

LICENSE APPEAL COMMISSION
CITY OF CHICAGO

Baza II, LLC)	
Nikolai Perepitchka, President)	
Applicant (COP-IA))	
for the premises located at)	Case No. 08 LA 45
2500 West Chicago Avenue)	
)	
v.)	
)	
Department of Business Affairs & Licensing)	
Local Liquor Control Commission)	
Mary Lou Eisenhauer, Acting Director)	
)	

ORDER

OPINION OF CHAIRMAN FLEMING

Baza II, LLC applied for a Consumption on Premises - Incidental Activity liquor license for the premises located at 2500 West Chicago Avenue. After reviewing all documents related to the application including written objections of area residents and community groups the Acting Director of the Local Liquor Control Commission issued a denial letter dated July 11, 2008. The reason for the denial was that the issuance of the license would have a deleterious impact on the health, safety and welfare of the surrounding community. The July 11, 2008, letter advised the applicant that it had twenty days to appeal the decision at the License Appeal Commission. On July 28, 2008, the applicant filed a timely appeal of the July 11, 2008, denial.

On August 5, 2008, the Local Liquor Control Commission issued an amended denial letter which again alleged deleterious impact as the basis for the denial. The amendment in this

denial letter was notification to the applicant that pursuant to Section 4-60-0404 of the Municipal Code it had twenty days to devise and submit a plan of operation to the Acting Director of the Local Liquor Control Commission to provide reasonable assurance that the issuance of this license would not have a deleterious impact on the surrounding community. The original letter of denial did not advise the applicant for this option as was required by the Municipal Code.

On September 4, 2008, the applicant through its attorney filed a plan of operation. On October 2, 2008, Mary Lou Eisenhauer, Acting Director of the Department of Business Affairs and Licensing/ Local Liquor Control Commission, issued a letter of denial on the plan of operation. This letter advised the applicant this was the final denial and it had twenty days to appeal the decision.

The case proceeded to hearing on October 7, 8 and 16, 2008.

It should be pointed out the sole basis for the denial of this license is the allegation that the issuance of this license would result in a deleterious impact on the community. The denial letters reference an overwhelming amount of residents in the community are opposed to the issuance of the license citing parking and traffic problems, patronage and criminal activity concerns, disorderly conduct, neighborhood safety issues and growing concerns the activity is actually a tavern. The issue before this Commission is whether the issuance of this license would cause a deleterious impact. The matter is to be considered de novo on the issue of whether the decision of the Local Liquor Control Commission was appropriate based on the

preponderance of the evidence presented at the hearing. The factors set out in the denial letters are explanatory only but are not evidence for this hearing.

One other matter needs to be addressed before moving on to the central issue with respect to deleterious impact. At various times during the proceedings Mr. Holt mentioned the fact that the original denial letter did not advise his client of the opportunity to present a plan of abatement. As mentioned earlier, a subsequent amended denial letter did advise the applicant of its rights to present a plan of abatement. A plan of abatement was eventually filed and was found by the City to be insufficient. These facts are not in dispute. This Commissioner is uncertain as to what relief, if any, Mr. Holt believes his client is entitled to as a result of this procedural error. No motion to discuss the case was filed and no motion to strike the amended denial letter was made. This matter is pointed out and referenced primarily to note the issue was raised at the hearing if it becomes relevant on an appeal.

There were several primary and secondary witnesses testifying in favor and in opposition to the issuance of this license. Rather than going through the testimony of each of these witnesses, the testimony from both sides will be summarized.

A substantial number of the witnesses opposing the application referred to the fact they felt the establishment is a bar and not a restaurant. This Commissioner understands the concern of these witnesses but the question of whether this place will be a bar as opposed to a restaurant is a factor in itself in deterring the issue of deleterious impact.

Another concern of the opposition witnesses that does directly impact the issue of deleterious impact is traffic. While the address of the applicant is 2500 W. Chicago Avenue, the actual entrance to the establishment is on Campbell. Campbell is one way for traffic heading southbound. This means there is no direct access to the Campbell entrance off Chicago Avenue. Anyone who wants to drop off patrons at the Campbell entrance will need to drive through the residential side streets to get to the entrance. With an occupancy of 132 people one could be dealing with more than just a few cars driving through the neighborhood to get to the Campbell entrance. The witnesses in favor of this license that addressed the issue of traffic pointed out the proposed valet parking scheme and the fact that the valet drop-off and pick-up will be located on the north side of Chicago Avenue west of Campbell.

Tied in with traffic concerns but a matter that must be viewed separately on the issue of deleterious impact is the impact on parking. The testimony from the opponents described the area as one that is already congested with respect for parking. Some of the area is permit parking but other areas adjacent to Smith Park is not. While some of the witnesses had garages and would not be individually impacted, there was also testimony that the area was regentrified and parking throughout the area was tight. The witnesses in favor downplayed any parking problems and again mentioned the fact that there will be valet parking.

Opponents of the license also testified to concerns of noise and litter arising from the issuance of the license.

The Municipal Code sets out the definition of deleterious impact to be used in these type of cases. Deleterious impact is defined as: “a risk of a substantial increase in noise, litter, or vehicle congestion.”

Based on the totality of the evidence and having had the chance to observe the witnesses testify and weigh their credibility this Commissioner finds the City did prove by a preponderance of the evidence that the issuance of this license would cause a deleterious impact on the health, safety and welfare of the community with regards to traffic and parking.

With this determination the next step under the ordinance is to determine if the plan of operation submitted by the applicant provided reasonable assurances that the issuance of this license would not have a deleterious impact on the surrounding community. Joy Adelizzi, the Deputy Director of the Department of Business Affairs and Licensing/Local Liquor Control Commission testified the reasons why her department felt the plan of operation was insufficient were set out in City's Exhibit 9, in evidence. Ms. Adelizzi also stated at the hearing the opinion that the plan of operation would not provide reasonable assurance that its implementation would end any deleterious impact.

According to the Municipal Code the burden is on the applicant to establish that the plan of operation would resolve any deleterious impact on the community from the issuance of a liquor license. This Commissioner feels that the applicant did not meet that burden with respect to the issues of traffic congestion and parking. The fact that there will be valet parking does not

mean all patrons will use the valet parking. If the valet is used traffic congestion in the community will be affected since the parkers must drive through the side streets to get to and from the school parking lot. If customers do not use the valet they will need to drive through the community to get to the Campbell entrance. As mentioned earlier, Campbell is a one way street southbound. There is no access to Campbell off Chicago Avenue. Many of the streets in the residential area are one way. It should also be noted that the occupancy for this establishment is 132. That is not a small number of people coming into the community throughout the day and evening. The credible evidence in this case established that parking availability is scarce as it now exists. There is permit parking on Campbell which would make that area unavailable for customers. Parking in the area of Smith Park is also light because of the large number of park patrons. Adding the customers of the applicant not using valet would significantly impact parking in the community. Since the applicant plans to be open all day and evening, these parking problems would affect the community throughout the day and evening. There is also an issue as to whether the valet service would be able to use the school during school days and afternoons. If the school is unavailable in the afternoon, where are the customers parking.

The denial of the plan of operation lists other matters that are not relevant to the ruling in this case. If an applicant feels community concerns are well-founded is not material to the issue before this Commission. This Commissioner has not relied on such nonmaterial matters in making his decision.

The City proved by a preponderance of the evidence that the issuance of this license would cause a deleterious impact on the health, safety and welfare of the community. The plan of operation did not provide reasonable assurance that its implementation would negate any such deleterious impact.

The decision to deny the license to Baza II, LLC is affirmed.

OPINION OF COMMISSIONER SCHNORE

While I was not present for all the hearings before the Commission, having read the transcripts of the hearings I missed, I concur in part and dissent in part with Chairman Fleming's opinion. I find the City did not meet its burden regarding parking, in that the provision of a valet service along with an offsite parking lot sufficiently minimizes parking concerns. Unfortunately, the parking solution will exacerbate the traffic problem. I find the City met its burden regarding deleterious impact as to traffic, and I affirm.

COMMISSIONER KOPPEL'S DISSENTING OPINION

This case comes before the License Appeal Commission on a trial de novo on the question of whether the applicant has satisfied and met the requirements for obtaining a Consumption on Premises - Incidental Activity liquor license in the City of Chicago. It should be noted that the license was denied on the premise that it would cause a deleterious impact upon the community.

It should be noted that this location is properly zoned and that there were no objections from the Police Department or the Alderman with regard to denying this application. In addition, the Local Liquor Control Commission has improperly and unjustly punished the applicant whose record will reflect for no legitimate reason that he has been denied a retail liquor license in the City of Chicago.

The record is devoid of evidence that the license would cause a deleterious impact upon the community. The City maintained that the license would contribute to traffic congestion, loitering and criminal activities that plague the area. However, if these problems do in fact exist it appears it is the responsibility of the local law enforcement agencies and not the applicant to address these issues.

To deny the application predicated on what could happen is inappropriate. The denial of this license would be prevent the applicant who is a apparently a good businessman from ever obtaining a license.

This applicant is being unjustly punished and may have a real consequence for the applicant should he ever endeavor to secure a retail liquor license and will have to disclose that he has previously sought and been denied such a license.

Further, to deny the application by any means possible despite the applicants exemplary conduct, credentials and merit cannot be permitted. The City should be reversed.

THEREFORE, IT IS HEREBY ORDERED That the said order or action of the Local

Liquor Control Commissioner of the City of Chicago be and the same hereby is AFFIRMED.

Pursuant to Section 154 of the Illinois Liquor Control Act, a petition for rehearing may be filed with this Commission within TWENTY (20) days after service of this order. The date of the mailing of this order is deemed to be the date of service. If any party wishes to pursue an administrative review action in the Circuit Court, the petition for rehearing must be filed with this Commission within TWENTY (20) days after service of this order as such petition is a jurisdictional prerequisite to the administrative review.

Dated: December 18, 2008

Dennis M. Fleming
Chairman

Stephen B. Schnorf
Member