

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

CYNTHIA J. MORRONE, : NO. 10 - 01,088
Plaintiff :
 : CIVIL ACTION - LAW
vs. :
 :
PA. LIQUOR CONTROL BOARD, :
Defendant : LIQUOR CONTROL BOARD APPEAL

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DAVID MILLER, : NO. 10 - 01,101
Plaintiff :
 : CIVIL ACTION - LAW
vs. :
 :
PA. LIQUOR CONTROL BOARD, :
Defendant : LIQUOR CONTROL BOARD APPEAL

OPINION AND ORDER

Before the Court are two appeals from the decision of the Pennsylvania Liquor Control Board dated May 13, 2010, which approved the Application of Pub It Always, Inc. for a place-to-place transfer of restaurant liquor license no. R-13395. A de novo hearing was held October 1, 2010.¹

Pub It Always, Inc. (hereinafter “Intervenor”²) filed an Application with the Pennsylvania Liquor Control Board to transfer its restaurant liquor license from the premises at 200 East Fourth Street to the premises at 164 East Fourth Street (one building west, across a street on the same side of East Fourth Street). Intervenor plans to demolish the apartment building currently at that site and construct a new, one-story building to house its establishment. Cynthia Morrone (hereinafter “Morrone”) objects to the transfer because she believes there will not be enough parking for the new business and because the new business

¹ The Court accepted as evidence the certified record of the proceedings before the Liquor Control Board on February 24, 2010, and also received further testimony offered by the parties.

² Pub It Always, Inc., as applicant below, was granted the right to intervene by Order dated July 19, 2010.

will compete with her own establishment at 200 East Fourth Street (Intervenor's former location). David Miller (hereinafter "Miller"), who owns a house at 139 East Willow Street,³ which is directly behind and one building over from the proposed new business, objects to the transfer because he fears noise and increased traffic will negatively affect him at his residence. After considering all of the evidence, the Court will dismiss both appeals.

As was noted by the Board in its opinion, an application for transfer of a liquor license must be denied if it is determined that the granting of the application would be detrimental to the health, welfare, peace and morals of the residents within five hundred feet of the new location. 47 P.S. Section 4-404. In making such a determination, the Court must consider the nature of the neighborhood and the nature of the proposed licensed premises. See K & K Enterprises, Inc. v. Pennsylvania Liquor Control Board, 602 A.2d 476 (1992).

Morrone's concerns that there will not be enough parking do not provide a basis to deny the application. Intervenor's plans include providing parking for 14 vehicles in a nearby parking lot, and the on-street parking will be available as well. The Court also notes Morrone's recent elimination of seven parking spaces at her own establishment,⁴ which diminishes the seriousness of her concern. With respect to her concern that the new business will compete with her own business, such simply does not come into play in the context of a liquor license transfer.

Miller's concerns that noise and increased traffic will negatively affect him are speculative at best, and thus also do not provide a basis on which to deny the application.⁵ Miller's house is situated directly behind an establishment known as The Sons of Italy, and thus he would be more likely to experience noise from that establishment, but the record shows that he has not complained of noise there in the past. Further, other houses and a few large trees block the view from Miller's house to the proposed new business⁶ and, in any event, the Liquor

³ Miller testified, however, that he does not live at that residence at this time as he is separated from his wife, although he also testified to plans to reconcile and return.

⁴ Morrone testified that she recently added an outdoor seating area in front of her establishment, which eliminated seven parking spaces in the front of the building.

⁵ A perceived threat to an area is not sufficient cause to deny an application. Arrington v. Pennsylvania Liquor Control Board, 667 A.2d 439 (Pa. Commw. 1995).

⁶ A site view conducted at Morrone's request provided this information.

Control Board has its own regulations regarding noise from licensed establishments, and thus this concern may be addressed in that manner.

As the neighborhood is 50% college facilities, 30% commercial and only 20% residential, the Court does not believe that approval of the transfer will negatively affect the residents in that neighborhood, and the objectors herein have failed to show otherwise. Accordingly, the Court will enter the following:

ORDER

AND NOW, this 5th day of October 2010, for the foregoing reasons, the appeals filed by Cynthia Morrone and David Miller are hereby dismissed, and the decision of the Pennsylvania Liquor Control Board, approving the application of Pub It Always, Inc. to transfer its restaurant liquor license No. R-13395 to premises located at 164 East Fourth Street, is hereby AFFIRMED.

BY THE COURT,

Dudley N. Anderson, Judge

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