

City of Cape Girardeau
Liquor License Review Board

April 8, 2013
City Hall – City Council Chambers
401 Independence Street
4:00 p.m.

MINUTES

Roll Call – Board Members:

- Mrs. Heather Brooks
- Mrs. Carol Peters
- Mr. Charles “Speedy” Wagoner

Roll Call – City Staff:

- Mrs. Trisha Holloway, *Customer Service Mgr.*
- Mr. Tim Morgan, *Director of Inspection Svcs.*
- Battalion Chief Brian Shaffer, *Fire Marshall*

1. Call to Order

The Liquor License Review Board convened on Monday, April 8, 2013, at 4:00 p.m. with Chief Review Officer Heather Brooks presiding and Board Members Carol Peters and Charles Wagoner present.

2. Introduction and Opening Comments

Mrs. Brooks introduced the members of the Board and reviewed the agenda items and meeting format.

3. Approval of February 13, 2013 minutes

A Motion was made by Charles Wagoner, seconded by Heather Brooks to approve. Motion approved. 3-0. Aye, Brooks, Peters, Wagoner.

4. Review of appeal of recommended denial of license for That One Bar, 36 North Spanish Street

a. Public Comments

Mr. Dave Hutson addressed the Board and said that he owns the building at 31 North Main Street. He said that the folding stairs exiting into the alleyway between Spanish and Main Streets poses a hazard for the tenants living in his building because they obstruct access for ambulance or emergency equipment. Mr. Hutson said that building codes should be addressed inside the building, not with an external fire platform. He said that he has had concerns since 2010, when the fire escape was installed.

Mr. Loyd Ervin, of 115 Themis Street, appeared in support of the recommended denial. He said that the cigarette smoke coming from the bar is so thick, it chokes his family inside his home. He complained of a fan located approximately 60’ from his bedroom window that he believed to be an exhaust fan venting cigarette smoke from the business. Mr. Ervin said that he has contacted both the Cape Girardeau County Health Department and the Fire Department and he has been told that there is nothing they can do about the cigarette smoke.



b. City Staff Comments

Mr. Tim Morgan, Chief Review Officer, appeared and said that Inspection Services reviews and signs off on all liquor license applications and recommends the denial of That One Bar's liquor license. Upon questioning by the Board, Mr. Morgan confirmed that he approved the installation of the folding stairs to be set up at the beginning of the work period and taken down at the end of the work period each day.

Mr. Morgan said that if the business owner were to propose another egress suggestion, City staff would review the recommendation to deny the liquor license. Mrs. Brooks asked if City staff was contacted by neighbors of the property concerning the stairs. He answered that they were not, nor were they contacted about the exhaust fan.

Battalion Chief Brian Shaffer, Fire Marshall, addressed the Board and confirmed that he has been contacted by Mr. Ervin about the exhaust fan issue. Mrs. Brooks asked if the business' exhaust fan was positioned near where Mr. Ervin's air intake might be. BC Shaffer said not that could be observed. Upon questioning by the Board, he said that positioning of air ventilation exhaust fans would not be inspected by the Fire Department. Mr. Wagoner asked if he had tried the stairs and BC Shaffer answered that he had when the bar first opened. He said that his crews have been monitoring the door and observing that the stairs have been set up when the door is open.

c. Applicant Comments

Mr. Daniel Grimm, attorney for building owner, Mr. Rick Werner, appeared and said that he had three people he would call to address the Board with his prompting: Ms. Pam Davisson, Mr. Rick Werner, and Mr. Jeff Koenig.

Ms. Davisson, architect with Keystone Design, appeared and said that she drew the design for the floor plan in November or December of 2010 after working with City staff and speaking a few times with Mr. Morgan. She said that during the design she was mindful of the trash dumpsters in the alley behind the bar, and specifically incorporated two exits. She said that Mr. Morgan agreed that the stairs would work and the City approved the plans on April 29, 2010. Upon questioning from Mr. Grimm, Ms. Davisson said that a building built under a certain building code can remain in use as such, even if the code changes. The steps are structurally safe.

Mr. Wagoner asked who owned the building and who managed the bar when the design was drawn. Mr. Grimm answered that it was a different building owner and a different business manager, but it doesn't matter, since the use is the same. Ms. Davisson said that the stairs meet the current building codes. Upon questioning by the Board, Mr. Morgan confirmed that the stairs meet the current building codes, it is because the stairs intrude on the public right-of-way that he has recommended the liquor licenses denial.

Mrs. Brooks stated that the stairs meet the building code as designed, it is the intrusion on the public right-of-way that is the issue triggering the denial. Mr. Wagoner stated that he could not vote to approve the liquor license without the approval of the building inspector. Mr. Grimm said there are lots of things on the public right-of-way and the stairs are meant to be retracted during the daytime hours. The design passed the inspection code. Upon questioning



by the Board, Mr. Morgan said that he could not recall any discussion of a License and Indemnity Agreement at the time the plans were drawn.

Mr. Werner appeared and said that when he bought the building, it was in use as a bar, and he bought the building to continue use as a bar. Upon questioning from Mr. Grimm, Mr. Werner said that it would be a financial detriment to stop using the building as a bar, and it would be a financial detriment to knock out wall to create a stairwell opening.

Mr. Grimm said that the stairs are 108” wide, narrower than the dumpsters in the alley. The dumpsters don’t move, some are without wheels. He said that even with the stairs set up, trucks can drive past without a problem. Mr. Hutson disagreed and said that that the stairs do create a problem. Mr. Werner said that the space beyond the set up stairs is wider than a parking space. Mrs. Peters asked if there were police reports filed for damages caused by the stairs. There were none.

Mr. Koenig, tenant of That One Bar, appeared, and upon questioning from Mr. Grimm, said that they passed the Health Department inspection and the Fire Department inspection. He said that it would be a financial detriment if the bar cannot open for business.

d. Board review, discussion, and possible action

The Board asked Mr. Morgan if an Occupancy Permit has been issued. He replied that no new permit is issued, unless the permit is pulled. Mrs. Brooks stated that the current formal process is for a License and Indemnity Agreement to be issued when private property usage infringes on a public alleyway. The Board asked BC Shaffer if the stairs would impede emergency responders. He answered that they would respond to the front or rear doorway depending on the location of the incident.

Mrs. Brooks asked who had access only through the alley and Mr. Hutson answered that his tenants’ only entrance was through the alleyway. Mr. Wagoner asked Mr. Morgan what he will do about the issue. Mr. Morgan said that if the business owner had another exit plan, he would review the recommendation to deny the liquor license.

Mrs. Brooks said that, unfortunately, this is the price paid when we get creative to avoid empty older buildings. Mr. Grimm asked if the Board can change the interpretation of the building code. Mrs. Brooks said that the steps are approved by the safety code and the building code, the only change is the use of public access or public right-of-way. Mr. Grimm said that he would be happy to draw up a License and Indemnity Agreement. Mr. Hutson said that access is restricted for the tenants, they need access 24 hours a day because this is where they live.

Mr. Wagoner said that he is trying to see all sides of this issue, but he could not vote to approve the liquor license without the approval of the building inspector. Mrs. Brooks said that in 2010, neighbors could appeal when a Liquor License was granted. She asked Mr. Werner if he knew about Mr. Ervin’s complaint about the exhaust fan. He answered that he has not heard about this complaint before. Mr. Werner said that he has known Mr. Ervin for years and he would work with him to find the source of his complaint.

Ms. Davisson said that the building is 85’ wide. It would require two remote exits, regardless of its use.



Mrs. Brooks said that when this became a right-of-way issue, she wonders if the Liquor License Review Board can deal with this issue, or if it should be deferred to the City Manager or the City Council. She said that she would recommend the Board defer the issue to the City Manager, but would like to address the issue of smoke. She would like to see the owner and neighbor and neighbor discuss and find a solution.

Regarding the stairway, a Motion was made by Heather Brooks, seconded by Charles Wagoner to defer to the City Manager.

Motion approved. 3-0. Aye, Brooks, Peters, Wagoner.

Regarding the issue of smoke, a Motion was made by Heather Brooks, seconded by Carol Peters to table.

Motion approved. 3-0. Aye, Brooks, Peters, Wagoner.

5. Adjourn

A Motion was made by Charles Wagoner, seconded by Carol Peters to adjourn.

Motion approved. 3-0. Aye, Brooks, Peters, Wagoner.

