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SC Court of Appeals

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

RM & Sons, LLC, d/b/a Anderson Liquor,

Docket No. 20-ALJ-17-0177-CC

Petitioner,

vs.

FINAL ORDER

South Carolina Department of Revenue and
City of Anderson,

Respondents.

APPEARANCES: For the Petitioner: Kenneth E. Allen, Esq.
For the Department: Patrick A. McCabe, Esq.
For the Intervenor: J. Franklin McClain, Esq.

STATEMENT OF THE CASE

This case is before the Administrative Law Court (ALC or court) pursuant to a request for a contested case hearing filed by RM & Sons, LLC, d/b/a Anderson Liquor (Petitioner or Anderson Liquor) on July 14, 2020. Anderson Liquor applied to the South Carolina Department of Revenue (Department) for a retail liquor license for its location at 1311 Williamston Road, Anderson, South Carolina (proposed location). Thereafter, the Department received a public protest to the proposed license from Chief James S. Stewart of the Anderson Police Department on the grounds that the proposed location was not suitable for licensure due to the high-crime area that surrounds it.¹ The Department denied the Petitioner's application based solely on the suitability of the location.

On August 24, 2020, the City of Anderson (City) filed a motion to intervene, which the court granted without objection on September 29, 2020.

A hearing in this matter was held on November 5, 2020, at the ALC in Columbia, South Carolina. After careful consideration of the evidence presented, the applicable law, and the

¹ Due to a clerical error, the Anderson Police Department did not have notice of the Petitioner's application initially. As a result, its protest was untimely filed with the Department and, therefore, invalid. That notwithstanding, the City of Anderson was later granted leave to intervene without objection and was able to file its protest in opposition to the Petitioner's license via its Chief of Police.

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concerns raised by the City, the court finds that the Petitioner's retail liquor license application should be granted, subject to the conditions set forth herein.

ISSUE

The only issue in dispute is the suitability of the Petitioner's location.

FINDINGS OF FACT

Having carefully considered all testimony, exhibits, and arguments presented at the hearing in this matter, and considering the credibility and accuracy of the evidence, the court makes the following findings of fact by a preponderance of the evidence:

1. On February 28, 2020, RM & Sons, LLC, d/b/a Anderson Liquor applied for a retail liquor store license for its proposed location at 1311 Williamston Road, Anderson, South Carolina.
2. On April 10, 2020, the Department received a letter from Mr. Tony Stewart, then Pro-Tem Mayor of the City of Anderson, expressing concern about the suitability of the proposed location. According to Mr. Stewart, the proposed location is in a high-crime area with gang activity. Mr. Stewart stated that he believed the sale of alcoholic liquor would adversely affect the welfare of the surrounding community.
3. On April 15, 2020, the Department received a protest form from Chief James Stewart² of the Anderson Police Department. Chief Stewart expressed his concerns about the suitability of the proposed location based upon the numerous service calls in the surrounding area. According to CAD reports from Anderson County Emergency Services submitted with his protest, the area surrounding the proposed location received 749 calls for service in 2019, including for seven sexual assaults, twelve overdoses, five shootings, and three murders.
4. By letter dated April 29, 2020, the Department conditionally denied the Petitioner's license application.
5. On May 6, 2020, the Petitioner timely protested the denial of the license to the Department.
6. On July 8, 2020, the Department issued its determination denying the Petitioner's license application on the grounds that the proposed location is unsuitable. Specifically, the Department found that the proposed location: (a) is within close proximity of two churches

² Chief Stewart bears no relation to Mr. Stewart.

and low-income housing; (b) is in a high-crime area with ongoing gang activity; (c) is a constant strain on law enforcement, as evidence by the 749 calls for service to that location; (d) would increase calls for service if its license was granted due to the “increase in loitering, littering, and crime that normally accompany the operation of a liquor store”; and (e) if granted the license it seeks, “would create a situation that is not conducive to the health, safety, and welfare of the community.”

7. At the hearing, Raj Patel and Ken Blakely testified on behalf of the Petitioner. Mr. Patel is the owner of the proposed location and manager of a Shell fueling station and convenience store located across the street that is owned by his grandmother. Mr. Patel testified that he has managed the neighboring Shell station since his grandmother purchased it five years ago. He testified that the Shell station, which holds a valid beer and wine permit, has not incurred a single alcohol warning or violation during his tenure as manager, nor has it had any criminal issues with its three employees.³ Mr. Patel stated that this is due in part to the location providing alcohol training for all staff, and age verification equipment at the register. He further stated that, because he primarily serves repeat, local customers, he is acquainted with roughly 95% of his customer base. These repeat customers are law abiding citizens who do not cause problems at the store.
8. As for the proposed location, he stated that the building operated as a convenience store and check cashing location prior to his purchase of the location. The location had an off premises consumption beer and wine permit for at least some of the time it operated. Mr. Patel testified that, after acquiring the location, he invested roughly \$250,000 of his own money to undertake major renovations to the building’s structure, repave the parking lot, add lighting, and landscape the exterior. Mr. Patel stated that, as a part of this process, the building was divided in half and that only one half would be used as the liquor store, with the remaining half being allocated to storage. He testified that he would manage the store himself and would not allow littering, loitering, or any other criminal activity at the business. Mr. Patel stated that the store, which will close no later 7 p.m. daily and will not be open on Sundays, will also have a security system with cameras, electronic age verification equipment, and that all of its employees would undergo alcohol training. To

³ Mr. Patel noted that the City did not protest the issuance of the permit to the Shell station after his grandmother acquired the building, nor have they protested any of the subsequent renewals of that permit.

that point, Mr. Patel readily acknowledged that he understood his license and financial investment would be at risk if there were any compliance issues at the proposed location.

9. With respect to the character and suitability of the surrounding area, which is at the heart of the City's protest, Mr. Patel stated that, in addition to his grandmother's gas station located across the street, there is a motel (Southerner Motel) near the proposed location and an apartment complex (Fairview Garden Apartments) a few hundred yards down the road. When questioned about the Anderson Police Department's records of calls for service (CAD data) in the general vicinity of the proposed location, Mr. Patel acknowledged that there has been criminal activity in the area, including at the apartment complex and motel, but testified that he did not believe that the level of crime was abnormal, based on his experience. He further stated that, while the CAD data showed a number of calls to the location of the Shell station he manages, none of those calls originated from the Shell station, and he has never had any arrests or legal issues stemming from the store or its employees.
10. Mr. Blakely, who lives near the proposed location, frequents the Shell station and has become with familiar with Mr. Patel in the process. He testified that both he and his wife have come to know Mr. Patel quite well and have found him to be an upstanding citizen.⁴ Mr. Blakely stated that he had no doubt that Mr. Patel would responsibly manage the liquor store and that he would be comfortable patronizing the establishment. Regarding the suitability of the proposed location, he likewise acknowledged that the area has its share of crime, but stated that there is nothing unique about the proposed location. In fact, Mr. Blakely, who is retired from the Anderson Police Department, testified that the proposed location was not a burden on law enforcement during his time in the police department and he did not believe the location would be an undue burden on law enforcement if licensed. With respect to the CAD data, he stated that calls are generated based on the location entered when the report is made, even if it is simply where a traffic stop occurred, and that the location listed does not mean the business or occupants at that location were involved in any way. Thus, Mr. Blakely testified that calls for service to the Shell station for things such as domestic issues are not reflective of or fairly attributable to Mr. Patel or the

⁴ Mr. Blakely noted that he was not under subpoena, but rather appeared voluntarily at the hearing to testify on behalf of the Petitioner.

Petitioner. As for the motel and apartment complex, he opined that the calls for service to those locations are on par with similar facilities in Anderson and that the proposed location was not in a higher crime area than other areas.

11. For the Department, Shayna Thompson testified. Ms. Thompson works at the Department as an Alcoholic Beverage Licensing (ABL) analyst, the tasks for which include reviewing ABL applications for approval or denial. As a part of that process, she stated that she reviews all documents submitted with the application, including leases, public protests, and law enforcement input. Ms. Thompson testified that, in this case, there were protests against the license submitted by the Mayor Pro Tem of Anderson and the Anderson Police Department that raised concerns regarding the suitability of the proposed location. Although the police department's protest was untimely, she nevertheless considered CAD logs submitted with the protest as evidence of unsuitability. Ms. Thompson determined that the level of calls for service in the general vicinity of the proposed location casts doubt on the suitability of the location and, consequently, denied the permit.
12. Finally, Chief James Stewart and Tony Stewart testified on behalf of the City. Chief Stewart has been with the Anderson Police Department for twenty-nine years and has served as Chief since 2012. He testified that he considers the surrounding area a high-crime zone and was concerned with the proposed location's proximity to Anderson University, two churches, and a day care center. Chief Stewart testified that 2019 CAD data for a section of Williamston Road revealed a total of 1022 calls for service, including 749 from the Fairview apartments, 151 from the Southerner Motel, 53 from a C & L Quick Stop, and 69 from the Shell station managed by Mr. Patel.⁵ Of those 1022 calls for service to the general area, 128 were for a domestic disturbance, seven were for sexual assaults, five were for shootings, and two were for murder.⁶ Chief Stewart stated, however, that he was not concerned with the number of calls to the C & L Quick Stop or Mr. Patel's Shell station, which he characterized as typical. Rather, he was concerned with the volume and type of calls to Fairview Apartments and the Southerner Motel.⁷ Chief Stewart testified that, from October 1, 2019, to October 27, 2020, the largest categories of offenses were

⁵ Chief Stewart noted that numbers for 2020 were lower as a result of the COVID-19 pandemic.

⁶ According to the data submitted by Chief Stewart, the two largest sources of calls for service were for "Keep Check" (19.3%) and "911 Hang-up/Open Line" (14.8%).

⁷ Chief Stewart noted that his office is also protesting the license of a bar located across from Fairview Apartments.

simple assaults, followed by drug/narcotics, and larceny/theft, which he opined would all be perpetuated by the addition of another establishment selling liquor.⁸ Nevertheless, Chief Stewart stated that he has no issues with Mr. Patel or his Shell station and conceded that without Fairview Apartments or the Southerner in the equation, he would not have protested the Petitioner's license. His principal concern is with crime at the Fairview Apartments, though he acknowledged that the Fairview is not unique in that regard. Chief Stewart further acknowledged that the two churches in the vicinity, neither of which protested the instant license, are outside of the statutorily prescribed distance parameters.⁹

13. Mr. Stewart is a former Mayor Pro Tem of Anderson and current owner of a telecom site management company. Additionally, he presently serves as a City of Anderson council member representing the district that includes the proposed location. Mr. Stewart similarly testified that, while he had nothing against Mr. Patel specifically, he was concerned with the suitability of the proposed location in light of the crime in the general area. He stated that people elected him to clean up the community and he believes that the Petitioner's establishment would contribute to the "social ills" he has sought to clean up for twenty-four years.

CONCLUSIONS OF LAW

Based upon the above findings of fact, the court concludes the following as a matter of law:

1. Section 1-23-600 of the South Carolina Code grants jurisdiction to this court to hear contested cases under the Administrative Procedures Act. S.C. Code Ann. § 1-23-600 (Supp. 2019). Specifically, Section 61-2-260 grants the ALC the authority to hold contested case hearings in matters governing alcoholic beverages, beer, and wine. S.C. Code Ann. § 61-2-260 (2009).
2. Unless otherwise required by law, the standard of proof in an administrative proceeding, such as this, is by a preponderance of the evidence. S.C. Code Ann. § 1-23-600(A)(5); *Anonymous (M-156-90) v. State Bd. of Med. Exam'rs*, 329 S.C. 371, 375, 496 S.E.2d 17, 19 (1998). A 'preponderance of the evidence' is evidence which convinces as to its truth.

⁸ Chief Stewart stated that, had the Petitioner applied for a beer and wine permit instead of a liquor license, he would have to "go back and look at the data" to determine whether he would have protested the application.

⁹ See S.C. Code Ann. § 61-6-120(A) (Supp. 2019) (stating that the Department shall deny a liquor license application if "if the place of business is . . . within five hundred feet of any church, school, or playground situated outside of a municipality.").

Frazier v. Frazier, 228 S.C. 149, 168, 89 S.E.2d 225, 235 (1955). An applicant for a liquor license has the burden of proving it meets all the statutory requirements for licensure. 48 C.J.S. *Intoxicating Liquors* § 186 (September 2020 Update).

3. In this state, the requirements for retail liquor licenses are set forth in Section 61-6-110 and Section 61-6-910 of the South Carolina Code. S.C. Code Ann. § 61-6-110 (2009); S.C. Code Ann. § 61-6-910 (2009).
4. Section 61-6-910 instructs, among other things, that a liquor license application must be refused if “the store or place of business to be occupied by the applicant is not a suitable place” S.C. Code Ann. § 61-6-910(2). Yet, the statute does not set forth what constitutes a suitable place, nor does it contain any requirements that a location must meet in order to be deemed suitable. Accordingly, broad discretion is vested in the trier of fact to determine the suitability of a particular location for licensure. *See Fast Stops, Inc. v. Ingram*, 276 S.C. 593, 595-96, 281 S.E.2d 118, 120 (1981). The “determination of suitability is not solely a function of geography,” rather, “[i]t 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.” *Kearney v. Allen*, 287 S.C. 324, 326-27, 338 S.E.2d 335, 337 (1985).
5. Additionally, qualifying members of the public may formally object to the issuance of a retail liquor license by tendering a valid protest to the Department in accordance with the applicable filing requirements. *See* S.C. Code Ann. § 61-6-185(A) (2009); *see also* S.C. Code Ann. Regs. 7-201 (2011) (providing additional information on the protest requirements set forth in Section 61-6-185).
6. The mere fact that a permit or license is protested, however, is not a sufficient reason, by itself, to deny an application. Protests founded upon opinions, generalities, and conclusions that are not supported by evidence, or that are based upon purely speculative concerns, do not provide an adequate basis for the denial of a permit. *See, e.g., Taylor v. Lewis*, 261 S.C. 168, 171, 198 S.E.2d 801, 802 (1973). Rather, in the absence of a sufficient reason to deny the application, “[a]n applicant who meets, or complies with, the statutory requirements is entitled to the issuance of a license or permit” 48 C.J.S. *Intoxicating Liquors* § 194 (September 2020 Update).

OPINION

The sole disputed issue in this case is the suitability of the Petitioner's proposed location given the City's concerns regarding criminal activity in the vicinity. The concerns of Chief Stewart and Mr. Stewart are premised on the belief that the liquor sold by the Petitioner, if granted the license, would contribute to an increase in crime and undesirable activity in an area that is already marred by a high level of crime. However, neither Chief Stewart nor Mr. Stewart have specific concerns about Mr. Patel or his proposed liquor establishment. Rather, they are concerned about the adverse impacts that his liquor store would have on activity at the Fairview Apartments and the Southerner Motel. While this court understands and appreciates the concerns raised by the City, and the efforts made by Chief Stewart and Mr. Stewart in the interest of community safety of the citizens they represent, as set forth below, there is insufficient evidence that the proposed location would not be suitable for the retail liquor license it seeks.

Here, the court thoroughly considered the testimony and data presented on the criminal activity in the area. The designation of the area around the proposed location as a hotspot for criminal activity was not sufficiently developed at the hearing. While Chief Stewart testified that area around Williamston Road, including Fairview Apartments and the Southerner Motel, is a high-crime area, there was nothing presented at the hearing to contextualize the number of calls for service near the proposed location with calls made in other locations in Anderson. Without that information, this court is unable to determine whether the calls for service on Williamston Road account for five percent or fifty percent of the City's total call volume, or whether the type or volume of calls for service in the area around the location are disproportionate to other parts of the city. Thus, while the court accepts the Chief's assessment that it is a high crime area, without some evidence of how dangerous it is compared to other parts of the city, the weight the court attaches to that designation is diminished.

Moreover, even if the vicinity of a proposed location is deemed a high crime area when considering the general character of the neighborhood, that does not end the inquiry.¹⁰ While there was ample testimony at the hearing on drug offenses, assaults, weapons charges, murder, etc., there was nothing presented linking alcohol to those offenses. There was also nothing to suggest that

¹⁰ As an aside, there was also mention of several churches, a school, and a daycare center being in the vicinity of the proposed location. The mere fact that there are churches, universities, and/or childcare facilities in the general area, however, does not make a location unsuitable for the possession of a liquor license. There are minimum distance parameters set forth in statute and, provided an establishment is outside of those prescribed distances, a license must be granted. See S.C. Code Ann. § 61-6-120(A). Here, no argument was made by any party that the proposed location is within the prohibited distance from the childcare center, the churches, or Anderson University.

the specific proposed location has been a source of criminal activity. In fact, Chief Stewart noted that the Shell station managed by Mr. Patel has not been the source of an inordinate amount of calls for service and that he was not particularly concerned with the proposed location itself. Rather, the City's concern is that placing a liquor store in a low-income, high-crime area would be like "putting gasoline on a fire." However, there was no evidence submitted at the hearing to substantiate this claim. The Shell station managed by Mr. Patel directly across from the proposed location sells beer and wine until 10 p.m., the proposed location has possessed a beer and wine permit in the past, and there was – until this year – a bar across the street from Fairview Apartments that sold liquor by the drink late into the night. Conversely, Anderson Liquor, the proposed location, will have to close by 7 p.m. every night and will not be open on Sundays. Thus, given that there has been no shortage of locations offering intoxicating beverages for purchase near the proposed location, it is difficult to see how the addition of the Petitioner's proposed establishment with more limited hours would bring about an increase in crime that is feared by the City.

Furthermore, Mr. Patel himself is, by all accounts, a careful manager and law-abiding citizen who has operated a neighboring permitted facility for five years without issue. He has invested a large sum of money to remodel and improve the proposed location for licensure as well. Mr. Patel understands his substantial investment in the location, and the risk of forfeiting all of that if he were to incur any alcohol violations at the proposed facility. He has every reason to operate a safe and lawful operation, and the court cannot hold him responsible for the unlawful or unsafe actions some patrons may choose to engage in at other locations such as the Fairview Apartments or the Southerner Motel. This is especially true when the evidence presented to the court drew absolutely no connection between the sale of alcoholic beverages at the existing licensed entities, and the reported criminal activity in the area. Consequently, in view of the above, the court finds insufficient evidence that the proposed location is unsuitable for licensure.

A review of case law on this subject further supports such a finding. In *Kezo Quick Stop*, an applicant's beer and wine permit was similarly protested by the City of Anderson on suitability grounds. See *Tsegay Haile, d/b/a Kezo Quick Stop v. S.C. Dep't of Revenue*, Docket No. 17-ALJ-17-0372-CC at *1 (S.C. Admin. Law Ct. April 11, 2018). Specifically, it was alleged in that case that the proposed location was not suitable for permitting because: (1) there were over 700 calls for service in a five-block radius of the proposed location; (2) six of those calls for service were for criminal offenses that occurred at the proposed location itself, including a murder in the parking

lot, shots fired, receiving and possessing stolen goods, and larceny; (3) one of the six incidents at the proposed location involved the stealing of the Petitioner's own handgun, which he kept for personal protection; (4) there was a school for at-risk children in the immediate vicinity; (5) there had been an noticeable improvement in conditions since the Petitioner's facility had its renewal application declined; and (6) the specific location had twice previously been found unsuitable for permitting by this court. *See id.* at *3-5. The court denied the permit upon finding that "area immediately surrounding the Petitioner's store is the site of frequent criminal activity" and that "criminal activity around the location [was] worse when the location was licensed to sell beer and wine." *Id.* at *8-9. In doing so, the court highlighted the fact that the Petitioner's store itself "was the site of a murder, one report of shots being fired, larceny of the Petitioner's own handgun from the premises, and three other offenses." *Id.*

The circumstances in the present case are notably different than those in *Kezo Quick Stop*. While the Petitioner's location is similarly bordered by higher-crime areas, the site itself has not been the source of any criminal activity and there is no evidence that the neighboring areas have experienced an uptick in crime as a direct consequence of Mr. Patel's convenience store receiving its beer and wine permit. What is more, there is no evidence of a reduction in crime when the former permitted business at the proposed location closed or when the bar across from Fairview Apartments ceased operations. This further supports a finding of suitability in this case.

In sum, neither the City nor the Department demonstrated that granting a liquor license to this applicant for this location would increase crime or that, without licensure, the area would be more safe. Some evidence of a nexus between the sale of alcohol and the crime rate would certainly have strengthened the City's argument, but there was nothing to show that by reducing the immediate availability of alcoholic beverages in the area, crime was or would be reduced. All of the evidence presented at the hearing suggests that the general vicinity is simply one with a higher rate of crime and that such is the case irrespective of whether the Petitioner receives a liquor license. There is, therefore, insufficient evidence of a correlation between the Petitioner's proposed alcohol sales and crime in the area to justify denying the license.

Nevertheless, the court is concerned about the criminal activity in the area. Therefore, while the court grants the Petitioner's license, its establishment must have interior and exterior security cameras with recording capabilities, and those recordings must be made available to law enforcement personnel upon reasonable request. Additionally, the parking lot must be well lit and

there must be "no loitering" signs displayed on the building's exterior, and such a policy must be enforced at all times the facility is open. This will require Mr. Patel or his staff to routinely police the parking lot and grounds to ensure that patrons are not loitering, littering, or engaging in other activity that may be criminal in nature, or that may lead to criminal activity occurring. Patrons must depart the premises immediately upon making their purchases.

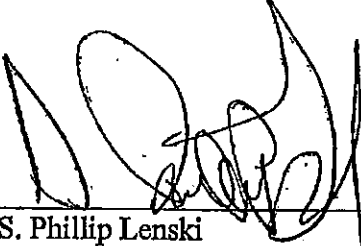
ORDER

Based upon the foregoing findings of fact and conclusions of law, the court finds that the Petitioner complies with the applicable requirements for licensure at its proposed location.

IT IS THEREFORE ORDERED that the Department shall **GRANT** the Petitioner's application for a retail liquor license for its location at 1311 Williamston Road, Anderson, South Carolina, subject to the conditions set forth herein.

AND IT IS SO ORDERED.

November 18, 2020
Columbia, South Carolina



S. Phillip Lenski
Administrative Law Judge

CERTIFICATE OF SERVICE

I, Emily B. Howard, 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).

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