

LICENSE APPEAL COMMISSION CITY OF CHICAGO

GARFIELDS BEVERAGE WAREHOUSE OT LLC)	
d/b/a GARFIELD’S BEVERAGE)	
David Garfield (Managing Member))	
APPLICANT (Package Goods))	
For the premises located at)	
1437 N. Wells St., Chicago, Illinois 60610)	Case No. 22 LA 01
)	
v.)	
)	
Department of Business Affairs and Consumer Protection)	
Local Liquor Control Commission)	
Shannon Trotter, Commissioner)	

ORDER

**DECISION of Commissioners GIBBONS and BERG, with
Chair PARRY DISSENTING**

A denial letter was issued by the Local Liquor Control Commissioner dated January 31, 2022, denying the application for a package goods liquor license submitted by GARFIELDS BEVERAGE WAREHOUSE OT LLC d/b/a GARFIELD’S BEVERAGE, David Garfield (Managing Member) for the premises located at 1437 N. Wells St., City of Chicago, County of Cook, State of Illinois (“Applicant(s)” or “Garfield’s”). For the reasons stated herein, the denial of the package goods liquor license is REVERSED.

JURISDICTION

This appeal was heard pursuant to the authority granted to the License Appeal Commission of the City of Chicago (“License Appeal Commission” or “LAC”) by the State of

Illinois under (235 ILCS 5/) Liquor Control Act of 1934 (“Liquor Control Act”). The appeal was timely and properly filed by the Applicant. Applicant seeks review of a denial of its application for a package goods liquor license pursuant to 235 ILCS 5/7-9.

BASIS FOR DENIAL

The Local Liquor Commissioner issued a denial letter dated January 31, 2022, denying Applicant’s package goods liquor license application under Municipal Code of Chicago (“MCC”) 4-60-040(h) citing: “Deleterious impact concerns by the local community.”

“Per Section 4-60-040(h) of the City of Chicago Municipal Code, “the local liquor control commissioner shall deny an application if the applicant fails to satisfy the requirements of this chapter, and may deny an application for a city liquor dealer’s license if the issuance of such license would tend to create a law enforcement problem, result in or add to an undue concentration of licenses, or have a deleterious impact on the health, safety or welfare of the community in which the licensed premises is to be located.

On December 23, 2021, your application for a Package Goods liquor license was denied and a plan of operation was subsequently submitted pursuant to 4-60-040 of the City of Chicago Municipal Code. Your plan of operation has been reviewed and disapproved because it does not provide reasonable assurance that the issuance of a liquor license will not have a deleterious impact on the surrounding community. West Burton Place Neighborhood Association (WBPNA) as well as many members of the surrounding community have objected based on health, safety and welfare concerns. They feel that the issuance of a liquor license at the applicant premises will lead to increased violations of law, drinking on the public way and parks, noise, litter and traffic congestion.

The Commission agrees that the issuance of this license would not serve the best interests of the community.”

SUMMARY OF PROCEEDINGS

Due to the way in which the court reporting service transcribed the proceeding, the transcripts are as follows: T1 (Day 1), T2a (Day 2, part a), T2b (Day 2, part b), T2c (Day 2, part

c) and T3 (Day 3). Also note that the terms "alcohol" and "liquor" are used interchangeably to denote government-regulated beverages that have an alcohol content.

Evidence Exhibits Admitted

City's Exhibits

- 1 Binder containing six tabs of information and a table of contents - (1) an affidavit indicating the contents of the binder is what the LLCC Commissioner relied upon in issuing the denial letter; (2) initial 9/23/2021 and final 1/31/2022 denial letters; (3) application created 2/20/2021; (4) community letters (approximately 97), other objection statements/emails (14) and petition signatures (one petition with approximately 249 signatures, of which approximately 37 were from businesses as indicated in City Ex. 1, Bate stamp 0303 noting signatures with an "*" as a business, and a second online "chang.org" petition City Ex. 1, Bates stamp 0339 with 124 signatures) & inquiries into when a decision would be made and requests that the community be more involved in the process for considering the license, with a few individuals signing petitions as well as more than one letter; (5) proposed Plan of Operation; and (6) Application Summary, Police District Commander no objection letter, Alderman acknowledgement and support letter for application, state certificate of good standing for LLC, zoning map. The dimensions outlined within the application show a little over a 35-1/2-foot storefront on Wells Street (Bates Stamp 0022). The hours of operation are listed as Monday- Thursday 10:00 a.m.- 10:00 p.m., Friday- Saturday 10:00 a.m.- 11:00 p.m., and Sunday 11:00 a.m.- 7:00 p.m. (Bates Stamp 0006).
- 2 Stipulations as to City Ex. 1 and that City employed its usual process in accepting and reviewing the package goods liquor license application and dates of notices and submissions.
- 3 Video clip (00.00.20) depicting a weekend night in July 2021 in the vicinity of 1437 N. Wells and taken on the same side of the street as the location and adjacent to the small park sometime after 10:00 p.m.
- 4 Video clip (00:01:19) depicting a weekend night after 9:00 p.m. (later identified as having been recorded at 12:30 a.m. on cross by witness Keller) in October 2021 in the vicinity of 1437 N. Wells and taken on the same side of the street as the location and adjacent to the small park
- 5 Photos A, C & D were admitted and show discarded liquor containers on the public way and the park and were taken in 2022 by witness Keller
- 6 Photos of public way and park at night and day, some showing crowds of people, people passed out/sleeping on the ground, vehicular traffic and firetruck in traffic. 6a was taken in June 2021; 6b-d taken in June or July of 2021 between 11:00

p.m.- 12:00 a.m.; 6d in September 2021; 6f Summer morning in 2021 all by witness Stolte

- 7 List of businesses near the proposed location at 1435 N Wells (actual address is 1437 N Wells). It is listed as approximately 1 of 18 liquor licensed businesses on the 1400-1500 blocks of North Wells. The park is listed at 1449 N Wells. Prepared by witness Stolte. Map showing proposed location and some of the other businesses. Printed by witness Stolte.
- 8 Video clip #1 of an Old Town Merchants and Residents Association (“OTMRA”) Special Service Area (“SSA”) public meeting (00:18:29), in which is described the area of the SSA security patrol, including the vicinity of the proposed location. At approximately 00:05:11- 00:12:10 in the video security captain and witness for Applicant noted an increase of people bringing their own alcohol or buying alcohol and drinking it on the public way, an increase of medical calls and more problems generally on the public way and private properties. He also noted an increase of stopped vehicular traffic and that for the most part the establishments were trying to keep people orderly in lines to get in, but the volume of people there has increased and led to the street area being a parking lot of stopped cars and people in the street. He also explained he spoke with the police and indicated he said security needed more help and that he didn’t expect there’d be more law enforcement. He indicated that the residents’ concerns were legitimate and mentioned Burton Place and the alley there specifically as an area of concern for security. There was further testimony as to how people are detained and released unless it’s a serious crime (00:12:10-00:15:17). The captain also spoke about garbage cans being dumped over on Friday nights which was one person they finally identified but was not arrested (00:15:17-00:15:48), and other examples of people being detained but not resulting in arrests having increased since the pandemic, which he surmised that things like property damage, simple assault and drunken disorderly are lower priority for law enforcement (00:15:48-00:18:29)
- 9 Video clip #2 of same OTMRA SSA public meeting (00:10:16), in which the security captain said they need more support from CPD (“Chicago Police Department”) and that he’s tried to meet with them. Residents were encouraged to call SSA Security directly. People in the group acknowledged there are issues with public intoxication and that the volume of people on the streets about doubled since the pandemic. During this time witness Stolte expressed the West Burton Place Neighborhood Association (“WBPNA”) frustration with the lack of control over the volume of people and their conduct. During the meeting a member of the SSA committee directed that a letter go to CPD requesting more assistance for the vicinity of West Burton Place. Other security suggestions were made throughout the clip of this meeting.

Applicants Exhibits

- 1 Restrictive Covenant between Garfield's and the landlord at proposed location in which some of the things agreed to include a prohibition on selling less than a four-pack of craft beer, six-pack of non-craft beer, large containers of beer (e.g., kegs), alcohol less than "a fifth," tobacco products, and agreements to adhere to festival guidelines and to cooperate with law enforcement
- 2 Plan of Operation. It lists hours of operation as Monday – Saturday as 7:00 a.m.- 11:00 p.m., and Sunday as 11:00 a.m.- 10:00 p.m. Beyond any already imposed legal requirements, there includes restrictions on products sold (such as fortified wines, high-gravity malt liquors, half pint and airplane-sized bottles and hard spirits will be sold for more than \$8.99/unit); It also includes assurances of lighting and surveillance cameras with access to them for law enforcement; that signs will be posted requesting patrons not cause loud noise and loitering and that management will enforce its policies against it (though without detail as to what the policies and procedures are); that trash will be cleaned up throughout the operating hours in front of and adjacent to the premises and trash containers locked and secured; that reasonable measure will be taken to prevent panhandling, fighting and other criminal activity, working with CPD and attending CAPS (“Chicago’s Alternative Policing Strategy”) meetings to work with the community and to immediately address any public nuisance issues which adversely impact the health, safety and welfare of the community and that the Plan will not be amended or modified without input from the alderman.
- 3 Appointment letter of Managing Member and witness David Garfield to the SSA committee in another neighborhood where a Garfield’s store exists
- 4-6 Letters in support from Aldermen Burnett (location at issue), Waguespack and Martin (in which other Garfield stores are located) in which the latter aldermen noted Garfield’s as basically, being a good business neighbor
- 7 Letter from Wicker Park/Bucktown Chamber of Commerce indicating Garfield’s positive involvement in the community there
- 8 Letter in support from witness Miller regarding Garfield’s positive community involvement at another store location
- 9 Letter from the OTMRA Zoning Committee approving a special use permit at 1435 N Wells for the proposed store, citing reliance on the plans, community response to a survey, community meeting comments, and Restrictive Covenant signed by Garfield's with the landlord at the proposed location
- 10 Zoning Board of Appeals approval letter. One of the standards it used in the approval was whether "[T]he proposed special use is in the interest of the public convenience and will not have a significant adverse impact on the general welfare of the neighborhood community." Its Findings summarized testimony by WBPNA "Objectors" to and OTMRA in support of the Special Use Permit. The

Board found that the proposed use was "in the interest of public convenience because it will provide the neighborhood with a high-end craft beer and spirits store," and that it will benefit "BYOB" (bring your own beverage) restaurants in the area. It found that whether a liquor store has a significant adverse impact on the general welfare of the neighborhood depends on the operation of the liquor store, and that Garfield's, in essence, is a good business citizen with its other Chicago stores. While it "sympathizes" with the Objectors, the Board posited that the "concerns regarding violent crime, intoxication in the public way and garbage due to such public intoxication, these issues are not at all attributable to the Applicant's proposed special use," and would not become more prevalent in the neighborhood because of the proposed special use, while also finding that the Objectors testimony regarding the harm a liquor store poses to the neighborhood "to be entirely speculative."

Case Law Presented by Parties

Mj Ontario, Inc. v. Daley, 861 N.E.2d 1161 (Ill. App. 1st Dist. 2007)

In re HQ Beercade Pilsen LLC, License Appeal Comm'n Order 20 LA 02 (October 6, 2020), judgment aff'd by the Circuit Court in Order 2020 CH 07173 (August 13, 2021)

Opening Statements

Both sides presented Opening Statements. City explained its choice of witnesses and the fact that parties entered pre-hearing stipulations to assist in judicial efficiency of the hearing. It further pointed out that City is not of the position that the applicant in this case is a "bad operator," but rather the specific location it chose for this particular license application is in the "midst of all the chaos" (T1. 43) that has resulted from an oversaturation of liquor licenses, generally, in that area, and that opening what City termed a "warehouse style, big box liquor store" (T1. 43) would have a deleterious impact on the health, safety and welfare of the community adding to current problems of public intoxication, illegal outdoor drinking on the public way and park, parking and traffic concerns, littering and noise. City posited it is a "terrible idea" (T1. 44) for the community and that "countless" (T1. 43) community members

have spoken out against the proposed license for the location. City referenced that caselaw¹ supports denial of a liquor license based on deleterious impact where there is evidence of existing problems that would be exacerbated by the issuance of a license. City noted that the ordinance allowing a denial of a license for deleterious impact is like a vaccine in that it can be used as a preventative measure; and that the community does not have to wait to suffer the actual consequences of deleterious impact associated with the issuance of the license before the City can act by denying the issuance of a license that it deems would result in further problems that would have a deleterious impact on that community. City noted the timeline from initial denial of the application in December 2021 on the basis of “deleterious impact” with the City giving Applicant an opportunity to submit a Plan of Operation addressing the “deleterious impact” concerns, which Applicant then did submit on January 12, 2022 and after which a review by the LLCC Commissioner determined Applicant did not provide reasonable assurances that the issuance of the license would not have a deleterious impact on the community and which resulted in a final denial of the application on January 31, 2022 in which the Commissioner noted “that the issuance of this license would not serve the best interest of the community” (T1. 47). City noted the de novo standard of review and that City need only prove its case by a preponderance of the evidence, whether it’s more likely than not, the granting of the license would have a deleterious impact and, if so proved, the City would then need to show by a preponderance of the evidence that the proposed Plan of Operation, as submitted, does not provide reasonable assurances that issuance of the license would not have a deleterious impact. City also raised that the concerns of residents who live in a community that turns into “one large, giant drunken party” (T1. 51) on the weekends should win out over a business trying to sell more

¹ Mj Ontario, Inc. v. Daley, 861 N.E.2d 1161 (Ill. App. 1st Dist. 2007)

alcohol in an area that has current problems with outdoor drinking. City iterated that it is the location of the proposed license and the lack of a Plan of Operation that addresses the deleterious impact concerns for that location in the community as why this license should not be granted (T1. 40- 54).

Applicant Opening

Applicant quoted a finding from a prior License Appeal Commission (“LAC”) case that read “if an applicant presents with no history of liquor violations and no history of deleterious impact in the operation of other liquor establishments, that is competent evidence that the issuance of this license to this applicant will not cause a deleterious impact.”² Applicant stated that should sum it up. In this case the alderman sent a letter in support of the application, not in opposition of it. Applicant has no disciplinary history. Applicant further stated its witnesses know of its participation in communities and community events. Applicant posited that it seemed as though City’s case has more to do with an undue concentration of licenses rather than deleterious impact, but that wasn’t the basis for denial. Applicant stated it is the City’s duty to prove that Garfield’s “will cause a deleterious impact” (T1. 57) and that the evidence would show that Garfield’s would improve the community with trash pickup as noted in the Plan of Operation. It also noted that it surmised the denial was made because of a “very active group of community members who are very unhappy with the way their community is going” (for which Applicant expressed “some sympathy”) (T1. 58). It stated that the letters against granting the license that the LLCC Commissioner relied on from the community were form letters, and that no one will talk about Garfield’s being a problem because it’s not, and that current crime in the area is not relevant to Applicant. Applicant pointed out that deleterious impact is defined as an

² *In re HQ Beercade Pilsen LLC*, License Appeal Comm’n Order 20 LA 02 (October 6, 2020), judgment aff’d by the Circuit Court in Order 2020 CH 07173 (August 13, 2021)

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 (T1. 60). Garfield's stated there would be no expert testimony on property values and that any property value information would be mere speculation by residents, that law enforcement has no opposition to the license and that the community's SSA security captain who previously spoke at a community meeting about crime in that area is in favor of the license. As to whether there is a risk of substantial increase in noise, litter and vehicular congestion, Applicant pointed out that it is just one licensee and that it would have to be a substantial increase. Applicant stated it would be closing at 10 p.m. and not contributing to noise, that the Applicant picks up its own and others' trash and at their other locations, and that because Applicant will be using the same delivery trucks from the same distributor as other liquor licenses holders in the area and that the store is intended for people from the neighborhood to walk in to purchase "higher-end craft items," there won't be more vehicular congestion. Applicant agreed it is a review de novo, but noted that the number of licenses already issued in the area was not listed as a basis for denial and should not be considered. (T1. 54- 64)

City's Case in Chief

Summary of Salient Points in the Testimony of Amy Keller (T1. 64- 182)

Witness Keller was identified as owning and residing at the two-unit building at the corner of Wells and Burton Place, within steps from the Burton Place Park which is shown in the video clips and photographs in City's Exhs. 3- 6, and a one-minute walk to Applicant's proposed location. She's lived in the community, which she described as a mix of single family, multi-unit owned and rented homes along with commercial spaces, since 2009 and has resided at her current home since 2017. She said she moved to the neighborhood because it was calm and had

a mix of residential and business, and the River North area from where she was moved was starting to become "out of control." She said that what was once her respite after work is now "awful" on the weekends and is considering whether to move again or rent it out. Now when someone stays in their garden unit, they complain of noise and drunk people on the weekends, so she's not sure who she could sell or rent to. She has not had her property value analyzed for a dollar amount and does not know if it has increased or decreased in dollar value. She testified to firsthand observations and experiences of crowds, vehicular traffic congestion, drunken groups of loud people in front of her house, in the alley, blocking the public way, people drinking packaged liquor on the public way and park, and herself finding and cleaning up discarded liquor containers in the public areas around her house, the little park, and her property. She provided video and photographic evidence of the same (City Exhs. 3-5). She explained "the park" is a small plaza that was created some decades ago by closing off the street at Burton Place and Wells Street. It is also referred to as a "pocket park" in City Exh. 7. She described in detail the conduct of drunken individuals on her property and the public way, but she did not testify that it was directly attributable to consumption of package goods liquor. Also discussed was her observation of traffic congestion, firetrucks and ambulances not being unusual during this time and SSA security spending time directing traffic and not dealing with other safety issues and concerns that because Garfield's was a bigger store with a big variety of products, not a small "mom-and-pop shop," that it would attract even more traffic. She was also concerned with deliveries if they attempted to use vans in the alley of the historic area and if they used trucks whether they would cause additional double parking for delivery on Wells. On cross she agreed that she was not familiar with three-tiered system of liquor distribution in which licensees in the same designated area use the same distributors, using the same trucks. She said it as an unlivable

situation in the warm weather months, mostly on Thursday through Saturday nights and sometimes on weekend days. She described situations in which people who couldn't get into some of the bars and restaurants -- sometimes the lines to get in are three rows deep -- will have packaged goods in the form of a six-pack (presumably of beer) or a bottle of wine and sit down in the park and drink them. She also shared a video clip of an incident in which loud music was playing from a speaker on the public way near a limousine stopped in traffic, men were dancing and drinking out of two packaged goods champagne bottles and no one turned the music down after repeated requests by the witness. She called the police twice, the first about 20 minutes after the conduct started and no police came to the scene. According to her the little park outside her house is within 50 feet, or "crawling" distance, from the Applicant's proposed location, that it is a 30-second walk from many of the bars and restaurants. She opined that putting a package goods liquor store where there's already a problem with drinking packaged goods liquor on the public way and park would make it all the easier for people to get liquor and continue buying and consuming packaged goods liquor at the park and on the public way there, making the problem even worse. The witness also testified that the package goods liquor she witnessed on the public way were not cheap, specifically naming what she called nice bottles of champagne and more generally what she called mid-to-high end liquor. She testified that there was a meeting to address public concerns of the proposed liquor license prior to a zoning change that occurred a day after the Restrictive Covenant Applicant signed with the landlord. She testified that the zoning committee of the OTMRA approved Garfield's request, but the overall board did not. That as to the OTMRA, the witness stated that it was supposed to be a liaison organization between the residents and businesses, but that it acted more like a chamber of commerce. The witness testified that she has been a member of the West Burton Place Neighborhood

Association ("WBPNA") since its inception in or around 2017 and that she is also a member of the OTMRA. She said she's voiced her concerns to 911 with no response; the police, SSA security and OTMRA with little response; and that Garfield's has never made an attempt to reach out to WBPNA. She asserted that she opposed a packaged goods liquor store at the location, but not a restaurant with an on-premises consumption license. While she knows nothing of how the business operates within other communities, she said Garfield's picked an excellent place for business at the 1437 N Wells location because it's in a spot with a lot of people who buy a lot of alcohol, but she iterated it is really bad for the neighborhood because it will make the existing problems worse. She responded on cross examination that if Garfield's committed to having employees pick up trash on the street that would be helpful but that it has not committed to that, but any efforts they make to stop loitering outside the store would not stop loitering elsewhere. She also noted that the Restrictive Covenant that Garfield's signed with its landlord was signed a day before the public meeting on the topic of the proposed liquor store and to her knowledge was not revised after the public meeting discussing the residents' concerns raised in the meeting.

Summary of Salient Points in the Testimony of Ashley Geisheker (T1. 183- 209)

Witness Geisheker identified herself as an owner and resident of a single-family home on West Burton Place since 2012, having lived in the neighborhood since 2009. She is on the OTMRA safety committee and a member of the WBPNA. Her home is approximately 200 feet from the proposed liquor store. She also described her neighborhood as a mix of commercial and residential. She testified to a lack of balance between commercial properties that are used for liquor sales and other commercial properties and that there is an "oversaturation of alcohol sales" in the community. She testified that what is currently happening is that people are "pre-

gaming” (drinking alcohol before going into a bar/club/restaurant) outside of the bars (presumably the public sidewalk), inside parked cars and in the park which is increasing crime, noise and package goods litter. In the park, which is between her house and the proposed location (all within about 230 feet), people are drinking “nice IPAs” and “cocktails” and leaving trash that the neighbors end up cleaning. The witness described the area around their locations as having the highest concentration of bars, and that a parking lot about 300 feet from the proposed store location is a spot where people are pre-gaming. She lives across the street and two buildings down from the parking lot. She said her safety and that of her partner’s has been put at risk with physical encounters with drunk people and that she no longer feels safe there. She opined there was a no way putting a liquor store in this location would not make the problems even worse. She said it would make it easier for people to get alcohol to pre-game. She further described physical encounters with and property damage by drunk people with regular occurrences of vomiting and urinating on her building, which she did not specifically attribute to people who were drinking package goods liquor. She testified that she suffers sleepless nights and mental anguish caused by bars, crowds and crime there. The witness testified she’s opposed to package goods license or a liquor license for venues with entertainment, but not for a restaurant. She has not had her home’s value professionally appraised in the last three years. She said that if Garfield’s had staff pick up trash on Wells Street during store hours, and not just adjacent to its building, that would be helpful, but that her biggest concern was safety from public intoxication that starts as early as midday and late into the evenings on weekends. She has been to another Garfield’s store.

Summary of Salient Points in the Testimony of Keith Stolte T2a.-T2b. 7-40

The witness identified himself as an owner and resident since 1999 in a condo building 80 feet from the back edge of the proposed Garfield's location on Wells and has written a history of Chicago artists colonies which includes a section on the Burton Place community. He is a member of WBPNA and the Carl Street Studios Condo Ass'n. He testified that properties in his building and on his block are sitting longer on the market, and that he has considered leaving because of the current "party atmosphere" of the neighborhood. He too, expects a package goods liquor store would increase and make worse what he has seen and some of which he provided as examples in City Exh. 6 of public drinking of packaged liquor in the park (which he sees frequently especially from March through October), drinking of packaged liquor in the lines of people waiting to get into bars, clubs and restaurants, and in the very narrow u-shaped alley (in one part it narrows to about a little over seven feet wide) where people also urinate. He's also witnessed assaults involving intoxicated people hears noise from the street. This primarily occurs on weekends and Thursdays, and he has called the police with no response and the OTMRA and gone out onto the street to SSA security to voice his concerns. He estimated that in the last five years the neighborhood has transitioned for the worse, becoming a "wild party place" with more crowds (he sees public ride share companies dropping off most of the people he sees coming onto the street there), public urination and drunkenness – sometimes after the bars close but not exclusively because the partying and activity in the alley is starting earlier. He estimated from Spring-Fall 2021 he'd seen six "passed out" people near his home. He also noted serious traffic congestion, especially on Fridays and Saturdays which he described as a "parking lot," an increase of trucks lining the streets, vandalism (noting a specific example) on his block and litter. The witness is concerned that a liquor store at the proposed location will make it even easier for people who can't get into the bars, get thrown out of the bars or choose not to wait in

line to get in the bars to get package goods liquor and drink at the park and alley by the store. He noted that crowds start forming around 9:00 p.m. on weekend nights and Thursdays and people have started to drink increasingly more in the park on Saturday afternoons. He testified he'd expect that a package liquor store at the proposed location would result in more discarded beer and hard liquor cans and bottles in the alley, park and flowerbeds along the public sidewalk. The witness expressed concern that the Garfield's website offered curbside service at all their locations and how that would create even more traffic problems. The witness noted that the Plan of Operation proposed an increase in operational hours from the original application and expressed that he thought longer hours in the evening would adversely impact the community; he also was concerned that it had the term "warehouse" in Applicant's name. He testified he wouldn't be opposed to a package goods liquor license three blocks away, but that he opposes any package good liquor license in the proposed location, not specifically Garfield's. He had no information that Garfield's serves intoxicated people. He explained that "a good portion" of the residents and the 20-30 people on the block in the immediate vicinity of Burton Place oppose the issuance of a package goods license, but that they are only a small portion of the overall Old Town neighborhood population. The witness testified that it would be helpful if Garfield's had an employee picking up garbage on Burton Place, the park and the alleys, but only marginally if it was just right by its building. Conversely he was concerned with such a narrow alley that there would be problems with disposing of store refuse, packing materials. As to the SSA security captain, the witness testified that based on his interaction with the captain shown on the SSA meeting clips (City Exhs. 8-9) the captain understands the problems and the witness respects the captain. The witness also noted that he learned at the May 2022 CAPS meeting there was a rise of 70 percent in batteries and 50 percent in assaults in the area. The witness also testified that

he'd been in contact with the alderman about the neighborhood residents' concerns. He testified to and/or listed four stores that offer packaged goods liquor within the vicinity of the proposed location -- Walgreens (1601 N Wells), Glunz (1206 N Wells), Foxtrot (1562 N Wells) and Galleria Liquors (1559 N Wells) (See also City Exh. 7).

The City rested.

Applicant's Case in Chief

Summary of Salient Points in the Testimony of Kevin Salmon (T2b. 44-94)

The witness identified himself as the security captain paid for by OTMRA SSA for the vicinity that includes the proposed location on Wells which he described as one of the safer places to go in the City and a nice place to live. He has been there six years. Security is provided Memorial Day to Labor Day on Thursdays 7:00 p.m. – 1:00 a.m.; Fridays 10:00 p.m. – 4:00 a.m.; and Saturdays 11:00 p.m. – 5:00 a.m. with one rotating weekday patrol of about four hours during the day. He's noted a big increase in people out on the streets during those times – 3,500 to 7,000 at a time (later testifying that it would be 2,000-3,000 people) –with most security issues occurring later in the shift. He described the public park near the proposed location as active and where people tend to congregate because it's in the center of the busiest part of Wells Street. He explained that during the pandemic businesses were selling to-go alcohol and it was making a mess that they had to clean but the selling of to-go liquor has stopped and he is not aware of any on-premise consumption licensees selling packaged goods liquor. He testified that he's never had face-to-face interaction with Garfield's owners but that he's seen their locations. He did not know if opening a liquor store at the proposed location would adversely affect the area. He explained generally that in other areas that sell single-serve inexpensive liquor that it promotes a lot of drinking in the street. He didn't think people would come to Wells Street to go

to Garfield's, but rather to go to the bars and restaurants. He felt there are not enough trash receptacles there because trash is always an issue, that most of the trash ends up in "the trash area," but a Garfield's employee picking up trash would be helpful. Later in his testimony he said that he hasn't seen a lot of trash on the public way or in the park, but mostly in overflowing receptacles. As to traffic congestion being a big issue, he testified it mostly occurs on the weekend nights 11:00 p.m. – 2:00 a.m., and during the day during school drop offs and pick ups and that there are some delivery trucks, but he didn't think Garfield's would add to the congestion. He testified it's mostly bars and restaurants who contact him and not the residents regarding security issues. His interaction with Burton Place residents usually centers around complaints of loud noise, people hanging around their houses and in the alley, and urinating in the alley usually from 10:00 p.m. and later. There are no complaints about package goods stores, but rather on-premises consumption liquor establishments. Security calls CPD in emergency and serious crime situations, not usually for drunken disorderly conduct and minor altercations. He testified to instances of pick pocketing and aggressive panhandling and that security would like more resources. He testified that there was only a problem with outdoor drinking during the pandemic and if security sees someone drinking in line to get into an establishment, they stop it, but he also testified that directing traffic takes up a lot of the four-to-five person security team's time during their shifts. He testified security has to watch and tell people the park is closed and not to lean on residents' doors. Most of the people he encounters during shifts are coming from outside the neighborhood and he doesn't see them going to buy alcohol and then drinking in the park. Most of the people he sees are people in their mid-twenties, thirties and forties and the places they go to on Wells tend to be more upscale. He also testified that passed-out people on the ground happens but is not a common occurrence and not before 10:00 p.m. and that if

security sees it they call for medical assistance. He didn't know whether a liquor store would substantially increase the amount of trash.

Summary of Salient Points in the Testimony of James Miller (T2b. 97- 121)

The witness identified himself as an auctioneer and customer of Garfield's at another location. He lives a block from the store. He knows Garfield's to have turned a place that housed a "shoddy" liquor store into a "well-run place" with typical offerings, some which may be considered high-end. The witness testified that there is not night life in the immediate area around that location. He noted that the store has several trash cans around its building and has seen employees picking up trash around the building. He suggests to people from organizations needing donations to contact Garfield's as it is accommodating to organizations seeking donations. He knows Garfield's to be a good member of the community, helping out where it can, and responding to issues raised to it directly by individuals in the community. He opined that Garfield's has had a positive impact on the community. He was contacted by the store manager regarding the case for the 1437 N Wells proposed location.

Summary of Salient Points in the Testimony Kathy Posner (T2b. 122-136)

The witness identified herself as a Gold Coast resident, residing less than a mile from the proposed store location, and a member of the 18th District Police Advisory Committee ("DAC"³) since community policing was created 30 years ago. At hearing she was currently vice chair. It oversees CAPS meetings. Garfield's donated water bottles at her request for the National Night Out and other holiday celebrations and she will continue to ask for donations. She has no reason

³ The transcript reads "deck" where it should read "DAC"

to believe opening a store at the Wells Street location would lead to an increase in crime and would have no problem asking Applicant to address any problems in the community if she were to become aware of any, and she likes that Garfield's is family-owned. She said she's familiar with what is happening near the proposed location from what she reads or sees on police reports.

Summary of Salient Points in the Testimony of Brian Farley (T2c.)

The witness identified himself as residing five blocks away from the 1437 N Wells address and as an owner of a family real estate company that owns six or seven mixed use properties (commercial on the storefront and residences above) in the Old Town area, one of which has a liquor license for a pub owned by a family member. His office is on Wells Street, and he works there during the week and on some weekends. He has seen the neighborhood change over the years and noted that Wells Street has become cleaner and safer than it once was, now with higher-end retail and residential tenants. The witness became aware of Garfield's when it was applying for the proposed location liquor license and when Garfield's asked for his feedback on the process. He testified that he does not like seeing vacant storefronts – the more businesses there, the more it helps other businesses and he felt Applicant's business would fit right in with all the bars and restaurants because it's proposing to sell higher-end, not lower-end packaged liquor. He opined that he thought having Garfield's at the location would help property values because there would be fewer vacancies and would draw people throughout the day, not just later in the day when bars and restaurants are opening. As to traffic during the day he testified there is a fair amount of truck traffic on Wells and the adjacent alleys and loading docks that serve Wells Street, but that problems are minimal. He also opined that a liquor store would have less noise than other uses of the space. He said that as to litter and trash on Wells it

is “pretty clean,” but not so much the alleys, and that crime on Wells Street, other than commercial robberies are typical of any neighborhood. He testified that he’s never seen people passed out on the street when he’s come to work in the morning.

Summary of Salient Points in the Testimony of David Garfield (T3. 7- 74)

The witness identified himself as the CEO of Garfield's for about 22 years. He is third generation in the business, his grandfather starting it in 1951. There are currently three stores in the City (3200 N Lincoln, 1336 N Milwaukee, and 1704 N Milwaukee) and four outside the city in the Northwest suburbs (Barrington, Crystal Lake, Prospect Heights, and Palatine). He described two of the three City store locations as having street parking and the other having a small parking lot in a strip mall. None of the City stores have liquor license disciplinary histories, though he recalled one suburban violation being issued about 10 years ago for a sale of tobacco to an underage person. He testified his entire staff is BASSET-certified, which an employee must complete before they begin working at Garfield's. The witness described it as a state certification which he believed had to be completed every two years, and it is based on an approximately four-hour tutorial on what is legal or not legal and how to handle different situations when selling alcohol. He described the packaged goods liquor business as very competitive, and that Garfield's has chosen to focus on service and selection and further described it as having a loyal customer base. The witness described with examples the company's involvement in the communities around its stores, donations it makes, and how it works with the communities to accommodate special events by adjusting operational hours, and other things like ingress and egress to the stores as needed or allowing police to use the parking lot as a mobile base of operations during civil unrest in which two Garfield's stores had to close

and suffered looting and damage. He is not at every store every day, but he is very active with daily presence in multiple stores and he described himself as very involved in what is going on in the stores. There are also district managers (one for the City and one for the suburbs) and each store has a general manager. He personally was approached to participate on an SSA committee. He was appointed by the current City mayor to serve on one of the SSAs where one of the stores is located. He was asked by another community to participate on another SSA committee, but he cannot sit on two SSAs at once, so he asked one of his managers to agree to sit on the SSA for a neighborhood where another Garfield's is located. His only personal involvement with aldermen has been through the liquor licensing process and he testified to participating in fundraising events for one of them. Letters from the two aldermen where other City stores are located noted things like Garfield's community involvement, responsiveness and communication and cleanliness. One alderman wrote that Garfield's was an asset to the community and that he never received a complaint about the business. The witness testified that for the last four or five years, Garfield's has been in the top 100 retailers in MarketWatch (an industry publication) and was selected as an industry leader this year -- the witness has been interviewed and two articles have run/will run in the magazine. The witness testified Garfield's chose the 1437 North Wells Street location because it fits well with their target market of neighborhoods with higher household incomes -- to be more of a higher-end bottle shop rather than a bodega-style store. He explained that "Warehouse" is in the company's legal name, and their suburban locations can be 12,000-15,000 square feet, but the City stores vary in size from 2,500 - 5,000 sq. ft., with the location on Wells planned at 3,000- 3,500 sq. ft.. The witness testified that he is currently all hands-on in the development of the Wells Street location. He explained that the process to apply for the liquor license for the Wells Street location was more difficult than it was for the other locations. He

met with the alderman and OTMRA -- the OTMRA was represented by an attorney and explained that in order for it not to oppose the license Garfield's would have to agree to not sell certain things. Additionally, Garfield testified, the company went "above and beyond" and entered into a restrictive covenant with the landlord. The witness stated he did not become aware of WBPNA, which he described as a very small population of that area, until he saw the letters members had written to the LLCC Commissioner in opposition to the license. After the denial a Plan of Operation was submitted to address the concerns stated in the denial, and the witness understands that violations of the Plan of Operation may lead to license discipline. He testified the actual hours of operation are planned to be less than what is stated in the Plan of Operation, but that hours of operation were expanded on the Plan of Operation so that there was flexibility in changing the hours. He testified he expected 4:00- 8:00 p.m. to be peak hours of operation. As to garbage, the witness described himself as a stickler for cleaning it up and that while employees will be cleaning outside around the property throughout the day, "I am not going to clean up the whole neighborhood. That is not my responsibility." He posited that maybe cleanup would occur within a hundred yards. The Plan of Operation indicates Applicant will pick up trash "located in front of, and adjacent to the premises" and that it will lock and secure its trash containers (Applicant Exh. 2). Applicant said that the store also will not be selling tobacco, but that it wasn't in the Plan of Operation. He said he also didn't understand how a store there would create noise and that there's never been a line outside their stores to get in. He believed that if people are consuming alcohol while waiting in line to get into on-premises liquor consumption places, it happens after the time Garfield's would be closed and that Applicant will not be promoting drinking on the public way, so he didn't understand what those people have to do with Applicant's proposed store. As to deliveries, the witness explained

that all the establishments on Wells use the same distributors so there would not be more delivery trucks, and that because Applicant can store a bigger inventory than the restaurants it would probably have fewer deliveries. There are exceptions when a delivery needs to be made for special circumstances, but he estimated that occurs maybe once a quarter. He also explained that Applicant's target is not drive-up business, but rather the people in the six-block surrounding area, and that he thinks there would be less vehicular traffic than what happens when people drive to go to the restaurants. He opined that the impact of Garfield's on the community would be minimal. He also testified that he would not be opposed to organizing the liquor-licensed establishments to combat some of the issues in the area. When asked whether he contacted WBPNA after he learned of its members' oppositions he responded that he had not, that he'd only found a social media page and not really a website on which what he saw seemed to be "all negative stuff about liquor stores in the area," and that he was told by other business owners that WBPNA was difficult to work with and had unrealistic expectations of businesses. He testified that once people leave the store with their packaged goods liquor, Applicant has no control over what they're doing with it.

Closing Arguments

City

City recapped its testimony and evidence. It argued that it needed to prove by a preponderance of the evidence: (1) that the granting of the license would have a deleterious impact, and if so (2) the submitted Plan of Operation was insufficient to provide reasonable assurances there would not be a deleterious impact. City argued that LAC should not consider the *HQ Beercade* case Applicant cited as controlling the outcome in this case because it was a different type of license and different community, and that the case never went before an Illinois

Appellate court. City argued the Illinois Appellate Court articulated what deleterious impact is and how it can be proven in the *MJ Ontario* case that City cited, further explaining that deleterious impact may be shown by testimony based on the observations of that witness, and that reasonable inferences can be drawn from there. City argued that the case also mentioned the speculative nature inherent in application denial cases for deleterious impact – that the goal is to try to prevent the impact before it happens. It argued that City has proven by a preponderance of the evidence that granting this license would have a deleterious impact by exacerbating conditions that already exist as to traffic, trash, public drinking and intoxication and other problems. It was argued that the City need only prove one impact – an adverse effect on the value of any property; or an increased risk of violations of law; or risk of a substantial increase in noise, or litter or vehicular congestion – and the use of the term “risk” in the definition addresses the permissive speculative nature of these denials. City argued that it proved the requisite level of risk associated with opening a packaged goods liquor store in that location where thousands of people gather and already create problems with packaged good liquor on the public way and park. City also pointed out that the hours of operation in the Plan of Operation are less restrictive than in the initial application, and that City is not a party to the Restrictive Covenant Applicant signed with the landlord and would not be able to enforce it, and that it was signed prior to the public meeting convened to discuss the concerns residents had and did not address those concerns. City argued that as to noise, it was not a concern that Garfield’s would be hosting loud parties at their location, but rather the effects of selling large numbers of people alcohol in this area. City also pointed out that promises made outside of the application and Plan of Operation should not be considered, because they are not part of the application, that the license would be based on what is written in the application and Plan of Operation. City iterated

that this case isn't about whether Garfield's is a good business, it's about what the effects of opening a packaged goods liquor store at that specific location will be, given the current circumstances of that community, and that Applicant's other Chicago stores are not in "party central," and seem like the type of places that are great for a Garfield's to be in. City pointed out that the Applicant's security captain witness was inconsistent not only with what he talked about at the SSA public meeting in the video clips, but also with other witnesses who live in that vicinity. City argued the claim that people weren't really drinking on the street or in the park anymore after restaurants stopped serving to-go beverages during the pandemic were not only inconsistent with other witnesses, it supported that there is a risk that easy access to more packaged goods liquor would bring more drinking to that park just as it had during the pandemic. City also argued that the letters in opposition should be considered and that its witnesses, who have long been in the neighborhood and have seen businesses come and go, should be found credible. City argued that it shouldn't be that the worse a neighborhood gets, the less recourse the City has to control liquor licenses in it.

Applicant

Applicant summed up its witness testimony and evidence, noting its lack of disciplinary history and commitment to community involvement. It argued that City tried to prove a case for undue concentration of licenses, which was not the basis of denial for this application. Applicant argued that the *MJ Ontario* case was distinguishable from this one because the alderman in *MJ Ontario* opposed the license, whereas in this case the alderman was in support. Applicant argued that City had to prove that the license to Garfield's will have a deleterious impact on the health, safety, and welfare of the community, and that the entire case had nothing to do with Garfield's itself, that it could have been any other applicant, and that it proves this case is really about the

number of licenses in the neighborhood, not the stated basis of deleterious impact. Applicant argued that the letters in opposition were all very similar, obviously a form letter, and that it is a small group of people objecting to the license. Applicant argued that *HQ Beercade* decided this case, and that it was upheld in Chancery court. Applicant argued that there should be consistency in the way “licenses like this are handled.” Applicant argued that as to the photos presented by the City, that one could go to any neighborhood in the City and come up with similar photos, that it is the nature of living in a big city, and that Old Town is one of the nicest neighborhoods in the City, and the photos are not believable. Applicant further argued that it would be closed during the drunkenness and partying at the times depicting in City’s video evidence. It argued that despite what was in the Plan of Operation, it would stick to the hours it testified to at hearing. It argued that one of the City witnesses testified that he supports the security captain and said he does a good job and that the captain testified under oath that the neighborhood is safe and one of the most desirable spots in the City and that Garfield’s would not have a negative impact. Applicant argued that the idea that LAC not follow its own decision or be consistent when it is upheld by the Circuit Court is absurd. Applicant argued that as to the adverse effect on any property -- no City witness testified that the appraised property value of their home had decreased. Applicant argued that as to increase risk of violations of law, that the police did not object to the application. It argued as to a risk of substantial increase in noise, there was nothing to suggest noise from the store; as to litter, it would apply to litter generated because of the store and Garfield’s can pick up trash beyond what was listed in the Plan of Operation; and as to vehicular traffic congestion, there is already a lot of traffic, Applicant will be closed during a lot of the congestion, and deliveries are by the same trucks already used in the area and so there won’t be a substantial increase. It argued that via the Plan of Operation, the

restrictive covenant is enforceable by the City. Applicant argued that it has no disciplinary history and that the City would have had to show that Applicant had a “bad” history. Applicant argued that all the City proved was that there is a small subset of residents in one of the best neighborhoods who are unhappy with current neighborhood conditions.

City Rebuttal

City noted that in terms of evidence there is overlap in case law between deleterious impact and undue concentration of license cases, and that just because witnesses may have mentioned there are too many licenses, doesn't mean that is the City's position, allegation or basis of denial in this case. It noted that law enforcement concerns is a separate basis for denial. City re-emphasized *MJ Ontario*'s findings that exacerbation of existing conditions can constitute deleterious impact, and that nowhere in case law does it say that City has to prove an applicant has a disciplinary history in order for deleterious impact to be found. City also argued that *HQ Beercade* involved a different type of license in a different community and different facts. It argued that what matters in this case is what is going on now in the community, the totality of the circumstances, and that City has proven risks exist that are articulated in the definition of deleterious impact, and Applicant did not submit a Plan of Operation sufficient to provide reasonable assurances that there will not be a deleterious impact.

ANALYSIS

The standard of review is *de novo* in cases of denial of a liquor license application (235 ILCS 5/7-9).

The local liquor control commissioner may deny an application for a liquor license “if the issuance of such license would tend to create a law enforcement problem, result in or add to an undue concentration of licenses, or have a deleterious impact on the health, safety or welfare of the community in which the licensed premises is to be located” (MCC 4-60-040(h)).

“Deleterious impact” is “presumed to exist whenever there have been a substantial number of arrests within 500 feet of the applicant’s premises” (MCC 4-60-040(h)), and otherwise defined without presumption to mean “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” (MCC 4-60-010).

The community in which the proposed location exists has existing problems with outdoor public consumption and unlawful behavior that need to be enforced by the SSA security and law enforcement. It appears to be a law enforcement issue and associated with the crowds of people attracted to the on-premises consumption liquor license holders in that area. The concerns of deleterious impact by residents in the community are understandable. It should be noted that the 3,000- 3,500 square feet of the location, though, is far from the large liquor warehouse described in some of the form letters in opposition sent to the Local Liquor Control Commissioner. The use of the word “warehouse” in its company name may have misled some of the neighbors who sent form letters to the LLCC as to the type of business actually proposed for the location. A review of the evidence of the actual type, style and size of the proposed location renders the letters misleading. Whether the hours on the Plan of Operation were expanded from the original application is not of concern because Applicant was proven to have a positive impact at its other locations, including the three in Chicago, and demonstrated that it adjusts its hours as necessary at its locations. Its Plan of Operation further explains the measures it plans to take to do its part

to not have a deleterious impact on the health, safety and wellness of the community. It was not proven in this case that Garfield's would cause a deleterious impact and a package goods license for it should not be held hostage waiting for the laws to be enforced.

As to Applicant's assertion that the LAC is bound by its decision in a prior case, to our knowledge, this commission has never been directed by the Illinois appellate courts to impose agency-specific precedents based on LAC rulings in prior cases and unless directed otherwise by an appellate court of competent jurisdiction LAC rejects the notion that an articulated view in one particular case with its own particular set of facts and circumstances and in its own particular time in history dictates how future cases will be determined. Cases presented to the LAC are very fact specific and really are very much dependent upon not only the applicant and the applicant conduct, but also the time, place and type of license proposed. Thus, the LAC ruling and any findings in *HQ Beercade* is not determinative in this case. The Court in *MJ Ontario* makes clear that different conclusions can reasonably be reached in separate instances (*MJ Ontario*, 861 NE2d at 1171).

Having fully considered and weighed the evidence summarized above, based upon the law, and for the reasons stated herein, the License Appeal Commission finds the basis for denial was not proven in the light of the whole record. The denial of the application for a package goods license is REVERSED.

CONCLUSION

IT IS THEREFORE DECIDED AND ORDERED that the January 31st, 2022, denial of the application for a package goods liquor license for GARFIELDS BEVERAGE WAREHOUSE OT LLC d/b/a GARFIELD'S BEVERAGE, David Garfield (Managing

Member) for the premises located at 1437 N. Wells St., City of Chicago, County of Cook, State of Illinois is REVERSED and the license shall issue.



Thomas Gibbons
Commissioner



Cynthia Berg
Commissioner

DISSENTING OPINION, by Chair Parry

While I agree that if a package goods license were to issue for this location, Garfield's would be well-suited, I disagree with the majority ruling in this matter. A package goods license should not be issued to Applicant for this location at this time. Garfield's demonstrated it has a history of positive community engagement and has no disciplinary history in the City. However, just because someone is a fine captain doesn't mean they should sail the boat in hurricane conditions. This community is in hurricane conditions. It is my opinion, after considering and weighing the evidence, that the City proved by a preponderance of the evidence that the granting of such a package⁴ goods license would have an increased risk of violations of law, in the form of illegal consumption of package goods liquor on the public way, and a risk of substantial increase in litter, in the form of discarded empty and not empty package goods liquor containers, and thus result in a deleterious impact to the health, safety or welfare of the community.

The City proved that there are seasonal problems with liquor consumption, open liquor containers and discarded liquor containers in the form of packaged goods on the public way and in the public park in the immediate vicinity of the location proposed for this package good

⁴The Municipal Code of Chicago classifies the license itself as "package goods license" though the phrase "packaged goods" or "packaged goods license" may be used in other references to packaged liquor and the retail sale of packaged liquor.

license. By all accounts at hearing there is not an adequate law enforcement presence in the vicinity of the proposed location. Not even the imposition of additional Special Service Area security is able to adequately control the consumption of liquor, possession of open liquor and improper disposal of discarded liquor all in the form of packaged goods on the public way and in the public “pocket” park. I agree with City that at hearing the security captain’s recount of package goods liquor consumption on the public way was inconsistent with what he spoke of at the SSA public meeting in the video and the firsthand accounts provided at hearing by other City witnesses who reside within several buildings of the proposed location and park. He testified that a lot of the security time is spent directing traffic. That may explain the inconsistencies. I find the City witnesses’ accounts credible. City proved that often during evening hours and to a lesser degree on the weekend afternoons in warmer weather months on the public way and in the public park people exhibit behavior consistent with drunkenness while in possession of liquor in the form of packaged goods. The *MJ Ontario* court used an example of another case in which a produce store’s application package goods liquor license was denied based solely on inadequate parking which created a hazardous condition at a particular intersection (*MJ Ontario* 861 NE2d at 1167). In the *MJ Ontario* case, the court ruled that evidence of existing problems in the immediate area around the property were relevant to potential impact of a license on the health, safety or welfare of the community, and opinions from persons who based their opinions on their own personal observations were not “speculative” (Id at 1168)

Allowing a package goods liquor license at the proposed location within the mayhem that appears to occur during warm weather months will add fuel to the fire. No matter where the packaged goods of liquor have come from in the past, making it even easier for people who come

to this immediate area to “party” on the public way and in the public park with packaged goods liquor is a terrible idea for the community and will have a deleterious impact.

Parties in this case were asked to limit testimony at hearing to only those witnesses they felt necessary to their cases and to avoid presentation of cumulative testimony, and so the signed letters that were referred to as “form” letters are of great import because those individuals may not have been afforded an opportunity to testify as to eyewitness accounts of what they see in the neighborhood. While the letters may be “form,” there are additional comments and not all of them are the same. I would opine that because most of them say the same or similar things, it means that most of the people signing the letters are experiencing similar things and have similar concerns. Even though the “form” letters mention a “beverage warehouse,” the letters also make note of the public consumption of liquor and there were individual comments that made mention of other issues, such as trash. The concerns raised by these residents by signing a letter should not be ignored or discounted just because the letters may have been “form” letters. That would be like saying that your signature on a petition in support of a political candidate doesn’t matter. When people sign “form” letters, they adopt the language of the letters. It matters not that they may not have found new or creative ways to say the same things everyone else is saying.

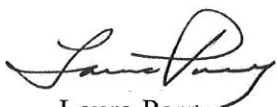
It’s also troubling that Applicant takes the position that it’s not going to clean up the whole neighborhood without further investigating where package liquor goods end up on the public way there. It is troubling that in response to concerns raised by some residents about the issuance of a package goods liquor license at this time in this location, Garfield’s chose to EXPAND its hours in the Plan of Operation. The City chose to allow Garfield’s to submit a Plan of Operation subsequent to the initial denial of the application to provide reasonable assurance that issuance of the license would not have a deleterious impact. Garfield’s took that opportunity

and chose to expand its operational hours and chose not to include the mirror language of the Restrictive Covenant it says it signed to address the community's concerns. If the hours of operation had been further limited, and not expanded, on the Plan of Operation, or the language of the Restrictive Covenant mirrored in the Plan of Operation that may have helped make it a closer case in my opinion, but Garfield's did not do that. The fact is, even though Garfield's appears to be a responsible and responsive commercial neighbor in the communities in which it currently operates, it has absolutely no control over where packaged goods end up after they leave the store. We're not talking about discarded food containers or wrappers, we're talking about discarded containers of liquor – empties, and containers that may still contain liquor. These discarded items when not properly disposed of are accessible to children, underage adults, pets and other creatures and may cause them harm. Further, if there is a change in culture within the Applicant's business, then despite how it says it will conduct its business at hearing or in community meetings, legally Garfield's can operate to the fullest extent allowed by law under the conditions of the package goods liquor license issued. It is important to understand that what is written in the application and Plan of Operation is what matters as to enforceability of the conditions of licensing -- Applicant may not be bound to the community by any Restrictive Covenant it may have signed with a landlord or any other promises outside the application and Plan of Operation. Note that the plain language regarding deleterious impact is directed at the license and not the licens"ee". There is no evidence that Garfield's wouldn't be anything but a fine commercial partner in this community at a different place and/or a different point in time. But the evidence here, considered and weighed, demonstrated by a preponderance of that evidence that this is not the right place and time for such a package goods liquor license as applied for to be issued.

This dissent was not influenced by the LLCC's finding that issuance of the license would not serve the best interests of the community because it is not the standard articulated in the law that allows for the denial of an application on the basis of deleterious impact, and this was a hearing *de novo*. Also, to be clear, this dissent was not influenced either way by the repeated calls and emails made by certain community members to the LLCC or BACP documented within the record (i.e., the squeaky wheel gets the oil way of thinking), but rather relies upon the firsthand observations described in the testimony and detailed in the evidence.

Additionally, the City's video and photographic evidence refutes any suggestion that consumers of "high-end," "upscale" or more expensive liquor are less likely to "hang out" and consume liquor on the public way or leave packaged liquor goods litter on the public way. Any suggestion that people who pay more for liquor are better behaved is unpersuasive and objectionable.

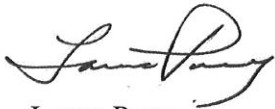
At the very least, with a finding of no deleterious impact, then the Plan of Operation is moot, and the hours applied for on the original application should be imposed as a condition of licensing. Even when the Plan of Operation is considered, while it may not have been an attempt to hornswoggle the licensing process, because the Plan of Operation expands the hours of operation and thus causes greater concern that the store will be open even longer than originally planned, the hours of operation on the original application should be imposed as a condition of the license. For the reasons stated above, I respectfully dissent.



Laura Parry
Commission Chair

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 5, 2022



Laura Parry
Commission Chair



Thomas Gibbons
Commissioner



Cynthia Berg
Commissioner