

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Bliss Columbia, LLC d/b/a Tryst)
)
 Petitioner,)
)
 vs.)
)
 South Carolina Department of Revenue,)
)
 Respondent.)
)
 Kathleen McDaniel,)
)
 Intervenor.)
 _____)

Docket No. 17-ALJ-17-0119-CC

FINAL ORDER

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Jul 10 2020

SC Court of Appeals

This matter is before the South Carolina Administrative Law Court (“ALC” or “Court”) pursuant to a request for a contested case hearing by Bliss Columbia, LLC d/b/a Tryst (“Petitioner”) regarding the denial of its application for an on-premises beer and wine permit (“Permit”) and restaurant liquor by the drink license (“License”) by the South Carolina Department of Revenue (“Department” or “Respondent”).¹

Petitioner filed its application on November 16, 2016. However, because of public protests filed against the issuance of the Permit and License, the Department denied the issuance of the Permit and License on February 6, 2017. Petitioner protested the denial on March 27, 2017, and Respondent issued its Department Determination on April 11, 2017, upholding the denial. A hearing was held on July 11, 2017, at the ALC in Columbia, South Carolina.

FINDINGS OF FACT

Having observed the witnesses and exhibits presented at the hearing and passed upon their credibility, taking into consideration each party’s burden of proof, the Court makes the following Findings of Fact by a preponderance of the evidence.

¹ The restaurant liquor by the drink application was withdrawn and is not before the Court.

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Notice of the time, date, place, and subject matter of the hearing was timely given to the parties, the intervenor, and protestants. Alexander Vrolijk (“Vrolijk”) testified on behalf of Petitioner, Kathleen McDaniel (“McDaniel”) participated and testified as an Intervenor,² and Britton All (“All”) and Captain Joseph J. Odom (“Odom”) of the Richland County Sheriff’s Department testified as protestants in this matter.

Petitioner’s location is 3722 River Drive, Columbia, South Carolina, in the Earlewood Neighborhood, and is owned by Bliss Columbia, LLC. Petitioner executed a lease on the property on November 1, 2015, and subsequently made minor, non-structural, improvements in preparation for its operation.³ Thirty-two security cameras were also installed that allow interior and exterior monitoring. Petitioner was unaware of the property’s history of criminal activity, including violence, until it began the permitting and licensing process.

Vrolijk testified that upon learning of the protests and concerns raised by the Intervenor and law enforcement, he decided to withdraw his application for a restaurant liquor by the drink license and elected not to operate a sexually oriented business. He plans to operate a restaurant that will allow customers under twenty-one and will be open seven days a week. Employees will be trained to prevent underage drinking. He will have shift managers and security personnel and plans to use security training offered by SLED. He will not permit littering and loitering and will pursue a “safe serve certification” in order to avoid impaired drivers. Petitioner also stated that more than 25% of needed the needed capital comes from two investors

McDaniel testified she has resided at her current Earlewood address since 2008 and she presently serves as the president of the community association. McDaniel stated that the neighborhood would welcome a family restaurant but did not want another sexually oriented business that would attract crime and violence. She toured the premises with Petitioner and found them clean and in good repair. She asked that the order in this case reflect Petitioner’s testimony that he does not intend to operate a sexually oriented business.

² Kathleen McDaniel filed a Motion for Leave to Intervene with the Court on June 20, 2017, which was granted on July 6, 2017.

³ Petitioner’s application submitted to the Department included a copy of its lease which stated the premises were “to be used for the purposes of a lawful Sexually Oriented Business serving alcohol.”

All and Odom, the protestants, testified that previous businesses in the location were hubs for crime and violence until the last business's forced closure in 2012. They also raised concerns about parking but believed Petitioner wanted to do the right thing. Both also requested that any order allowing a restaurant serving beer and wine to operate at the location would include measures to allow holding the Petitioner accountable.

Petitioner, through his attorney, agreed to limit hours of operation from 11:00 A.M. to 12:00 A.M. (midnight), and agreed that the restaurant would not operate as a sexually oriented business.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, the Court concludes the following as a matter of law. The ALC has jurisdiction in this matter pursuant to S.C. Code Ann. § 61-2-260 (2009) and S.C. Code Ann. § 1-23-600 (Supp. 2015). *See Palmer v. S.C. Alcoholic Beverage Control Comm'n*, 282 S.C. 246, 248, 317 S.E.2d 476, 477 (Ct. App. 1984) (“[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....”).

Licenses and permits issued by the state for the sale of beer, wine, and liquor are not rights of property, but are rather privileges granted in the exercise of the police power of the State. *Wall v. S.C. Alcohol Beverage Control Comm'n*, 269 S.C. 13, 15, 235 S.E.2d 806, 807 (1977).

S.C. Code Ann. § 61-4-520 (2009) sets forth the specific requirements for issuance of a beer and wine permit. S.C. Code Ann. § 61-4-520(1) provides that “[t]he applicant, a partner, or co-shareholder of the applicant, and each agent, employee, and servant of the applicant to be employed on the licensed premises are of good moral character.” S.C. Code Ann. § 61-4-520(5) further provides that the location of the proposed place of business must be a “proper one.”

The question before the Court is whether Petitioner will be permitted to sell beer and wine for on-premises consumption. S.C. Code Ann. § 61-4-520 vests the ALC, as the trier of fact, with the authority to determine if the applicant's proposed place of business is proper. *See Fast Stops, Inc. v. Ingram*, 276 S.C. 593, 595-96, 281 S.E.2d 118, 119-20 (1981). The determination of proper location involves many considerations related to the nature of the proposed business and its impact on the community. *Kearney v. Allen*, 287 S.C. 324, 327, 338 S.E.2d 335, 337 (1985). Also relevant

to the determination is whether the proposed location has been previously approved for a permit or license. *See Smith v. Pratt*, 258 S.C. 504, 508, 189 S.E.2d 301, 302 (1972). Further, the burden to law enforcement is relevant to the determination of suitability of location. *Palmer*, 282 S.C. at 250, 317 S.E.2d at 478 (“The findings...that there have been law enforcement problems in the area, support the conclusion that the location is unsuitable for the sale of cold beer and wine.”).

However, a protest alone is not a sufficient reason to deny an application for a license or permit. The denial of a license or permit to an application 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 not supported by the facts. *Taylor*, 261 S.C. at 171, 198 S.E.2d at 802. A license or permit application will be granted if the statutory criteria are satisfied.

The ALC is very concerned with the rights and welfare of those who live near Petitioner’s business as well as the potential impact on law enforcement. As a condition of the issuance of the permit, Petitioner must abide by the restrictions to which the applicant has agreed. Specifically, Petitioner will only operate from 11:00 A.M. to 12:00 A.M. (midnight) and will not operate as a sexually oriented business. Furthermore, as provided in S.C. Code Ann. Regs. 7-200.1 (I) (2011):

Any written stipulation and/or agreement which is voluntarily entered into by an applicant for a permit or license between the applicant and the Department, if accepted by the Department, will be incorporated into the basic requirements for the enjoyment and privilege of obtaining and retaining the permit or license and shall have the same effect as any and all laws and any and all other regulations pertaining to the permit or license. Knowing violation of the terms of the stipulation or agreement shall constitute sufficient grounds to revoke said license.

Also, under S.C. Code Ann. § 61-4-590 (2009):

The department may, on its own initiative or on complaint signed and sworn to by two or more freeholders resident for the preceding six months in the community in which the licensed premises are located or by a local peace officer, all of whom are charged with the duty of reporting immediately to the department a violation of the provisions of Section 61-4-580, revoke or suspend the permit pursuant to the South Carolina Revenue Procedures Act.

Therefore, Petitioner has a continuing obligation to the community to uphold to the standards imposed by the laws of South Carolina.

While the Protestants raised valid concerns about the issuance of an on-premises beer and wine permit, the ALC concludes that this location is suitable for a permit with the imposition of restrictions on the hours of operation and on the nature of the business.

ORDER

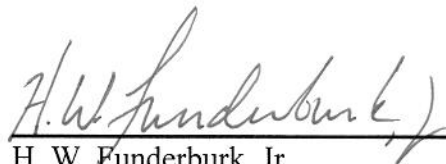
Based upon the above Findings of Fact and Conclusions of Law, it is hereby:

ORDERED that Petitioner's application for an on-premises beer and wine permit be **REMANDED** to the Department to grant the permit provided the following conditions are met:

- (1) Petitioner and the Department shall enter into a written agreement that the permit incorporates the restrictions that Bliss Columbia will operate as a restaurant and may sell beer and wine for on-premises consumption from 11:00 A.M. to 12:00 A.M. (midnight) and will not operate as a sexually oriented business at 3722 River Road, Columbia, South Carolina 29201.
- (2) The Department shall determine that any partners, co-shareholders of the applicant, and each agent, employee, and servant of the applicant to be employed on the licensed premises are of good moral character.
- (3) The Department shall conduct a final inspection of the premises.

IT IS FURTHER ORDERED that a failure to conform with the conditions stated above will be considered a violation against the Permit and may result in a fine, suspension, or revocation of the Permit.

AND IT IS SO ORDERED.



H. W. Funderburk, Jr.
Administrative Law Judge

July 26, 2017
Columbia, South Carolina

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CERTIFICATE OF SERVICE


I, Julia M. Miller, 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).

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July 26, 2017
Columbia, S.C.



Julia M. Miller
Judicial Law Clerk

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