



STATE OF DELAWARE
OFFICE OF THE ALCOHOLIC BEVERAGE CONTROL COMMISSIONER

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

TELEPHONE: (302) 5775-ABC (222)
FAX: (302) 577-3204

Shivam, GT, LLC
t/a Delaware Liquor Emporium
110-200 East Street (current address)
150 King Boulevard (future address)
Camden, DE 19934

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DECISION AND ORDER
Protested Application

SUMMARY OF EVIDENCE

1. The above entity (“Applicant”) applied for a package store liquor license, to include Sunday sales.¹

2. The Office received a protest petition against the application, but the Office was unable to verify the requisite 10 residents or property owners within 1 mile of the proposed premises, as required by the Delaware Liquor Control Act, because of absent or illegible addresses. Additionally, some protestors with legible addresses were not within one mile. This Office, in its discretion, held a public hearing in accordance with Delaware law at 5 p.m. on May 31, 2023. See 4 Del. C. § 543.

3. James P. Becker, Esquire, and Zachary A. George, Esquire, with the law firm of Hudson, Jones, Jaywork & Fisher, LLC, represented the Applicant. Mr. Jignesh Patel appeared as the Applicant’s authorized representative.

4. Mr. Rushabh Maniar pre-registered to testify at the hearing to protest the application.²

¹ The assigned license number, once activated, is No. 15479. This is the second application for a package store at this proposed location. A decision on the first application was issued by the former Commissioner in August 2021.

² 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

5. Exhibits 1 through 36 were noted for the record.

6. As a preliminary matter, this Office determined that additional documents from the Applicant submitted the day before and on the day of the hearing, after the noticed deadline for submission, would not be considered to maintain procedural fairness. In addition, this Office decided that an Applicant witness who tried to register to testify after the noticed deadline, would not be allowed to speak, also to maintain procedural fairness.³

7. Mr. Jignesh Patel testified the proposed 7,000 square foot store will be larger compared to other liquor stores in the area. The store will be advantageous for customers as it will offer a greater selection of beers, wines, and liquors and lower prices for products resulting from bulk quantity purchases. The proposed store will be located on a now-vacant parcel next to Grotto's Pizza and Wawa on East Street in Camden, Delaware.⁴ Mr. Patel testified the landlord informed him that the actual address for the store will be 150 King Boulevard, Camden, Delaware. He also testified the closest existing liquor store is approximately .7 of a mile away.

actual participation as a member of a group, testifying, cross-examining witnesses, and arguing a position. In cross-examination by Applicant's counsel during the hearing, Mr. Maniar testified he did not reside within one mile of the proposed premises, and his family's package store business is located within .9 of a mile of the Applicant's proposed store. Given the unique posture and facts of this case, this Office determined Mr. Maniar is a "party" but subject to appropriate evidentiary weight, if any, being afforded to his testimony. *Newsome v. Delaware Alcoholic Beverage Control Comm.*, 1993 WL 258712 at *2 (Del. Super. July 1, 1993).

³ Applicant's counsel stated he had no record of receiving notice of the deadlines for exhibit submission and witness pre-registration. Counsel argued that the previous practice of the former Commissioner allowed for submissions up through the day before a hearing. Staff with this Office confirmed that notification of the deadlines was sent to verified email addresses of counsel on file with this Office on April 24, 2023 at approximately 8:24 a.m. In addition, this Office's practice for the approximate past two years has been to establish pre-hearing deadlines to ensure proper uploading of documents for viewing and afford sufficient time for those who wish to prepare for and participate in a hearing to review the documents.

Applicant's counsel also argued one of their witnesses tried but had been unable to pre-register because of technical problems and was not afforded the same opportunity as a witness against the application to testify. Applicant's witness did not contact the Office to explain the difficulty and seek assistance with registration. This Office confirmed that a witness who attempts to actively pre-register before the deadline to testify, but is unable to do so because of technical difficulties and who contacts the Office before the deadline, is assisted and allowed to testify. If a witness does not do so, they are not permitted to testify. This also has been the Office's procedure since September 2021. Accordingly, this Office determined David Rogers, Applicant's witness, could not testify.

⁴ According to Google Maps, Grotto's Pizza has a current address of 110 East Street, Camden, Delaware, while Wawa has a current address of 200 East Street, Camden, Delaware.

8. Mr. Kiran Patel testified that Kalaria Siblings, LLC is the owner of the parcel and he is a member of that company. He testified he has no family relationship with Mr. Jignesh Patel, who had approached him to establish a liquor store on the parcel. Mr. Kiran Patel testified the county had re-named East Street to King Boulevard. Addresses online for Wawa and Grotto's Pizza have not been updated to reflect the change in street name. He testified the commercial lease with the Applicant (Exhibit 13 and a part of the record) is for a period of 10 years.

9. Mr. Rushabh Maniar testified he is a resident of Camden where he and his family own a liquor store; the proposed package store will be .9 miles away from their store. If the application is granted, he testified there will be five liquor stores in Camden. He is concerned about the economic impact the proposed 7,000 square foot store will have on his family store. Mr. Maniar testified he does not reside within 1 mile of the proposed location. He testified that he has seen population and building construction growth in Camden in the years he's lived there. Mr. Maniar testified that over time, his family's store has become busier with increased sales; he attributes this to his family's work, time, and sacrifice in developing the store, but he conceded that some of the increased business may be due to the increased population in that community.

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. Applicant's proposed store is within the corporate limits of the Town of Camden.
2. Mr. Jignesh Patel testified the closest package store to the proposed premise is approximately .7 of a mile away.
3. Mr. Maniar testified his family's package store is approximately .9 of a mile away from the proposed store.

4. No evidence was presented in the record to show that the proposed package store would be within .5 of a mile of an existing package store.

5. The population in and around the Town of Camden has seen increased growth, including the construction of new buildings and apartment buildings, in the last several years.

6. The proposed package store will be approximately 7,000 square feet, which is larger than existing package stores in the area, and will offer greater selection of products with anticipated lower prices because of bulk purchase of products.

7. Mr. Maniar opposed the application because of his concerns about the potential economic impact the proposed store will have on his family's package store.

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 application has met the legal requirements for the requested license for a package store.

3. This Office also concludes there was no evidence in the record to show there are reasonable grounds to believe a statutory basis to refuse the application exists. The sole basis for objection was a concern from an owner of a competing liquor store about business rivalry between the two package stores. The Act does not provide that business competition is a basis for refusal. Rather, business competition is left up to the marketplace which is mostly determined by consumers. Thus, and limited to this matter and the record, this Office cannot afford much, if any, evidentiary weight

to the testimony from a competing store owner. The evidence suggests that with population and building growth, a package store offering a greater selection of wine, beer and spirits will help meet the need and convenience of the increasing population.

DECISION AND ORDER

IT IS THIS 14 day of June, 2023, the Decision and Order of this Office that the Licensee's application for a package store liquor license to include Sunday sales, is approved. Issuance of the liquor license is subject to a final inspection of the premises by a representative of this Office.

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.