

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Eighteen Ink, LLC, d/b/a Group Therapy,

Petitioner,

vs.

South Carolina Department of Revenue,

Respondent,

and

Thomas R. Gottshall, April C. Lucas,
and Michael Drennan,

Intervenors.

Docket No.: 19-ALJ-17-0001-CC

FINAL ORDER

RECEIVED

MAY 28 2020

SC Court of Appeals

APPEARANCES: For Petitioner: Bakari T. Sellers, Esquire; John R. Alphin, Esquire
For Respondent: Patrick A. McCabe, Esquire
For Intervenors: Christopher P. Kenney, Esquire

STATEMENT OF THE CASE

This matter is before the South Carolina Administrative Law Court (“ALC” or “Court”) pursuant to a Request for a Contested Case Hearing filed on January 2, 2019, by Eighteen Ink, LLC, d/b/a Group Therapy (“Group Therapy” or “Petitioner”). On July 17, 2018, Petitioner filed an application with the South Carolina Department of Revenue (“Department” or “Respondent”) to renew the on-premises beer and wine permit and restaurant liquor by the drink license previously issued for its location at 2107 Greene Street, Columbia, South Carolina, 29205. In a final determination issued December 4, 2018, the Department determined that Petitioner met the statutory requirements for renewal but denied Petitioner’s application based upon the receipt of timely public protests filed pursuant to S.C. Code Ann. §§ 61-4-525 (Supp. 2005) and 61-6-1825 (Supp. 2005) concerning the suitability of the location.¹ On January 2, 2019, Petitioner filed its hearing request with this Court.

¹ Initial protests were received from James M. Daniel, III, Michael Drennan, Thomas Gottshall, Susalee Lamb, William Lamb, Patricia Wood, William Hrushesky, Karen Belser, Polly Morrison, Nancy White, April Lucas, John Stucker, Vivian Armstead, Olufemi Olulenu, and Beth Richardson (“Protestants”).

FILED

April 29, 2020

EXHIBIT A

SC ADMIN. LAW COURT

Upon application and without protest from either party, on February 4, 2019, the Court granted Protestants' Motion for Leave to Intervene as to Michael Drennan, Thomas Gottshall, and April Lucas ("Intervenors"). On September 27, 2019, the Department added Columbia Police Department ("CPD") Chief W.H. Holbrook to the list of Protestants pursuant to a valid protest received by the Department on September 23, 2019. On December 9, 2019, Respondent filed an Amended Prehearing Statement informing the Court that the Department no longer considered the licensed location suitable for renewal due to an administrative citation issued to Petitioner by the South Carolina Law Enforcement Division ("SLED") on September 15, 2019, for permitting a criminal act on the premises in violation of S.C. Code Ann. § 61-4-580(5) (Supp. 2013). On December 19, 2019, the Department also added the University of South Carolina ("USC") to the list of Protestants pursuant to a valid protest received by the Department earlier that day.

Following proper notice to the parties and Protestants, a hearing in this matter was held on February 11 and 12, 2020, at the ALC in Columbia, South Carolina. The issue before the Court is the suitability of the location for the renewal of Petitioner's on-premises beer and wine permit and restaurant liquor by the drink license. After carefully weighing all evidence presented during the hearing, the Court finds the location suitable.

FINDINGS OF FACT

Having observed the witnesses and exhibits presented at the hearing and closely passing 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:

1. Petitioner is registered with the South Carolina Secretary of State's Office as Eighteen Ink, LLC, d/b/a Group Therapy. Group Therapy has been in business in its current location since 1978 and was purchased by Eighteen Ink, LLC in June of 2016. The applicants, Steve Taneyhill and Tiffany Lancaster, jointly own the company. On July 17, 2018, the applicants applied for a biennial renewal of the on-premises beer and wine permit and restaurant liquor by the drink license previously issued by the Department for the location at 2107 Greene Street, Columbia, South Carolina, 29205. The location, known as Group Therapy, operates within the municipal limits of the City of Columbia in the hospitality district of Five Points.

2. Steve Taneyhill runs the business as the sole manager. In addition to a cook, Group Therapy employs sixteen professional individuals, as opposed to students, who work as either security, bartenders, or both. Every employee who serves alcohol is trained, educated, certified,

and re-certified through a program called ServSafe Alcohol Program. The ServSafe Program is intended to ensure no patron is over-served and no one underage is served at all.

3. The establishment has a total of eleven security cameras and can hold a maximum capacity of 240 patrons. When at capacity, patrons waiting to enter stand behind a ten to twelve-foot rope used to keep an orderly line on the sidewalk. Group Therapy has live music provided by a band or DJ on Thursday, Friday, and Saturday nights. While these are typically the busiest nights in Five Points, multiple witnesses testified that USC athletic events and other special occasions in Columbia bring significantly more patrons to the area.

4. Taneyhill testified that patrons of Group Therapy range in age and that, while he does not specifically target college-aged customers, many of the patrons from 10:00 p.m. on tend to be younger. Following an earlier ALC decision regarding another Five Points business, Taneyhill stated he raised his drink prices so as not to entice a younger crowd seeking to take advantage of cheaper alcohol prices. Since taking ownership of the bar in June 2016, Taneyhill testified that Group Therapy has been cited once for serving to someone underage.

5. Group Therapy also maintains a special late-night permit that allows the establishment to stay open to serve beer and wine after other businesses close at 2:00 a.m. These special permits are applied for and issued by CPD in its discretion if the applicant's business meets certain criteria. CPD last issued a late-night permit to Group Therapy in July 2019.

6. Taneyhill testified that after a meeting in 2018 with representatives from SLED, USC, CPD, the Mayor's office, and other restaurant owners in Five Points, Group Therapy began using the Intellicheck Age ID® scanner to verify the identification cards of those entering the establishment. The scanner is the same system used by law enforcement to scan identification cards and costs around \$250 per month. Taneyhill stated the scanner is utilized to prevent underage patronage. While Group Therapy currently utilizes only one of these devices, which can create a back-up in the line outside, Taneyhill testified that he is willing to obtain two additional scanners should the Court so order. Additionally, at the request of law enforcement, Group Therapy has intermittently instituted other measures to reduce issues with CPD-identified "problem" patrons including requiring either student or military identification, conducting pat downs of entering patrons to look for weapons, and the removal of a DJ who played music CPD identified as attracting gang members to the establishment.

7. According to Taneyhill and other witnesses, sidewalk and street crowding are pervasive in Five Points. Since taking ownership in June 2016, Taneyhill believes there have been around five fights in the streets abutting Group Therapy. When people are out in the streets, Taneyhill maintained that Group Therapy has no ability to control what goes on and that that responsibility falls to law enforcement. Moreover, it is impossible to identify from which establishment(s) those in the streets are coming and going. To help combat such problems and to maintain order and safety in the area in general, Taneyhill stated he supports an increased CPD presence in Five Points, especially during the busier nights following USC athletic events and other special occasions.

8. Group Therapy initiated the Safe and Sound Pledge in which the owners of Five Points establishments have committed to providing patrons with an employee escort to safely walk them to their vehicles or their alternative rides home. Taneyhill serves as a board member of the Five Points Association and recently took over the annual Five Points Chili Cookoff to raise funds for the Special Olympics.

9. As to the license and permit renewal application, the Department Determination issued on December 4, 2018, found that Group Therapy met the statutory requirements of licensure for an establishment bona fide engaged primarily and substantially in the preparation and serving of meals pursuant to S.C. Code Ann. §§ 61-6-20 (Supp. 2018), 61-6-1610 (Supp. 2018), 61-6-1820 (Supp. 2009), and S.C. Code Ann. Regs. 7-401.3 (Supp. 2018). During the hearing, the Department maintained that Group Therapy continues to meet all statutory requirements related to food service and preparation. However, solely due to public protests filed pursuant to S.C. Code Ann. §§ 61-4-525 and 61-6-1825 concerning the suitability of the location, the Department denied the application for renewal.

10. The initial Protestants, including Intervenors, are residents who live in the neighborhoods surrounding Five Points.² Protestants contend that the location is unsuitable to have its license renewed because Group Therapy and other establishments in Five Points have caused the hospitality district to become a place where large crowds of young people - many of whom Protestants believe to be underage - drink to excess and congregate and loiter on public

² CPD and USC did not protest the application for renewal until September and December 2019, respectively.

sidewalks and streets.³ Protestants allege the same with regards to other establishments in Five Points, and believe that the high concentration of businesses that serve alcohol in Five Points promotes a culture of overconsumption by students that leads to nuisance behavior in and around the area. Such behavior puts the students' own safety at risk, creates a strain on local law enforcement resources, and disturbs the peace and enjoyment of residents in the surrounding neighborhoods. In essence, Protestants assert there is an overall public safety problem in Five Points and argue that Group Therapy specifically contributes to that problem.

11. Protestant Vivian Clark Armstead has lived in the MLK/Waverly neighborhood located two blocks behind Group Therapy for fifteen years and submitted her protest on behalf of herself and the MLK/Waverly Neighborhood Association as its president. As a resident of a community that is so close to the Five Points hospitality district, Armstead has witnessed firsthand some of the problematic behavior associated with Five Points and its patrons.⁴ Also, as president of the neighborhood association, Armstead is informed of problems other residents have encountered. She testified she has seen intoxicated patrons, many of whom are students, entering and leaving Group Therapy, but conceded that students are going to many other establishments as well. Aside from expressing annoyance with the size of the crowd specifically congregated outside of Group Therapy, Armstead had no direct complaints against the establishment itself.

12. Armstead further testified that when USC is in session, her neighborhood experiences increased litter, noise, and parking problems from Thursday nights through Sunday mornings, and the problems are exacerbated on nights following athletic events at USC. She attributes these problems to intoxicated students she sees coming to and from Five Points back to their rental homes in the neighborhood or their vehicles parked in and around the MLK park and surrounding area. In recent years, the rising number of rental homes in the MLK/Waverly neighborhood has resulted in increased foot traffic to and from the Five Points area as well as an

³ Protestants, including Intervenors, also objected to Group Therapy's license and permit renewal on the grounds that the business is not engaged primarily and substantially in the preparation and serving of meals as required by Article VIII-A, § 1 of the South Carolina Constitution and defined in S.C. Code Ann. § 61-6-20 (Supp. 2018). Petitioner filed a Motion in *Limine* to prevent Protestants/Intervenors from introducing any arguments or evidence relating to this issue arguing that the determination of compliance with this requirement falls squarely within the investigative authority delegated to SLED and the enforcement authority statutorily and solely vested in the Department. The Court heard arguments from all parties on this issue and granted Petitioner's Motion to Exclude finding that such a determination is an enforcement issue exclusive to the Department and, pursuant to the holding of the Court of Appeals in *S.C. Dep't of Revenue v. Sandalwood Social Club*, not a private right of action to be prosecuted or enforced by citizens bringing a claim under the Department of Revenue's regulatory scheme. See *Sandalwood*, 399 S.C. 267, 731 S.E.2d 330 (Ct. App. 2012).

⁴ Armstead stated she can see Group Therapy's entrance and rear patio from her front porch.

increase in house parties. Armstead added that she also sees students from nearby Allen University and Benedict College walking through the neighborhood to get to and from Five Points and their respective campuses.

13. During her testimony, Armstead recited the many instances of nuisance and problematic behavior she's observed in Five Points. According to Armstead, she has observed young people falling down, vomiting, and passing out while leaving Five Points and has concerns that in their intoxicated states, students are vulnerable to strangers in the area who may seek to harm them. Within the MLK/Waverly neighborhood, Armstead and her neighbors have set up neighborhood watches to protect and help students who they believe may be in danger. The neighborhood also conducts its own litter clean up after busy nights in Five Points. While she has succeeded in getting some of the parking spaces in her neighborhood reclassified to permit only, Armstead is of the opinion that more permitted parking will alleviate some of the problems. Armstead testified she has repeatedly contacted code enforcement and city officials to address parking issues and other problems she attributes to too many unrelated individuals living together in rental homes in the neighborhood but has not seen any results.

14. Finally, Armstead characterized the students who frequent Five Points as generally polite and expressed a willingness to work with Taneyhill and representatives from USC, Allen, and Benedict to develop a plan to resolve some of the issues. She expressed no opinion as to whether or not Group Therapy should be forced to close and insisted her complaint was not with the owner or the establishment itself, but with the conduct of patrons of Group Therapy and other Five Points establishments.

15. Intervenor Michael Drennan has lived just outside of Five Points in the Shandon neighborhood since 2004 and submitted his protest citing unsuitability and concerns for the health and safety of young people who frequent the Five Points hospitality district. Drennan began noticing the negative impact associated with Five Points around 2007-8. He believes that students are renting homes around him due to Shandon's proximity to Five Points and testified these young tenants create increased problems in the neighborhood such as noise, parties, litter, and property crimes.

16. Drennan has visited Five Points on several occasions and observed students vomiting, crying, interacting with police, and spilling out onto the streets when the sidewalks become overcrowded. On one visit to Group Therapy around midnight in April 2019, Drennan

stated he waited in a long line with around forty others to get in and observed Group Therapy staff pat and frisk entering patrons after conducting visual inspections of their identification cards. Upon leaving that night, Drennan testified he was forced to walk in the street because the sidewalks were overcrowded. Drennan has been a protestant in multiple cases involving the licensure and permitting of other establishments in Five Points. When questioned as to his objectives in this particular matter, Drennan testified that he takes issue with Five Points in general and believes the solution may be a reduction in the number and density of bars concentrated in the area.

17. On September 23, 2019, the CPD filed a timely protest opposing the renewal of Group Therapy's license and permit based on the amount and nature of calls for service to Group Therapy. Chief W.H. Holbrook testified that his department responds to calls from Five Points for issues such as general disorder, public intoxication, assaults, fights, vehicle break-ins, and occasional gunfire. He stated there was a "high" call volume related to alcohol offenses specific to Group Therapy from July 2018 through July 2019 but also pointed out that Group Therapy was only one of a number of establishments responsible for the increased calls that impose a burden on his department.⁵ Chief Holbrook further testified that present-day Five Points is different from what the area was years ago and policing there has had to be adjusted. Additionally, he pointed out that the area is now surrounded by approximately 2,500 rental properties that were not present years ago.

18. Chief Holbrook believes that a business model consisting of serving alcohol to young and underage people who drink to excess creates a vulnerable population in Five Points that officers must then deal with. Although CPD officers will address minor offenses as they encounter them, the department does not put emphasis on minor crimes like underage drinking and typically rely on SLED to issue citations or tickets for such offenses. On a regular Thursday, Friday, or Saturday night, Chief Holbrook testified that between CPD officers and personnel from the supporting agencies of SLED and the South Carolina Department of Probation, Parole and Pardon Services, there are typically twelve to fifteen members of law enforcement present in the Five Points area. On nights following USC athletic events, there can be as many as forty. When the majority of establishments close around 2:00 a.m., the onslaught of patrons flowing onto the streets and sidewalks of Five Points can range from six or seven hundred into the thousands on especially

⁵ CPD records reflect that thirty-eight calls during this yearlong period resulted in a response attributed to Group Therapy.

busy nights. That “dump” of students leads to further disorder that demands law enforcement attention. Chief Holbrook maintained that more police presence from his department in Five Points is simply not feasible as there are other, more serious issues in the city that require police resources. Chief Holbrook also testified that he was unaware that business owners in Five Points pay an extra 1% sales tax slated for the provision of increased services from CPD.

19. In July 2019, CPD approved Group Therapy for a late-night permit authorizing the sale of beer and wine after 2:00 a.m. Chief Holbrook testified that the vetting and approval process for such permits has become much more stringent in the last several years, leading to a decline in the number of permits currently being issued. The number of permits decreased from a high of twenty-three to just four being issued in 2019. As part of the vetting process, CPD obtains records reflecting the calls for service and number of incidents specific to each applicant’s location from July 1st to June 30th of the preceding year and compares the data to that of other establishments. Compared to other establishments in the area, Group Therapy did not have a high call volume or number of incidents. Accordingly, out of twelve applicants from Five Points, Group Therapy received one of four late-night permits issued by CPD based on data collected through June 30, 2019.

20. Chief Holbrook also testified that crime in Five Points has decreased regarding “quality of life” offenses. In addition to the increased scrutiny and vetting process for late-night permitting, Chief Holbrook attributed the decline to successful collaborations with business owners, neighborhood associations, other law enforcement agencies, and USC in the establishment of altered traffic patterns and transportation plans to increase safety.

21. In its protest, CPD indicated that Group Therapy maintains a reputation for peace and good order in the community. Chief Holbrook testified that conclusion is based on the department’s positive relationship with Taneyhill and the establishment’s willingness to take all necessary steps requested by CPD to address and mitigate problems. However, Chief Holbrook also testified he has seen inconsistencies with the application of those steps and believes that Group Therapy could use the Intellicheck Age ID® scanner with greater consistency to prevent problems with underage patrons.

22. In general, Chief Holbrook acknowledged that his end goal was to achieve a balance wherein young adults have an area in which to socialize so long as patrons and businesses both act responsibly. From the perspective of law enforcement, Chief Holbrook believes that

businesses, including Group Therapy, can alleviate much of the problems in Five Points by refusing entry and/or service to those under twenty-one and by not overserving patrons of any age.

23. The Department received an additional protest from USC on December 19, 2019. After an open meeting in which attendees questioned USC's absence as a protestant in this matter, the USC Chief of Police emailed Marc Shook, Dean of Students, asking him to review data supplied by CPD and other criteria to decide whether the University should join the protest. After reviewing the data and conducting his own online research, Shook submitted a protest on behalf of USC citing student safety.

24. USC has developed four criteria to determine whether or not to protest the issuance or renewal of alcohol licenses and permits for establishments in Five Points. First, students who end up hospitalized from alcohol-related illnesses are asked where they had their last drink. Since 2018, four hospitalized students have reported they last consumed alcohol at Group Therapy, a number that Shook described as significantly lower than that of other Five Points establishments. Second, Shook reported that USC had no issue with the ratio of food to alcohol sales reported by Group Therapy. Third, USC monitors advertising and social media posts to determine whether an establishment solicits underage students. With the exception of a drink containing candy, Shook testified Group Therapy does not actively target underage patrons. Finally, Shook analyzed the number of calls to law enforcement attributed to the establishment. While characterizing the number of calls as "limited" in 2018, based on the 2019 call data provided by CPD in its protest, Shook decided USC should join the matter as an additional protestant.

25. Shook testified that USC's undergraduate student population has grown substantially over the past five years and attributed the increased problems in Five Points to the continuously growing underage student population.⁶ Shook reported that these students suffer from higher levels of depression, anxiety, and suicidal ideations which can all lead to binge drinking. Since 2012, Shook testified that survey has shown that first-year students at USC reported more "heavy" and "problematic" drinking compared to freshmen at other SEC schools; "problematic" drinking rates among all USC freshman in 2018 were approximately twice the national average. (*See* Intervenor's Ex. 5, p. 1).

⁶ Because the University does not have the capacity to house all incoming freshmen students, undergraduate students must secure alternative off-campus housing. The Court notes that CPD and Protestants from surrounding neighborhoods both attributed some of the increase in problems associated with Five Points to the increase in the number of nearby student-occupied rental properties in recent years.

26. Although he has only been in Columbia and at USC for a year and a half, Shook testified that Five Points is not the same place it was ten years ago and believes Group Therapy's license and permit renewal should be denied based on the call data supplied by CPD. When questioned about the impact USC's recent decision to sell beer and wine at athletic events might have on student drinking, Shook testified that there is a much greater age range of patrons at those events and safeguards such as food availability, security, identification scanners, and traffic controls will prevent those athletic events from causing the same problems seen in Five Points.

27. On the night of September 15, 2019, Special Agent ("SA") Kirkland Jordan of SLED's Alcohol Enforcement Unit and two other special agents visited several establishments in Five Points as part of the unit's responsibility to conduct inspections and compliance checks to ensure laws and regulations are obeyed. SA Jordan testified that, aside from the annual St. Patrick's Day celebration, the crowd in Five Points that night was the largest she had ever seen due to a USC home football game earlier in the day.

28. While inspecting a normally locked hallway inside Group Therapy that was accessible to anyone that night due to a broken door, SA Jordan testified that she smelled the odor of marijuana. Unable to locate any other source of the smell, agents concluded the odor was likely coming from an office marked with an "Employees Only" sign and secured with a pin code lock. After trying to open the locked door, SA Dorman knocked and the door was opened from the inside. All three agents entered the office to find four occupants inside, none of whom were employees of Group Therapy. As a result of this encounter, SA Dorman issued a Uniform Traffic Ticket for Simple Possession of Marijuana to one of the occupants inside the office.⁷ Additionally, SA Jordan issued an administrative citation to Group Therapy for permitting a criminal act on the premises in violation of S.C. Code Ann. § 61-4-580(5) (Supp. 2013).

29. Because of this incident, on December 9, 2019, Respondent filed an Amended Prehearing Statement informing the Court that the Department no longer considered the licensed location suitable for renewal due to the administrative citation issued by SLED for permitting a criminal act on the premises in violation of § 61-4-580(5). The relevant portions of § 61-4-580 entitled "Prohibited Acts" state:

⁷ Due to evidentiary issues, burdens of proof upon the parties, and other jurisdictional considerations, the Court declines to adopt any further details of this incident as Findings of Fact in this matter. The ticketed individual enrolled in the Pre-Trial Intervention Program following this incident.

(A) No holder of a permit authorizing the sale of beer or wine or a servant, agent, or employee of the permittee may knowingly commit any of the following acts upon the licensed premises covered by the holder's permit:

* * *

(5) permit any act, the commission of which tends to create a public nuisance or which constitutes a crime under the laws of this State;

* * *

(B) A violation of any provision of this section is a ground for the revocation or suspension of the holder's permit.

30. Although § 61-4-580(B) states that a violation of any provision of the section is grounds for the revocation or suspension of a permit, the Department relies on S.C. Revenue Procedure 13-2 identifying the appropriate penalty for permitting a criminal act on the premises as revocation. (*See* Respondent's Amended Prehearing Statement, p. 2). Thus, based on this incident, the Department argued that the location is no longer suitable for permit and licensure renewal due to a violation of § 61-4-580(5).

31. During the hearing, however, the Department made clear that any violation and resulting penalty were not before the Court at this juncture and would be determined later in another case before the ALC.⁸ As Respondent is well aware, if the Department sees fit to impose an administrative penalty based on an alleged violation, there are certain preliminary procedures that must be accomplished before contested case review of the Department's final determination before the ALC. Just as the Department bears the burden of proving the facts demonstrating that a licensee actually committed the alleged violation, an aggrieved licensee must fully exhaust all agency remedies before seeking contested case review. Thus, until an actual violation is properly before the ALC in an enforcement proceeding, the Court declines to prematurely address and adjudicate what equates to an enforcement action under the guise of an additional factor pertaining to suitability in a license renewal matter.

32. Accordingly, the Court will only address the suitability arguments presented by Protestants and Intervenors opposing the renewal of Group Therapy's permit and license. Without the stipulation of the parties, any alleged violation shall be initiated by the Department in a separate enforcement action.

⁸ There is no evidence before the Court that an administrative enforcement proceeding relating to this incident has been initiated by the Department.

CONCLUSIONS OF LAW

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

1. S.C. Code Ann. § 1-23-600 (Supp. 2019) grants jurisdiction to the ALC to hear contested cases under the Administrative Procedures Act. The ALC also has exclusive jurisdiction to adjudicate contested matters involving the regulation of alcoholic beverages under Title 61 of the South Carolina Code. *See* S.C. Code Ann. § 61-2-260 (2009).

2. The weight and credibility assigned to evidence presented at a hearing 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. *Woodall v. Woodall*, 322 S.C. 7, 10, 471 S.E.2d 154, 157 (1996) (citing *McAlister v. Patterson*, 278 S.C. 481, 299 S.E.2d 322 (1982)). The standard of proof in administrative proceedings is a preponderance of the evidence unless otherwise specified. *Anonymous v. State Bd. of Med. Exam'r*, 329 S.C. 371, 375, 496 S.E.2d 17, 19 (1988) (quoting 2 Am.Jur.2d *Administrative Law* § 363 (1994)).

3. The Department is charged with the responsibility of administering the laws and regulations governing the sale of beer, wine, and alcoholic liquors in South Carolina. *See* S.C. Code Ann. §§ 61-2-20, -80 (2009). Members of the public may submit to the Department written protests against the issuance or renewal of a beer and wine permit and liquor by the drink license if the protestants comply with the requirements of the statute in rendering the protest. *See* S.C. Code Ann. §§ 61-4-525 (Supp. 2005) and 61-6-1825 (Supp. 2005).

4. In order to obtain a beer and wine permit or liquor by the drink license, the proposed location must be proper. *See* S.C. Code Ann. § 61-4-520(5) (Supp. 2005); *See also* *Schudel v. S.C. Alcohol Beverage Control Comm'n*, 276 S.C. 138, 142, 276 S.E.2d 308, 310 (1981).

5. "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. *Fast Stops, Inc. v. Ingram*, 276 S.C. 593, 596, 281 S.E.2d 118, 120 (1981) (citing *Smith v. Pratt*, 258 S.C. 504, 189 S.E.2d 301 (1972)). In determining whether a proposed location is suitable, the court may consider any evidence that shows adverse circumstances of the location. *Kearney v. Allen*, 287 S.C. 324, 326, 338 S.E.2d 335, 337 (1985) (citing *Pratt*, 258 S.C. 504, 189 S.E.2d 301).

Suitability “involves an infinite variety of considerations related to the nature and operation of the proposed business and its impact on the community wherein it is to be situated.” *Id.* (citing *Schudel*, 276 S.C. 138, 276 S.E.2d 308).

6. Without sufficient evidence of an adverse impact on the community, a license application must not be denied if the statutory standards are satisfied. *See* 48 C.J.S. *Intoxicating Liquors* § 196 (2017). The fact that the issuance of a license is protested is not a sufficient reason, by itself, to deny the application. *Id.* Moreover, the denial of a license to an applicant on the ground of unsuitability of location is without evidentiary support when relevant testimony of those opposing the requested license or permit consists entirely of opinions, generalities and conclusions, or is not supported by the facts. *Taylor v. Lewis*, 261 S.C. 168, 171, 198 S.E.2d 801, 802 (1973).

7. In determining the suitability of a location for an alcohol permit or license, consideration should be given to the impact the issuance of the permit or license will have on law enforcement. *Fowler v. Lewis*, 260 S.C. 54, 194 S.E.2d 191 (1973); *Roche v. S.C. Alcoholic Beverage Control Comm’n*, 263 S.C. 451, 211 S.E.2d 243 (1975). Evidence that the granting of a license will place a constraint on law enforcement’s ability to protect the community must be weighed. *Moore v. S.C. Alcohol Beverage Control Comm’n*, 308 S.C. 160, 162, 417 S.E.2d 555, 557 (1992).

8. There is no doubt that the hospitality district of Five Points requires a police presence and, depending on the night of the week and various events resulting in increased crowds, the level of police presence can fluctuate greatly. While Chief Holbrook testified that Group Therapy was just one of a number of establishments in Five Points responsible for increased and burdensome calls to the department, CPD submitted its protest against Petitioner’s renewal due to the high call volume (18 calls) that the department directly associated with Group Therapy from July 1, 2018 through June 30, 2019.

9. However, in July 2019, CPD issued a late-night permit to Group Therapy authorizing extended hours for the service of beer and wine. Chief Holbrook testified as to the stringent vetting and approval process for such coveted permits. Out of twelve applicants, Group Therapy received one of four permits awarded. Interestingly, the vetting process consists of a comparison of the calls for police service and the number of incidents attributed to each applicant’s location during the preceding year, also from July 1, 2018 through June 30, 2019. Compared to

other establishments, Chief Holbrook testified that the department found that Group Therapy did not have a high call volume or number of incidents.

10. Thus, based on the specific call data compiled by the department, CPD chose to issue a wholly discretionary permit authorizing Group Therapy to serve even more alcohol late into the night. Then, relying upon that very same call data just months later to support a claim of unsuitability, CPD chose to protest Group Therapy's authorization to serve alcohol altogether. Such markedly opposing positions are troubling. At best, CPD's inability to determine whether Petitioner's call volume is low, so as to justify a discretionary late-night permit to serve more alcohol, or high, so as to necessitate an absolute denial of alcohol licensure entirely, presents a factual dilemma in this case. As such, the conclusion that service calls attributed to Group Therapy will overburden law enforcement resources is not supported by facts and a denial premised on unsuitability in the context of a strain on law enforcement is without evidentiary support.

11. Of the criteria weighed by USC to determine the school's participation in protesting alcohol licensure matters, only the fourth factor concerning the number of service calls to law enforcement was present in Petitioner's case. Dean Shook testified that USC joined the protest and believes Petitioner's renewal application should be denied based on call data supplied by CPD. As previously discussed, due to factual inconsistencies, evidence pertaining to the volume of service calls offered to establish unsuitability due to law enforcement woes is insufficient to support a ground for denial in this matter.

12. While evidence of the heightened levels of alcohol consumption by USC freshmen in comparison to freshmen attending other SEC schools causes the Court concern, those levels cannot be attributed to Group Therapy to form a basis against suitability in this matter. In fact, Shook characterized the four students hospitalized after consuming their last drink at Group Therapy since 2016 as a "low" number. Moreover, Shook attributed the increased problems in Five Points over the past decade to an overall increase in the underage student population; this increased population suffers from higher levels of depression, anxiety, and suicidal ideations which can all lead to binge drinking, according to Shook. Again, while the Court is not insensitive to the plight of this younger generation, this matter concerns the licensure renewal of one business that has operated in Five Points since 1978. As a single establishment in a hospitality district seeking renewal of an alcohol permit, Group Therapy cannot be held accountable for the behavior or tendencies of a generation. Without question, Group Therapy cannot be responsible for the

significant increase in the underage student enrollment at USC – an enrollment which Shook testified has led to the overall increase in problems in Five Points as a whole.⁹

13. In determining suitability, it is also proper for the court to consider any evidence that demonstrates the adverse effect the location will have on the community. . *Palmer v. S.C. Alcohol Beverage Control Comm'n*, 282 S.C. 246, 317 S.E.2d 476 (Ct. App 1984). “A liquor license or permit may also be properly refused on the ground that the location of the establishment would adversely affect the public interest, that the nature of the neighborhood and of the premises is such that the establishment would be detrimental to the welfare ... of the inhabitants, or that the manner of conducting the establishment would not be conducive to the general welfare of the community.” 48 C.J.S. *Intoxicating Liquors* § 168 at 366 (2013). In *Palmer*, the Court of Appeals recognized a location’s proximity to other locations “where young people congregate and loiter” as a point warranting consideration when determining suitability. *Id.* at 250, 317 S.E.2d at 478.

14. The testimony of two residents from neighborhoods adjacent to Five Points established that crowds of young people gather in the area, sometimes to the point where sidewalks become too crowded and patrons spill out onto the streets. Many of these young people are intoxicated, creating a risk to their own safety as well as that of others. Litter, noise, parking problems, public intoxication, obnoxious behavior, and overall disturbances of the peace of nearby residents are not simply grievances important only to those affected residents; they are problems the Court evaluates with serious consideration and concern. These neighborhoods are important historical areas vital to downtown Columbia and residents should have quiet enjoyment of their properties without interference.

15. On the other hand, the Court must also recognize that while Protestant Armstrong and Intervenor Dretnan provided compelling testimony as to the nuisance behavior associated with Five Points in general, there is, at best, very limited evidence showing that this particular location is unsuitable for licensure. In fact, the only Protestant who has seen problematic intoxicated individuals travel to and from her neighborhood directly into or out of Group Therapy acknowledged that those individuals were likely also visiting other businesses, as well. Testifying

⁹ Despite the fact that USC freshmen report significantly higher levels of alcohol consumption than others in the SEC and nation, the Court simply notes that as of January 1, 2020, USC allows for and profits from the sale of alcohol at athletic events. To deter underage drinking, Shook testified that USC will be utilizing the same identification scanner technology employed by Group Therapy.

that she had no direct complaints with Group Therapy or its owners, Armstrong is, instead, dissatisfied with Five Points patrons as a whole, including those who visit Group Therapy.

16. While considering the valid protests of those in neighboring communities, the Court must also recognize that Five Points is currently celebrating 100 years as a primary hospitality district that is touted as a Columbia attraction frequented daily by visitors, non-student residents, and, most certainly, college students who attend school at USC, Benedict, and Allen, all located within walking distance of the area. Although there are undoubtedly problems associated with the area, there are also benefits that the Court finds important to weigh in this matter.

17. In attempting to achieve a balance, the Court echoes the end goal espoused by Chief Holbrook wherein young adults have an area in which to socialize so long as patrons and businesses both act responsibly. The Court also places weight on Chief Holbrook's testimony that many of the problems in Five Points can be alleviated by businesses refusing entry and/or service to those under twenty-one.

18. From testimony at the hearing, it is evident that Group Therapy has maintained a reputation for peace and good order in the community which can be attributed directly to Taneyhill's positive relationship with law enforcement and his willingness to take steps designed to address and mitigate problems at their request. At the hearing, Taneyhill also informed the Court of his willingness to meet with concerned neighbors, to implement additional measures to relieve strain on law enforcement, and to operate his establishment according to higher standards.

19. Accordingly, after carefully weighing the evidence and applying the law in this matter, the Court finds the location to be suitable for licensure renewal so long as Petitioner continues to meet all necessary statutory requirements along with the following conditions ordered to ensure that the location is operated responsibly and according to best practices:

- 1) Within ninety days of the date of this Order, Petitioner must secure two additional Intellicheck Age ID® scanners to verify the identification cards of anyone entering the establishment. The utilization of all three scanners should prevent underage patrons from entering the establishment and should also help to alleviate the back-up in the line of patrons waiting to enter the premises.

- 2) Within forty-five days of the date of this Order, Petitioner must designate a manager(s) who will be responsible for the operation of the establishment according to best practices when he is not present. To enhance communication with law enforcement and the public, the acting manager must be easily identifiable by all employees during any particular shift.

CONCLUSION

Based upon the foregoing Findings of Fact and Conclusions of Law, the Court finds that the location at 2107 Greene Street, Columbia, South Carolina, 29205 is suitable for the renewal of Petitioner's on-premises beer and wine permit and restaurant liquor by the drink license.

ORDER

IT IS HEREBY ORDERED that Respondent shall issue to Petitioner the on-premises beer and wine permit and restaurant liquor by the drink license for the location described in the application for renewal.

AND IT IS SO ORDERED.



SHIRLEY C. ROBINSON
South Carolina Administrative Law Judge

April 29, 2020
Columbia, South Carolina

CERTIFICATE OF SERVICE

I, Ti'a Smith, 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).



Ti'a Smith
Judicial Law Clerk

April 29, 2020
Columbia, South Carolina

RECEIVED

MAY 28 2020

SC Court of Appeals