



STATE OF DELAWARE
OFFICE OF THE ALCOHOLIC BEVERAGE CONTROL COMMISSIONER

CARVEL STATE BUILDING, 3RD FLOOR
820 NORTH FRENCH STREET
WILMINGTON, DELAWARE 19801

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TSG Hospitality, LLC
t/a The Chancery Market
1313 North Market Street
Wilmington, DE 19801
License No. 15617

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DECISION AND ORDER

Protested Application

SUMMARY OF EVIDENCE

1. The above entity (“Licensee”) holds a restaurant license issued by this Office, to include Sunday sales. The Licensee applied to this Office to amend its liquor license to include a patio permit for 4,650 square feet, and variances to the patio to permit live entertainment, external speakers or amplifiers, a paging system, and a wet bar.

2. A valid protest petition was filed against the application pursuant to 4 Del. C. § 543. A public hearing was held on April 20, 2023 in accordance with Delaware law.

3. Ciro Poppiti, III, Esquire, with the law firm of Lewis, Brisbois, Bisgaard & Smith, LLP, represented the Licensee. Mr. Scott Johnson appeared and testified as the Licensee’s authorized representative. Several persons who submitted a protest against the application also participated in the hearing.¹

¹ A “party” is defined by the Administrative Procedures Act as “each person or agency named or admitted in any agency proceeding as a party, or properly seeking and entitled as of right to be admitted as a party to an agency proceeding.” 29 Del. C. § 10102(g). A person acting as a “party” at a hearing would be evidenced by the person’s actual participation as a member of a group, testifying, cross-examining witnesses, and arguing a position. This Office determined the following, who were valid protestors, testified at the hearing and are parties to this matter: Eva Nagel, Gary Soulsman, and Jack Stango. *Newsome v. Delaware Alcoholic Beverage Control Comm.*, 1993 WL 258712 at *2 (Del. Super. July 1, 1993).

4. Mr. Johnson testified the patio and variances would not be open or operated later than the hours for the interior part of the restaurant. He testified that tenants are returning to their offices in the former Hercules building where the Licensee is located, and tenants and restaurant patrons want amenities. Mr. Johnson testified that the post pandemic world has increased the interest in outdoor seating. He testified that good cause exists for the wet bar with 8 bar seats because it will help Licensee meet this demand for outdoor seating and will allow patrons to enjoy outdoor entertainment activities including chess, checkers, and corn hole. Mr. Johnson testified there is good cause for live entertainment on the patio as patrons want and demand this feature. Mr. Johnson also testified that good cause exists for external speakers and amplification, and that the Licensee would not exceed the City of Wilmington's sound ordinance for residential zoning. Mr. Johnson described the live music Licensee intends to have as music persons might enjoy at a coffee house, with light amplification. Finally, Mr. Johnson testified that good cause exists for a non-obtrusive paging system, as those are needed for external communications with customers on the proposed patio.

5. Mr. Ryan Koch also testified on behalf of the Licensee. Mr. Koch testified that he is the general manager for the Licensee and is on the premises to oversee the day-to-day operations for Licensee. Mr. Koch testified that he takes the service and sale of alcohol seriously and would be available to neighbors who have concerns about noise from the establishment.

6. Several protestors testified about noise and hours of operation. Gary Soulsman testified as a protester, stating the word "protester" did not really apply to him because he enjoys the Licensee's premises. He testified that he wanted the Licensee to confirm on the record what its hours of operation would be for the restaurant and patio. The Licensee's representative, Mr. Johnson, confirmed the hours of operations for the restaurant and the patio, if approved, would be

the same: open until 9 p.m. Monday through Thursday; open until 10 p.m. Friday and Saturday; and open until 7 p.m. Sunday. The Licensee also testified it would first notify the three protestors of its intent to change the current operating hours before submitting a request to the Commissioner.

7. Eva Nagel and Joel Stango also testified as protesters and raised concerns about noise levels impacting the neighborhood. The Licensee agreed it would respond to neighbors' concerns about noise and would adhere to the City of Wilmington's municipal code as it relates to noise in areas zoned residential.

FINDINGS OF FACT

This Office makes the following findings of fact based upon the evidence presented, pursuant to 29 Del. C. § 10128(b)(2):

1. The Licensee's hours of operation are: open until 9 p.m. Monday through Thursday; open until 10 p.m. Friday and Saturday; and open until 7 p.m. on Sunday.

2. The Licensee agreed to notify the three protestors who participated in the hearing in advance of any intent to change its hours of operation before submitting such a request to this Office.

3. The Licensee agreed to address the neighbors' noise concerns and adhere to the City of Wilmington's residential noise ordinance.

CONCLUSIONS OF LAW

This Office makes the following legal conclusions pursuant to 29 Del. C. § 10128(b)(3):

1. The Commissioner may grant, refuse, or cancel licenses as required by the Delaware Liquor Control Act ("Act"), but she is not empowered to reject an application unless the applicant has failed to comply with statutory requirements or unless the Commissioner has reasonable grounds to believe that a statutory basis to refuse exists. 4 Del. C. § 543.

2. This Office concludes the Licensee has satisfied the legal standard of good cause for the requested patio permit and variances.

DECISION AND ORDER

IT IS THIS 28th day of April, 2023, the Decision and Order of this Office that the Licensee's application to amend its liquor license to include a patio, and for patio variances to include: external speakers or amplifiers, live entertainment, a paging system, and a wet bar with 8 bar seats is approved, with conditions that: 1) the Licensee will first notify the protestors of its intent to increase its hours of operation (currently until 9 p.m. Monday through Thursday; until 10 p.m. Friday and Saturday, and until 7 p.m. Sunday) before submitting a request to this Office; and 2) the Licensee will adhere to the City of Wilmington's residential noise ordinance.

IT IS SO ORDERED.



The Honorable Jacqueline Paradee Mette, Esq.
Commissioner

Right of Appeal

4 Del. C. § 304(b):

(b) The Commissioner's decision shall be final and conclusive unless, within 30 days after notice thereof has been mailed by the Commissioner's office, a party to such hearing files an appeal in the office of the Commissioner. Upon receipt of the appeal, the Commissioner shall cause the Chairperson of the Appeals Commission to be advised of the pending appeal and the Chairperson shall cause the Commission to be convened with at least 20 days' notice to all parties. The appeal shall be heard by the Appeals Commission, who shall, in accordance with the Administrative Procedures Act, Title 29 of the Delaware Code, review the matter on the record and affirm, reverse or modify the decision of the Commissioner.