward. She has found Walgreens to operate in compliance with City of Chicago ordinances. She feels safety cameras are a positive but those security cameras do not go a few blocks away. Her concern is what happens after consumers leave the store. She does not have the details about Walgreens' proposed plan of operation that would limit and impose certain restrictions on how and under what circumstances liquor would be sold at this location. She is not aware of any of Walgreens internal hiring

policies with regards to selling to eligible persons. She reiterated her concerns are the gang members not too far away and being able to get alcohol just two blocks away. She is aware that Walgreens has voluntarily opted not to carry low-end malt liquor, fortified wines and single serving containers of that nature.

The Alderman repeated her position that this area should not have liquor at all. She explained that at this moment this is a hot spot area with a lot of crime. Until that is cleared up, she does not want any establishment selling liquor.

She has not undertaken any type of traffic study to ascertain if the location of Walgreens negatively impacted traffic flow. The concerns about traffic are based on what she is hearing from residents. She did acknowledge the configuration of Walgreens and its parking lot and curb cuts was reviewed and approved by the City, but added that was without the alcohol. She did not know what percentage of customers travel to Walgreens in foot. She does not know and does not feel it relevant to know the anticipated overall percentage of sales of alcohol at this location if they were granted a license.

Michael Lindberg has been a Chicago Police Officers in the 24th District for his entire sixteen year career. He is familiar with this Walgreens since his assignment on foot patrol on Devon Avenue is approximately two blocks away. He is at this hearing as the representative of the 24th District. He was asked to attend by the sergeant of neighborhood relations. The former Commander Michael Wick retired the day before

Lindberg's testimony. Lindberg testified he is worried about people buying 40 ounce bottles or tall 20 ounce cans and going to the vacant lots across from Walgreens to drink and litter. His opinion would be affected to an extent if he found out Walgreens would not sell 40 ounce bottles or twenty ounce cans. He is also concerned for the potential for homeless because you usually find homeless begging by places that sell liquor.

His concern about gang activity in the area deals with older gang members buying alcohol and distributing it to minors. He has noticed problems with the sale of drugs or narcotics all around the area on the east side of Western. He would give an opinion on whether the license should or should not be issued but he does have concerns.

Officer Lindberg did not know if Commander Wick has voiced an objection to this particular license. He did not know who owned the unfenced vacant lots, but those are a source of problematic crime and activity. He does not know if the City of Chicago's Building Gang Unit has been directed to the vacant lot. The officer admitted he had no knowledge as to the products Walgreens intends to sell at this location and did not review any of Walgreens' policies with regard to the sale of alcohol. He has not reviewed the security system for this location and has not spoken to anyone who works at this Walgreens store or any corporate representative of Walgreens. Lindberg also stated the Walgreens at this location is not affiliated with gang activity and he believes Walgreens will call if gang members loiter in the parking lot.

Sadie Gerbic has lived at 6046 N. Campbell for sixteen years. She has been involved with the 5040 Neighbors Association, which was created due to the development of the Walgreens property. She also attends CAPS meetings and has had block meetings at her home. Her home is to the west and south of Walgreens. She was involved in obtaining petitions in opposition to Walgreens. Her concerns if a packaged goods license is issued to Walgreens is increased litter and about the traffic flow onto Glenlake into the residential area. She hoped people coming from the business would not go westbound through the neighborhood at increased speeds. She has not noticed any substantial increase in traffic on Glenlake since Walgreens opened, but is concerned she will if liquor is sold at Walgreens. She sees cars double parked by a liquor store at Peterson and Maplewood. There is concern with litter since she has seen a huge increase in liquor bottles in black bags in her alley. She feels it is more appropriate for liquor to be sold in commercial areas, not in residential areas. She started collecting the petitions in August of 2009, and she and others obtained about 200 signatures. She attended an initial zoning meeting but had mailed the petitions to Walgreens and others. The issue at that was whether to permit Walgreens to build a drive-thru because that was a zoning change. That zoning change and drive-thru was subsequently approved. She is concerned about litter, traffic safety and an acceleration of drinking.

The petitions were circulated with respect to a matter before the Zoning Board of Appeals and were circulated before the liquor license application was filed. While the increase in traffic has been minor, she opposes the license in part because of a concern that a liquor license might lead to an increase in vehicular traffic proceeding westbound

on Glenlake. She admitted she is not a traffic engineer and does not know what percentage of Walgreens customers arrive by foot as opposed to by car. She does not know what percentage of the store will be devoted to alcohol or what percentage of overall sales will be alcohol related. She did not know what type of product and packages Walgreens will sell.

She feels alcohol will lead to a rise in traffic based on what happened after the recently issued alcohol license to Peterson Liquors. She agreed it was possibly pure speculation to say that there will be additional bags of alcohol if Walgreens receives this license. No one has ever sent her a plan of operation to govern Walgreens' sale of alcohol at this location. She did feel it would be great of Walgreens to agree to put signs on the parking lot directing the traffic east bound.

Patricia Faldani lives at 6307 N. Claremont which is about two or three blocks from the Walgreens store at 6140 N. Western. She opposes the issuance of this license because of already existing trash and discarded liquor bottles about her property and the gang and drug activity that occurs on her corner of Rosemont and Claremont. She sees people walking in and about the vacant lots in that area. There are abandoned cars and abandoned buildings. She has worked to clean up the community and make it safe and feels this liquor license would make her work more difficult.

Ms. Faldani admitted she did not take it upon herself to learn about Walgreens' proposed business operation other than the plan to sell liquor.

David Taylor lives at 6110 N. Maplewood which is three short blocks from Walgreens. He opposes the issuance of this license. Since Walgreens has opened he has seen an increase in trash like candy wrappers and empty potato chip bags. He does not feel Walgreens is in a neighborhood that is an appropriate place for liquor. There is already trash from other liquor stores in the area.

Alison Tallard lives about two blocks away from Walgreens at 6244 N. Maplewood. She opposes this license because there is already traffic in and out and there is no place to park in the lot. The traffic coming out of Walgreens turning left blocks traffic on Granville. The second reason for her opposition is that there are people with alcohol or substance abuse problems that will go to Walgreens and loiter in the neighborhood. They leave garbage on the streets and sleep on the lawn. Adding alcohol to the already existing problem is going to further increase problems in the neighborhood. Ms. Tallard is not aware of Walgreens' sales policies toward alcoholic beverages and does not have an understanding about any security measures implemented by Walgreens to ensure lawful sale of alcohol. She is not aware of any plan of operation proposed by Walgreens, but doubts any policy addresses her concerns about liquor bottles being bought by legal individuals left on any block in the neighborhood.

Sharon Zurek has lived about five blocks from Walgreens at 6111 N. Talman for over twenty years. She has concerns about the issuance of this license. There is a great amount of vandalism, crime and gang activity. She wishes Walgreens would reconsider due to the distress in the neighborhood. Trash, litter and broken glass are some of her

concerns. People are also drinking and having sex in cars. The traffic situation at the new Walgreens is very dangerous because of traffic coming from the new parking lot and the old parking lot is for the old Walgreens directly across the street. People are trying to make the light at Granville and Western and cut each other off. She does feel the configuration of the Walgreens parking lot is dangerous. She does not know about the formal plan of operation presented by Walgreens but did read it would sell only beer and wine. The source of most alcoholic beverage related issues is Peterson's Liquors at Maplewood and Peterson.

Anastasia Glapan has lived at 2601 West Farwell for the last twenty years. That is about seven blocks north of this Walgreens. She is concerned about the issuance of a license at this location due to the gang bangers in the area. The older gang members buy alcohol for the youngsters. It is a safety concern. Additional trash and littering are also concerns. She admitted she is not aware of Walgreens' policies of the sale of alcohol or security policies at this location, or how employees are trained to ensure proper identification is shown before alcohol is sold. She agreed she is opposed to any additional licenses being issued at or near her home at this time. The problem is that Walgreens does not take responsibility once the liquor is sold and it is off their premises. It then becomes the community's problem. She is not aware of any proposed plan of operation.

Debra Sidock has lived in the neighborhood for twenty years and is temporarily living at 2639 West Ainslie. She is planning to return to this neighborhood. She opposes

this liquor license because she was mugged in front of the previous Walgreens when it had liquor. They did nothing about security. That store was also filthy but the store manager never did anything and blamed it on the other stores. Gang bangers hang out over there because nobody tells them to move on. A liquor license would add to security problems because the location is directly across from where all the Latin Kings are. She is also concerned about children crossing Western at Glenlake. The previous Walgreens had a beggar that hung out there for a year and a half. She described the area where you came through the drive-thru as the area where the gang bangers loiter in the parking lot.

Sophia Carey is a Business Consultant Supervisor with the Department of Business Affairs and Consumer Protection. She has been in that position five years and in that capacity she works with business consultants processing applications. She is familiar with this application and is familiar with the application process for a packaged goods license. As part of that process, the department takes into consideration objections from community groups. In this case they received over 200 objections, many in the form of a petition. These objections dealt with litter, noise, traffic, criminal activity and safety.

After the initial denial was issued, Walgreens was given an opportunity to submit a plan of operation to address the community concerns. That initial plan of operation was insufficient because it did not address the community's concerns regarding traffic and the safety issues associated with that. City's Exhibit 4(a) was identified as the revised plan of operation submitted by Walgreens in April of 2011. It was rejected because it still did

not properly address the community's concerns regarding traffic and safety. This revised plan added Section 6. This section stated the Licensee would install and maintain signs requesting customers who park in the lot exit onto either Granville or Western. This would not apply to customers who reside on West Glenlake. City's Exhibit 4(a) was allowed in evidence without objection.

Ms. Carey stated the ultimate decision in these matters is with Gregory Steadman, the Local Liquor Control Commissioner. She did not do an investigation to determine the veracity of the allegations contained in the petitions and she did not go out to inspect and observe traffic. She was not aware that similar objections had been presented to the Zoning Department.

In response to a question from Commissioner O'Connell, Ms. Carey stated the only concern with the plan of operation was that it did not address traffic and related safety issues. The community wanted the traffic flow to change and their understanding was that the applicant was not willing to work with the Alderman to change traffic as the community wanted it changed. If the direction of Glenlake was changed that would answer community concerns.

Pamela Stauffer lives at 2537 West Lunt which is about nine blocks from this Walgreens. She is the board chair of the West Rogers Park Community Organization. That organization is opposed to the issuance of this license. Its members are concerned about litter, congestion and possible safety issues. There is an increase in gang activity in

West Rogers Park and they do not want liquor sold there to attract gang members. This group has 300 members and she is not aware of anyone in favor of this license. Her group is working with the West Ridge Chamber of Commerce and the Alderman's Office to revitalize Western Avenue and they are trying to attract good businesses and provide a safe area for shoppers. They do not feel liquor sales should be part of that equation. Based on experience from the last Walgreens it will attract a certain clientele not wanted if liquor is sold. She has no stats on Walgreens' past performance at the prior location and her opinion is based on anecdotes. She does not feel Walgreens is not a good business for the community, but they do not want Walgreens to sell liquor. She supports the moratorium on issuance of any liquor license in the 50th Ward.

Erin Neff has been an attorney for the litigation and regulatory law department at the Walgreens corporate headquarters in Deerfield, Illinois for the last four years. She handles any legal concerns related to alcohol. She was assigned to assist when Walgreens rolled out its applications for approximately 5,000 liquor licenses in all 50 states, Washington D.C., and Puerto Rico. She has responsibility for Walgreens' efforts to obtain licenses in the city of Chicago and the entire state of Illinois. This process began in Illinois a little over two years ago. Since that process began Walgreens has not had any of the 250 licenses issued in Illinois revoked for cause. Liquor sales make up less than 2 percent of sales in the store with liquor licenses.

Walgreens employees must undergo a screening process that includes criminal background checks and drug testing. It has point of sale controls at its Illinois stores.

The older model prompts the employee, who must be over 21, to see if the purchaser looks to be over 40. If not, it requests a specific birthday and/or ID which must be entered into the system. The newer system is basically the same but has the capability to scan a license. Illinois employees are required to have Bassett training and additional training from Walgreens related to alcohol sales. None of the stores licensed in Illinois, since the roll out began, has been cited for a liquor service violation. Walgreens stores in Illinois are equipped with interior security cameras and one camera is trained on the alcohol section at all times. She would not know if a citation for an alcohol related violation was issued to someone after they left Walgreens' property. She was not involved in drafting the plan of operation for this particular application, but is aware the liquor license was denied due to traffic. Walgreens policies require that store managers and employees must be aware and knowledgeable of all municipal laws related to alcohol.

Donovan Pepper is the senior manager of government relations for Walgreens and is responsible for interaction with locals and municipalities in Illinois and all 50 other states. He has been with Walgreens six years. He is aware that Walgreens made a business decision about 10 to 15 years ago to phase out its liquor licenses. It was a cumbersome process managing full service liquor departments. This decision was not based on any disciplinary proceedings pertaining to illegal liquor violations.

The model for liquor sales for this location would be about 2% of total shelf space. It would have 9 to 12 feet of wine, and about 2 or 3 coolers of beer. The current

model for sale of alcohol does not include single serve products, 40 ounce beer, 22 ounce can, or any fortified wine. This is because the purpose of adding alcohol is for the convenience of its shoppers. They are trying to attract patrons that normally would not come to Walgreens. 43% of all their customers are female and the mix of alcohol is tailored to that customer. There has been no dramatic increase in foot traffic with the multiple stores that are currently licensed to sell in the city of Chicago. Liquor sales are about 2% across the company chain and there are no facts that would indicate sales at this location would exceed this 2% threshold.

Walgreens has a store at 7500 N. Western and had a store across the street from the present location at 6236 N. Western. That 6236 N. Western previously had a liquor license for over ten years and to his knowledge had ever been cited for a liquor-related violation. That store voluntarily surrendered its liquor license. An application for a new liquor license at that location was made prior to that location closing early this year or late last year. He met with then Alderman Stone and was not made aware of any Aldermanic or community objections. It was his understanding that the liquor license at that location was approved and would have issued except for a problem with that store's foundation that prevented it from passing the health inspection. Walgreens decided to just reapply for this license.

Pepper met with Alderman Stone about this application. They thought the license from the old store might transfer but learned a new application was required. Alderman

Stone supported the license and Pepper was not aware of opposition from the local police commander.

Pepper did become aware of a number of area residents who opposed the issuance of this license based on traffic concerns. There was a concern about a significant amount of traffic existing onto westbound Glenlake into the residential neighborhood. Glenlake is a two-way street. The curb cut was made at this location due to the location of the pharmacy drive-thru lane. This design and location of curb-cuts was approved by Zoning. He had an in-person meeting and a subsequent phone conversation with Alderman Silverstein. The purpose of the meeting was to discuss the community concerns and specifically the traffic patterns. The Alderman did not ask Walgreens to initiate a process with her office to reverse the traffic on Glenlake. Walgreens cannot do that on its own. Walgreens submitted a plan of operation after the original denial. It suggested some sort of signage that would deter individuals from driving westbound onto Glenlake. Walgreens had received no complaints about traffic congestion along west Glenlake. Peppers stated Walgreens remains willing to implement the proposals set out in City's Exhibit 4(a), the revised plan of operation. That includes the installation of the signage requesting patrons to exit in an easterly direction towards Western. No reports of gang activity have been reported to Walgreens, and he is not aware of any incidents of unlawful activity of any kind occurring at or immediately adjacent to 6140 N. Western.

The first issue to be decided is whether the issuance of this packaged goods license at this location would cause a deleterious impact on the health, safety and welfare

of the community. At the onset, case law such as Ace Produce vs. State of Illinois Liquor Control Commission, 93IllApp3d881, and M.J. Ontario v. Richard M. Daley, et al, have established that deleterious impact can be established by presenting evidence of already existing problems in a neighborhood that would be exacerbated by the issuance of the license. It is not necessary for the City to prove that Walgreens is the sole cause of a new and separate deleterious impact on the community. It is not necessary for the City to prove that Walgreens' actions cause a deleterious impact if the results of the sale of alcohol by Walgreens exacerbates an existing deleterious impact. The evidence presented by the members of the community and particularly the testimony of Alderman Debra Silverstein described conditions that support a finding that there is conditions that can be described as having a deleterious impact on the health, safety and welfare existing in this area of the 50th Ward. With those existing conditions, the addition of additional liquor sales from Walgreens would exacerbate these existing conditions. The evidence on this point does not need to be site-specific. The deleterious impact does not have to occur on the applicant property. Evidence in this case dealing with areas adjacent to and close to this property is sufficient for the City to have met its burden on this first issue.

The next issue to be determined is whether the amended plan of operation, in evidence, as City's Exhibit 4(a) provided reasonable assurances that the issuance of this packaged goods license would not have a deleterious impact on the health, welfare and safety of the surrounding community. Under the ordinance it appears, the burden of proof on this issue would be on the licensee applicant. We need address this specific issue except as to how it relates to community's traffic concerns because Sophia Carey

testified in response to direct questions from Commissioner O'Connell that her only concern with the plan of operation is that it did address traffic and related offenses. Since Ms. Carey was called by the City as its witness on behalf of the Department of Business Affairs and Consumer Protection it follows that the Local Liquor Control Commissioner felt that the proposed items in the amended plan of operation did provide reasonable assurances that the issuance of this license would not have a deleterious impact on the surrounding community with respect to the non-traffic concerns.

It was Ms. Carey's understanding that the community's concerns dealt with traffic exiting westbound onto Glenlake were not adequately addressed by Section 6 of the revised plan of operation. Her testimony was that the applicant was unwilling to work with the Alderman to change the traffic pattern. Section 6 of the revised plan of operation stated that:

Licensee will install and maintain signs in a conspicuous manner and at locations deemed appropriate by the Licensee requesting that customers who drive and park in the Premises' parking lot (other than those customers who reside on West Glenlake Avenue) exit the same onto either West Granville or North Western Avenue.

There was testimony about the deleterious impact that allowing traffic westbound onto Glenlake from the parking lot and traffic concerns be a basis of denying a license under the Ace Produce, Inc. v. State of Illinois Liquor Control Commission, the issue of whether the proposal under Section 6 of the revised plan of operation is sufficient to abate the traffic deleterious impact depends on the specific testimony presented at the hearing. The Ace Produce case had testimony about seven accidents involving traffic

leaving Ace Produce's premises in a twenty-one month period, if there was such evidence in this case the proposal in Section 6 may not have been sufficient. The evidence at this hearing did not include testimony of accidents with cars leaving the Walgreens lot, but with concerns of an increase in vehicular traffic westbound on Glenlake. With this type of testimony as the base for traffic concerns causing a deleterious impact, Section 6 of the revised plan of operation provides reasonable assurances that the issuance of the liquor license at this location would not have a deleterious impact on the surrounding community with respect to traffic exiting the parking lot onto west Glenlake.

The decision of the Local Liquor Control Commission denying this packaged goods license is reversed. The license will issue subject to Walgreens implementing and continuing to implement the conditions set out in the revised plan of operation in City's Exhibit 4(a).

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: January 20, 2012

Dennis M. Fleming
Chairman

Donald O'Connell
Member