

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Lula's Place, LLC, d/b/a Lula's Place,
Petitioner,
v.
South Carolina Department of Revenue,
Respondent.

Docket No. 23-ALJ-17-0194-CC

RECEIVED
ORDER
SC Court of Appeals
DEC 05 2023

APPEARANCES: For the Petitioner: Joenathan Chaplin, Esquire
For the Respondent: Dana R. Krajack, Esquire
For the Protestants: *Pro se*

STATEMENT OF THE CASE

This matter is before the Administrative Law Court (ALC or Court) for a final order following a contested case hearing pursuant to S.C. Code Ann. § 1-23-310 (2005 & Supp. 2022), S.C. Code Ann. § 1-23-600(B) (Supp. 2022), and S.C. Code Ann. § 61-2-260 (2022). Petitioner, Lula's Place, LLC, d/b/a Lula's Place (Petitioner), applied for an on-premises beer and wine permit pursuant to S.C. Code Ann. § 61-4-500 (2022) as well as a business liquor by the drink license pursuant to S.C. Code Ann. § 61-6-1810 (2022) for the location at 412 E. Moore Street, Olanta, South Carolina 29114-9334 (proposed location). Respondent South Carolina Department of Revenue (Department) denied the application pursuant to S.C. Code Ann. § 61-4-525 (2022) and S.C. Code Ann. § 61-6-1825 (2022) due to the receipt of the Protestants' valid public protests.

After notice to the parties and the Protestants, the Court held a hearing on this matter on August 16, 2023. Both parties and several Protestants¹ appeared at the hearing. Evidence was introduced and testimony presented. Petitioner declined to testify and did not offer evidence contradicting the issues raised by the Protestants. Petitioner promised to prohibit outdoor dining, loitering by patrons, and outdoor music if the permit and license are granted.

¹Of those that filed protests, J. Allen Lynch, Robert Barfield, Joseph Alexander, Lisa Floyd, Woodrow Lawhon and Carolyn Thompson appeared at the hearing. James Tomlinson, Billy Antwine, Lorne Beard, Anne & Steve Blankenship, J. Bryan Carter, Sean Carter, Connie Coker, and Bonnie McGee withdrew their protests prior to the hearing. Dion Beard, Deborah Bodner, Chris Chavis, Jimmy Coker, Kenneth Coker, Warren Coker, Billy Cusaac, Teresa Cusaac, Anna Dubose, Blake Electric, Lynette Malock, James Smith, Madison Spring, Tammy Matthew, Jerry Powers, and Paula Tanner filed protests but failed to appear at the hearing.



After carefully weighing all the evidence, the Court finds Petitioner's application for this location should be denied.

FINDINGS OF FACT

Having observed the witnesses and exhibits presented at the hearing, closely passed upon their credibility, and taking into consideration the burden of persuasion by the parties, the Court makes the following Findings of Fact by a preponderance of the evidence.

Notice of the time, date, place, and subject matter of the hearing was given to all parties and the Protestants. Notice of the application was lawfully posted at the location and published in a newspaper of general circulation. The Department determined Petitioner met all the statutory requirements for a beer and wine permit and business liquor by the drink license. At issue in this case is whether the proposed location is suitable for the sale of beer, wine, and liquor.

Petitioner is seeking an on-premises beer and wine permit and business liquor by the drink license for the proposed location. The proposed location is within the municipal limits of Olanta in Florence County. The proposed location is 255 feet from the sidewalk leading into a public park. The public park does not have playground equipment, but there was testimony that children skateboard in the park. The park has a gazebo and lighting for nighttime gatherings. I find that the proposed location is 255 feet from the entrance to the public park.

The proposed location is more than 300 feet away from the nearest church, but is within close proximity to three churches. Israel Baptist Church is 369 feet away, Olanta Baptist Church is 802 feet away, and Olanta Presbyterian Church is 932 feet away. The proposed location is across a street (less than 300 feet away) from Floyd Funeral Home. The funeral home patrons utilize the same public parking spaces on the street as the proposed location. Protestants Woodrow Lawhon and Lisa Floyd testified that the proposed location is not suitable for the on-premises sale of alcohol because of its proximity to the funeral home. They testified that the presence of a bar and party atmosphere is not appropriate so close to mourners entering and exiting the funeral home. I find that the close proximity to the funeral home makes the proposed location unsuitable for the on-premises consumption of beer, wine and liquor.

The proposed location is approximately 1,200 square feet in area and has a single bathroom. Petitioner has chairs and tables set up on the sidewalk for use by patrons, but is willing to remove those and keep patrons inside. Olanta Police Chief Robert Barfield testified that it is his experience that when there is a bar with inadequate rest room facilities, patrons will

use nearby public spaces such as the adjacent park to relieve themselves. I find that the restroom facilities in the proposed location are not adequate to serve the customers that would be expected to patronize the proposed business. That fact, along with the juxtaposition of the park property, makes the proposed location unsuitable for the on-premises consumption of beer, wine and liquor.

Olanta is a small town served by Police Chief Barfield as the town's sole law enforcement officer. The police chief is not on duty after 3 p.m. on weekdays or at all on weekends. Barfield testified the county police would have to respond to any calls related to disturbances at the proposed location after 3 p.m. or on weekends and it would take approximately twenty minutes for sheriff's deputies to arrive. He testified that there is usually a very short window of time to de-escalate the types of problems that arise at bars, and that the response time of the county sheriff's office would be outside that time window. He believes these circumstances create a high probability of violent altercations. He testified that if the business hired security to keep things orderly, security could act to de-escalate potentially violent situations and relieve the burden on law enforcement. However, there is no evidence that the Petitioner intends to employ security personnel. Protestant Michael Welch testified that when two similar businesses were operated in or near Olanta in the past, there were numerous calls to the fire department for fires and for violent incidents and injuries including shootings and stabbings. Both Welch, a long-time firefighter for the town, and Barfield, the Chief of Police, testified that the location is not suitable for the sale of beer, wine and liquor for on-premises consumption because of the strain they anticipate it would place on the small town's limited police and emergency services. Petitioner presented no evidence as to how it planned to control the behavior of its patrons to prevent violence that would put a strain on local law enforcement and emergency services.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, the Court concludes the following as a matter of law.

Jurisdiction

Jurisdiction over this case is vested with the South Carolina Administrative Law Court pursuant to sections 1-23-310, 1-23-600(B), and 61-2-260. "[T]he issuance or granting of a license to sell beer or alcoholic beverages rests in the sound discretion of the body or official to

whom the duty of issuing it is committed[.]” Palmer v. S.C. Alcoholic Beverage Control Comm’n, 282 S.C. 246, 248, 317 S.E.2d 476, 477 (Ct. App. 1984); See also Wall v. S.C. Alcoholic Beverage Control Comm’n, 269 S.C. 13, 235 S.E.2d 806 (1977). The weight and credibility assigned to evidence presented at the hearing of a matter is within the province of the trier of fact. S.C. Cable Television Ass’n v. S. Bell Tel. & Tel. Co., 308 S.C. 216, 222, 417 S.E.2d 586, 589 (1992). Furthermore, a trial judge who observes a witness is in the best position to judge the witness’s demeanor and veracity and to evaluate the credibility of his testimony. See e.g. Woodall v. Woodall, 322 S.C. 7, 10, 471 S.E.2d 154, 157 (1996); Wallace v. Milliken & Co., 300 S.C. 553, 556, 389 S.E.2d 448, 450 (Ct. App. 1990).

Suitability of Location

S.C. Code Ann. § 61-4-520 (2022) establishes the criteria for the issuance of a beer and wine permit. Included in the criteria is the requirement that the location be a proper and suitable one. See §§ 61-4-520(5)-(6). A liquor license may be denied if the proposed location is not suitable. See Schudel v. S.C. Alcoholic Beverage Control Comm’n, 276 S.C. 138, 276 S.E.2d 308 (1981). Therefore, either a beer and wine permit or a liquor license may be denied if the location of the business is not a proper and suitable one.

“Proper location” is not statutorily defined, but broad discretion is vested in the trier of fact to determine the fitness or suitability of a particular location for the requested permit and license. See Fast Stops, Inc. v. Ingram, 276 S.C. 593, 595, 281 S.E.2d 118, 120 (1981). In determining whether a location is suitable, it is proper for this tribunal to consider any evidence that shows adverse circumstances of location. Kearney v. Allen, 287 S.C. 324, 326, 338 S.E.2d 335, 337 (1985); Palmer, 282 S.C. at 249, 317 S.E.2d at 478 (citing Smith v. Pratt, 258 S.C. 504, 189 S.E.2d 301 (1972)). Furthermore, in considering the suitability of a location, it is relevant to consider whether the testimony in opposition to the granting of a license is based on opinions, generalities, and conclusions, or whether the case is supported by facts. Smith, 258 S.C. at 508, 189 S.E.2d at 302. The determination of suitability of location is not necessarily solely a function of geography. Rather, it involves a variety of considerations related to the nature and operation of the business and its impact on the community within which it is to be located. Kearney, 287 S.C. at 326-27, 338 S.E.2d at 337; Schudel, 276 S.C. at 142, 276 S.E.2d at 310. Further, “[e]ven in the absence of express restrictions, the presence of [places of worship, playgrounds, public gathering places, and residences] in the vicinity is a factor for consideration

on the question whether the issuance of a liquor license would be contrary to the public welfare or morals." 48 C.J.S. Intoxicating Liquors § 151 (August 2023).

The statutes and regulations controlling beer and wine permits do not set out a specific buffer zone between a location that may be permitted and nearby residences, schools, playgrounds, and churches. In determining if the location is a proper one, the statute provides that the Court "may consider, among other factors, as indications of unsuitable location, the proximity to residences, schools, playgrounds, and churches." § 61-4-520(6). It is also relevant to consider the previous history of the location. Smith, 258 S.C. at 508-09, 189 S.E.2d at 302; Taylor v. Lewis, et al., 261 S.C. 168, 171-72, 198 S.E.2d 801, 802 (1973).

In contrast, South Carolina law imposes specific distance limits between locations licensed to sell liquor and churches, schools, and playgrounds.

The department shall not grant or issue any license provided for in this article, Article 5, or Article 7 of this chapter, if the place of business is within three hundred feet of any church, school, or playground situated within a municipality[.] Such distance shall be computed by following the shortest route of ordinary pedestrian or vehicular travel along the public thoroughfare from the nearest point of the grounds in use as part of such church, school, or playground[.]

S.C. Code Ann. § 61-6-120 (A) (2022). A playground is "a place, other than grounds at a private dwelling, which is provided by the public or members of a community for recreation." § 61-6-120(A)(3). "With respect to a church or a school, the distance shall be measured from the nearest entrance of the place of business by following the shortest route of ordinary pedestrian or vehicular travel along the public thoroughfare to the nearest point of entrance to the grounds of the church or school[.]" S.C. Code Ann. Regs. 7-303 (2011). "The nearest point of the grounds in use as part of a playground shall be limited to the grounds actually in use as a playground and the grounds necessary for ingress or egress to such grounds from the public thoroughfare." Id.

Additionally, consideration can be given to the impact the issuance of the permit or license will have on law enforcement. Fowler v. Lewis, 260 S.C. 54, 57-58, 194 S.E.2d 191, 192-93 (1973); Roche v. S.C. Alcoholic Beverage Control Comm'n, 263 S.C. 451, 455, 211 S.E.2d 243, 244-45 (1975). Evidence that the granting of a permit will place a strain upon police to adequately protect the community must be weighed. Moore v. S.C. Alcoholic Beverage Control Comm'n, 308 S.C. 160, 162, 417 S.E.2d 555, 557 (1992).

"The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature." Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). "Under the plain

meaning rule, it is not the court's place to change the meaning of a clear and unambiguous statute.” Id. “Where the statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning.” Id. “What a legislature says in the text of a statute is considered the best evidence of the legislative intent or will. Therefore, the courts are bound to give effect to the expressed intent of the legislature.” Id. “If there is any ambiguity in the statute, however, that ambiguity ‘should be resolved in favor of a just, equitable, and beneficial operation of the law.’” Nicholson v. S.C. Dep’t of Health & Human Servs., 377 S.C. 590, 595, 660 S.E.2d 303, 305 (Ct. App. 2008) (quoting Stephen v. Avins Constr. Co., 324 S.C. 334, 340, 478 S.E.2d 74, 77 (Ct. App. 1996)). “Furthermore, ‘[t]he language [of the statute] must also be read in a sense which harmonizes with its subject matter and accords with its general purpose.’” Nicholson, 377 S.C. at 595-96, 660 S.E.2d at 305; (quoting Cox v. BellSouth Telecomms., 356 S.C. 468, 472, 589 S.E.2d 766, 768 (Ct. App. 2003). “Where a word is not defined in a statute, our appellate courts have looked to the usual dictionary meaning to supply its meaning.” Nicholson, 377 S.C. at 596, 660 S.E.2d at 305.

After carefully weighing the evidence and applying the law discussed above, the Court concludes the proposed location is not suitable for the sale of beer, wine, and liquor for on-premises consumption. The proposed location is within a municipality, so the shortest route of ordinary pedestrian travel from the proposed location to grounds necessary for ingress or egress to a playground from the public thoroughfare may be no less than 300 feet. Petitioners argue that the park is not a “playground” within the meaning of the relevant statute. Although the common usage of the term “playground” tends to evoke the idea of a space with specialized playground equipment provided for children to play on, section 61-6-120 provides its own definition of “playground” and omits any reference to the age of the individuals using the location for recreation as well as any reference to specialized playground equipment. The statute defines “playground” as “a place, other than grounds at a private dwelling, which is provided by the public or members of a community for recreation.” S.C. Code Ann. § 61-6-120(A)(3). The term “recreation” as used in section 61-6-120(A)(3) is not defined within the statute. “Recreation” is defined as “refreshment of strength and spirits after work. [A]lso: a means of refreshment or diversion.” Merriam-Webster.com, <https://www.merriam-webster.com/dictionary/recreation>. (Accessed Aug. 25, 2023). The park contains multiple benches and chairs facing the gazebo,

which is large enough to function as a stage. A sign at the park marks the location as falling under the category of "Parks And Recreation." The uncontradicted testimony demonstrates the park is primarily used by the community for activities that are diversions from work, such as parties and skateboarding. The park is a place, other than grounds at a private dwelling, which is provided by the public or members of a community for recreation. Therefore, the park is a playground pursuant to section 61-6-120(A)(3). The sidewalk entrance to the park grounds is 255 feet from the proposed location and the actual grounds of the park touch the sidewalk. Therefore, the proposed location is within 300 feet of a playground.

Petitioner's argument that the exact distance to the gazebo inside the park was not measured is unavailing. The measurement to the gazebo within the park is not relevant to a determination of the distance from the proposed location to the park since that is not the closest point necessary for ingress and egress to the park. I conclude that the proposed location is less than 300 feet from the public park. Thus, no license for the sale of liquor may be granted at the location.

Additionally, the evidence shows the proposed location lacks adequate space and restroom facilities to reasonably keep patrons inside the building. A single bathroom and 1,200 square feet of indoor space is insufficient to ensure Petitioner's patrons remain inside. I conclude that, when considered in light of the inadequate restroom facilities, the proposed location is not a suitable location for the sale of beer and wine for on-premises consumption due to the close proximity of the park.

Finally, the town of Olanta lacks the police resources necessary to respond to disturbances arising from Petitioner's serving of alcoholic beverages. The town is served by one police officer who does not work weekends or after 3 p.m. and county police would take twenty minutes to arrive in the event of a disturbance. The Court finds, based upon the uncontroverted testimony of the Protestants, that Petitioner's business would cause an undue strain on law enforcement and emergency services in the area surrounding the proposed location if the permit and license were granted.

For the reasons discussed above, the Court finds the proposed location is not suitable for the sale of beer and wine or liquor for on-premises consumption. Therefore, Petitioner's application for an on-premises beer and wine permit and a business liquor by the drink license is denied.

ORDER

IT IS THEREFORE, ORDERED that the Department shall **DENY** Petitioner's application for an on-premises beer and wine permit and a business liquor by the drink license, for the premises located at 412 E. Moore Street, Olanta, South Carolina 29114-9334.

IT IS SO ORDERED.



Deborah Brooks Durden, Judge
S.C. Administrative Law Court

September 5, 2023
Columbia, South Carolina

CERTIFICATE OF SERVICE

I, Robin E. Coleman, hereby certify that I have this date served this Order upon all parties to this cause by depositing a copy hereof, in the United States mail, postage paid, or by electronic mail to the address provided by the party(ies) and/or their attorney(s).

Robin Coleman

Robin E. Coleman
Judicial Aide to Judge Deborah Brooks Durden

September 5, 2023
Columbia, South Carolina

