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**STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT**

**SC Court of Appeals**

SRI Shakti, LLC, d/b/a Monticello One Love, )  
 )  
 Petitioner, )  
 )  
 vs. )  
 )  
 South Carolina Department of Revenue, )  
 )  
 Respondent, )  
 )  
 Gareth Fenley, Ellen Fishburne Triplett, and )  
 the Eau Claire Community Council, Inc., )  
 )  
 )  
 )  
 Intervenor. )

Docket No. 14-ALJ-17-0190-CC

**FINAL ORDER AND DECISION**

**APPEARANCES:** S. Jahue Moore, Esquire For Petitioner  
Mary-Beth Campbell, Esquire For Respondent  
Tobias G. Ward, Jr., Esquire For Intervenor

**STATEMENT OF THE CASE**

This matter came before the Administrative Law Court (“ALC” or “Court”) for a contested case hearing pursuant to S.C. Code Ann. § 1-23-600 (Supp. 2012) and S.C. Code Ann. § 61-2-260 (2009).

Respondent South Carolina Department of Revenue (“Department” or “SCDOR”) denied Petitioner’s application for a seven day off-premises beer and wine permit because of the timely filed protests by Basil Garcia, Ellen Fishburne Triplett, Gareth Fenley and Councilman Sam Davis.

Prior to the hearing on the matter, a motion was made to allow the inclusion of Gareth Fenley, Ellen Fishburne Triplett and Eau Claire Community Council, Inc. as parties by intervention in the case. The Intervenor were allowed as parties with the consent of the Petitioner.

A hearing on this matter was held at 10:00 a.m. on Tuesday, October 14, 2014 at the offices of the ALC in Columbia, South Carolina. After listening to the testimony and weighing all evidence presented at the hearing, this Court finds that Petitioner’s permit for the sale of beer

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**SC ADMIN. LAW COURT**

and wine for off premises consumption shall be granted, subject to completion of the requirements imposed by the Department.

### **FINDINGS OF FACT**

Having observed the testimony of the witnesses and exhibits presented at the hearing and closely passed upon their credibility, I make the following Findings of Fact by a preponderance of evidence:

1. Notice of the time, date, place and subject matter of the hearing was timely given to all parties and to all Protestants.

2. This case involves an application for a 7-day off-premises beer and wine permit submitted by Petitioner SRI Shakti, LLC, d/b/a Monticello One Love, located at 4039 Monticello Road, Columbia, SC, 29203, Richland County.

3. Petitioner SRI Shakti, LLC, d/b/a Monticello One Love, is a domestic limited liability company registered in the State of South Carolina.

4. Applicant Krunal Parmar and his wife, Jignashaben Parmar, own SRI Shakti, LLC. Mr. Parmar and his wife are both twenty-one years of age or older, are legal resident of the United States and have been legal residents of South Carolina for at least thirty (30) days before the date of the application.

5. The South Carolina Law Enforcement Division (SLED) report indicates that the subject location requires a final inspection. SLED records in Respondent's Exhibit 1 show no arrests for applicant or his wife as of November 7, 2013, and there is no evidence of any subsequent arrests. Accordingly, the Court finds the Parmars to be of good moral character.

6. Respondent South Carolina Department of Revenue averred that the Petitioner and his business location meet the statutory qualifications to hold an off-premises beer and wine permit except for final administrative approval of the proposed renovations to the existing building, which is zoned commercial. Mr. Parmar acknowledged that he understands the issuance of any permit for an off-premises beer and wine permit would be conditioned upon the completion of construction and renovations in accord with approval from the Department of Revenue.

7. Mr. Parmar owns and operates more than one convenience store in Columbia that hold permits for the sale of beer and wine to be consumed off-premises. Mr. Parmar has

demonstrated a history of rehabilitating blighted properties and turning them into profitable businesses. In 2013, Mr. Parmar purchased the current location for \$95,000 with such intent.

8. The subject property is located at 4039 Monticello Road which is a 4 lane commercial corridor. The building is approximately 4,300 sq/ft in size, half of which will be used for the convenience store. The parking lot can accommodate fifteen (15) cars. Located within the proximity of the property are numerous businesses and neighborhood facilities, such as a United State Post Office, a Columbia Police station (across the street), Hyatt Park Community Center, Walter's Retirement Center, a daycare facility, and A-1, a convenience store. Currently, the subject property is somewhat dilapidated, but Mr. Parmar intends on investing money to rehabilitate the property, which will include the installation of security cameras and six flood lights, as well as upgrades to the façade resembling another of Mr. Parmar's convenience stores. SCE&G will be adding street lights.

9. The hours of operation for the subject location will be 7:00 a.m. until 11:00 p.m. seven days a week. No loitering or consumption of alcohol will be allowed on the premises. Mr. Parmar and his wife are aware of the laws of the state regarding underage drinking and will properly check the identification of patrons in order to strictly enforce these laws.

10. Numerous residents and community leaders (both parties and Protestants) testified in opposition to the granting of the permit. It is their position the location is not suitable for the sale of beer and wine. Overwhelmingly, the consensus is that homelessness is a continuing problem that makes the area unwelcoming and dangerous. Those in opposition attribute the unsavory conditions of the area to the nearby businesses that sell alcohol. In the same breath, however, residents and community leaders express a desire for money to be invested in their community.

11. Lieutenant Chris White of the Columbia Police Department presented evidence showing the statistics for phone calls received related to alleged criminal activity in the area of the subject location. While the calls are some evidence of activity in the area, the statistics for the subject location are not found to be excessive. Moreover, there was no testimony as to how many of the calls were proven void by arrests and convictions.

12. Clades Johndon's business, the Walter's Retirement Center, has problems with trespassing by homeless individual, who leave trash within the yard area of the facility.

However, Mr. Johnson attributes this problem to the A-1 convenience store and not the proposed location of Petitioner.

13. Protestant Basil Garcia frequently walks his dog in Hyatt Park and has witnessed homelessness and littering to be a problem. However, the problem has not warranted him calling the police station to make a report and has not deterred him from using the park.

14. Intervenor Gareth Fenley uses both Hyatt Park as well as the United States Postal Office behind the proposed location. Homeless individuals frequently loiter around the post office. Based on her experiences, Ms. Fenley does not think that granting the permit is good for the community.

15. Intervenors argue that the subject area is saturated with establishments that sell alcohol. I disagree. The Sunoco station, the Hess station, Bi-Lo grocery store and A-1 convenience store are cited by Respondents as offending locations. Only the A-1 is close in proximity and it alone does not, in the opinion of the Court, constitute sufficient "saturation" to deny the permit.

16. Intervenors also cite the nearness of a church park, daycare, residential care facility, and the A-1 convenience store directly across the street, as rendering the area unsuitable. I disagree. The alcohol laws of the State of South Carolina have statutory "setbacks" or "separation distance requirements" that apply to some cases. The legislature has not seen fit to apply them to the sale of beer and wine for off-premises consumption as in the case here.

While the location of other businesses might, in some instances, justify denial of a permit, this instance is decidedly not one of those circumstances.

17. While it is true there are homeless people in the area, there is nothing to indicate Mr. Parmar has contributed or will contribute to the homeless situation or to the general criminal activity. There is not a shred of credible evidence to suggest that the issuance of the permit sought by Petitioner will increase homelessness or crime in the area. I find that the testimony of Intervenors and Protestants, though earnest and articulate, does not present facts of sufficient gravity to warrant denial of the permit.

#### **CONCLUSIONS OF LAW**

Based upon the foregoing Findings of Fact, I conclude the following as a matter of law:

1. S.C. Code Ann. § 1-23-600 (Supp. 2013) grants jurisdiction to the Administrative Law Court to hear contested cases under the Administrative Procedures Act. Additionally, S.C. Code Ann. § 61-2-260 (2009) grants the Administrative Law Court the responsibilities to determine contested matters governing alcoholic beverages, beer and wine.

2. “[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).

3. The weight and credibility assigned to evidence presented at the hearing of a matter is within the province of the trier of fact. See 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).

4. S.C. Code Ann. § 61-4-520 (2009) establishes the criteria for the issuance of a beer and wine permit. Included in the criteria is the requirement that the proposed location be a proper and suitable one. S.C. Code Ann § 61-4-520(6)-(7) (2009).

5. Although “proper location” is not statutorily defined, broad discretion is vested in the trier of fact to determine the fitness or suitability of a particular location for the requested permit. See Fast Stops, Inc. v. Ingram, 276 S.C. 593, 281 S.E.2d 118 (1981).

6. The determination of suitability of location is not necessarily a function solely of geography. Rather, it involves an infinite variety of considerations related to the nature and operation of the proposed business and its impact on the community within which it is to be located. Kearney v. Allen, 287 S.C. 324, 338 S.E.2d 335 (1985); Schudel v. S.C. Alcoholic Beverage Control Comm’n, 276 S.C. 138, 276 S.E.2d 308 (1981).

7. In determining whether a proposed 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, 338 S.E.2d 335 (1985); Palmer v. S.C. Alcoholic Beverage Control

Comm'n, 282 S.C. 246, 317 S.E.2d 476 (Ct. App. 1984) (citing Smith v. Pratt, 258 S.C. 504, 189 S.E.2d 301 (1972)).

8. The factual determination of whether or not an application is granted or denied is usually the sole prerogative of the executive agency charged with rendering that decision. Palmer v. S.C. Alcoholic Beverage Control Comm'n, 282 S.C. 246, 317 S.E.2d 476 (Ct. App. 1984). As the trier of fact, an administrative law judge is authorized to determine the fitness or suitability of the proposed business location of an applicant for permits and licenses to sell alcoholic beverages using broad but not unbridled discretion. Byers v. S.C. Alcoholic Beverage Control Comm'n, 281 S.C. 566, 316 S.E.2d 705 (Ct. App. 1984).

9. Without sufficient evidence of an adverse impact on the community, the application must not be denied if the statutory criteria are satisfied. The fact that a Protestant objects to the issuance of a permit is not a sufficient reason by itself to deny the application. See 45 Am.Jur. 2d Intoxicating Liquors § 162 (Supp. 1995); 48 C.J.S. Intoxicating Liquors § 119 (1981).

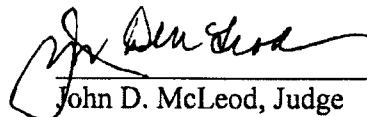
#### **ORDER**

Based on the testimony and the exhibits, and having passed upon the credibility of the witnesses, I conclude that the Petitioner has met its burden of proof by a preponderance of the evidence in showing that it meets all of the statutory requirements for holding an off-premises beer and wine permit. Although cognizant of the Protestant's concerns, the proposed location is a proper one for granting the permit. The location is suitable for Petitioner's operation and it will not be detrimental to the welfare of the surrounding community. I find and conclude the location to be suitable and conclude that the permit should be granted.

**IT IS THEREFORE, ORDERED, ADJUDGED AND DECREED** that this matter is remanded to the South Carolina Department of Revenue which is **HEREBY ORDERED** to proceed with processing of Petitioner's application for a 7-day off-premises permit for the sale of beer and wine for off premises consumption and to issue such permit upon satisfactory completion by Petitioner of all conditions imposed by the Department.

**AND IT IS SO ORDERED.**

November 17, 2014  
Columbia, S.C.

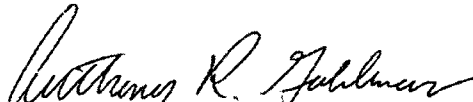


John D. McLeod, Judge  
South Carolina Administrative Law Court

**CERTIFICATE OF SERVICE**

I, Anthony R. Goldman, 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, in the Interagency Mail Service, or by electronic mail to the address provided by the party(ies) and/or their attorney(s).

November 17, 2014  
Columbia, S.C.

  
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Anthony R. Goldman  
Judicial Law Clerk

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