

STATE OF CONNECTICUT

DEPARTMENT OF CONSUMER PROTECTION

In the Matter of

The Crushed Grape
Gregory Davies, Applicant
The Crushed Grape LLC, Backer
Permit No. LIP.14813
Case No. 2011-426

Docket No. 12-20
January 12, 2012

MEMORANDUM OF DECISION

This matter involves a new application for package store liquor permit for The Crushed Grape, 254 Melba Street, Milford, Connecticut. A formal administrative hearing was held before the Department of Consumer Protection, Liquor Control Commission, on December 1, 2011. Gregory Davies, applicant and sole member of the backer limited liability company, appeared. The agent for the remonstrants, Attorney Steven W. Studer, and a remonstrant appeared on behalf of the remonstrance to oppose the application.

The hearing was held in accordance with Section 30-39(c), Connecticut General Statutes, as a result of a legally sufficient remonstrance questioning the suitability of the applicant and of the proposed location for use as a package store. The issue of the applicant's suitability was withdrawn on May 6, 2011; therefore, the hearing was held on the issue of whether the location was suitable for a package store liquor permit. Based upon the evidence adduced at the hearing, we find the following facts:

Liquor Control Agent Anderson reviewed the pending application and found it to be in order. As part of his investigation, Agent Anderson visited the location three times, reviewed and took measurements of various establishments

in the neighborhood, including schools, religious institutions, and other liquor permit premises. The 2010 census allows 21 package store permits in Milford, and this pending application is the twenty-first. Agent Anderson's investigation revealed nothing questionable about the application, the applicant or the proposed location. Prior to 2007, there was an active druggist liquor permit for many years at this location. The liquor permit application has zoning approval and was approved by the Milford Zoning Official, Emmeline Harrigan, Assistant City Planner; such approval remains in effect and has not been withdrawn. Mr. Davies received site plan approval for the location from Milford on December 21, 2010 and received further approval from the City Planner, David B. Sulkis, AICP, on January 4, 2011. Agent Anderson had numerous contacts with city planning and zoning officials throughout his investigation, and no city official expressed concern with the utilization of 254 Melba Street as a package store.

A residential area is across the street and another retail plaza is nearby. The proposed location is within 300 feet of a city park, Point Beach Playground. Point Beach Playground has a basketball court; it is underutilized as a "playground" and is not normally used or maintained in the same manner as other city playgrounds. The determination of factual issues on conflicting testimony is within the province of the commission. Noyes v. Liquor Control Commission, 151 Conn. 524, 527, 200 A.2d 467 (1964). In view of its proximity to the Point Beach Playground, it was necessary for Mr. Davies to obtain approval for use of the proposed premises as a package store by the Milford Recreation Department; such approval was granted by Bill McCarthy, Recreation Director, on November 24, 2010, and the approval remains in effect.

One resident remonstrant testified and expressed concerns about the proximity of the proposed business to Point Beach Playground; he further testified his wife owns a package store liquor business approximately one mile from 254 Melba Street and within 130 feet from Welch's Point Playground, an active playground.

Counsel for the remonstrants argues for a different interpretation of the Milford zoning laws which would result in the conclusion that a package store liquor permit could not be issued for the premises. We have thoroughly reviewed the evidence presented at the hearing and considered the zoning issues. We find that the permit premises' location complies with the requirements of the Milford zoning ordinances and the granting of this package store permit is not prohibited by Sec. 30-44 of the Connecticut General Statutes. It is well established that the Commission has the authority to determine whether or not its issuance of a permit would result in the violation of a local zoning law. Town of Greenwich v. Liquor Control Commission, 191 Conn. 528, 469 A.2d 382 (1983).

The location is currently an unoccupied building in a state of disrepair. The applicant presented a petition signed by 530 nearby residents, all in support of the Crushed Grape at the location within 300 feet of the Point Beach Playground. The applicant's intent is to establish a package store with fine wines, spirits and craft beers within a previously vacant store. Mr. Davies has signified his commitment to the area and intends to make substantial improvements to the building.

It is well settled that the determination of whether a proposed location is suitable for a liquor permit rests with the Liquor Control Commission. Williams v. Liquor Control Commission, 175 Conn. 409, 399 A.2d 834 (1978).

Based upon the facts adduced at the hearing, we do not find substantial evidence of detrimental effects upon the neighborhood that would preclude the granting of a package store permit to The Crushed Grape; further we find that a package store permit premises at this location is not prohibited by Milford zoning ordinances. Thus, we hereby dismiss the remonstrance and grant the application for a package store permit for Gregory Davies and The Crushed Grape, subject to the agent's final requirements.

**DEPARTMENT OF CONSUMER PROTECTION
LIQUOR CONTROL COMMISSION
BY:**

Elisa A. Nahas, Esq.
Designated Presiding Officer

Angelo J. Faenza, Commissioner

Stephen R. Somma, Commissioner

Parties:

Gregory Davies, Applicant, 5 Graham Avenue, West Haven, CT 06516-5816
(Via US Mail and Certified Mail # 7010 1670 0000 0762 2348)

Steven W. Studer, Esq., Agent for Remonstrants, Berchem, Moses & Devlin, PC,
75 Broad Street, Milford, CT 06460
(Via US Mail and Certified Mail # 7010 1670 0000 0762 2348)

Non-Parties:

John Suchy, Director, Liquor Control Division
Connecticut Beverage Journal
Connecticut State Library, 231 Capitol Avenue, Hartford, CT 06106