

STATE OF CONNECTICUT

DEPARTMENT OF CONSUMER PROTECTION

In the Matter of

Brian J. Hall, Applicant
O'Malley's LLC , Backer
Tommy's Package Store
Liquor Permit No. LIP.14558
Case No. 2009-3917

Docket No. 09-1001
October 8, 2009

MEMORANDUM OF DECISION

This matter involves a new application for a package store liquor permit for Tommy's Package Store, 30 Winthrop Street, Simsbury, Connecticut. A formal administrative hearing was held before the Department of Consumer Protection on October 1, 2009. Brian J. Hall, applicant, appeared with counsel. 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 proposed place of business. Remonstrants appeared to oppose the granting of this permit.

The following facts are found based upon evidence adduced at the hearing. Liquor Control Agent Kuria reviewed the pending application and found it to be in order. He conducted a complete new application investigation including an on-site inspection. He noted the presence of two churches, St. Bernard's Catholic Church and Trinity Episcopal Church within .13 mile. An elementary school is located across the street, approximately .01 miles from the proposed location. The proposed premises is currently vacant but has housed a package store permit since approximately 1944. The local zoning authority has approved the application, and Agent Kuria contacted both the zoning authority and the town

clerk and confirmed that they have signed the application. He received written confirmation from Lynn Charest, Zoning Compliance Officer, that the site is compliant with the Simsbury Zoning Regulations and Zoning Ordinances. He found nothing questionable about this new application.

Agent Kuria also contacted the remonstrants. Their concerns were proximity to churches and an elementary school, multiple permits in the village of Tariffville, possible negative impact on public safety and children, and the viability another package store.

The agent for the remonstrants noted that many neighborhood children walk to school and cross the street at a crosswalk located in front of the proposed store. During school opening and closing hours, this crosswalk is monitored by a crossing guard. Witnesses opposing the permit argue that Tariffville is a distinct village separate from the town of Simsbury. We find that Tariffville is a neighborhood in the town of Simsbury. By statute, based upon population, Simsbury is allowed nine package store permits; the pending application is for the eighth package store permit in Simsbury. Remonstrants speculate that advertisements for alcoholic beverages posted in the windows of this store would have a negative impact on school children walking past on the sidewalk. The content of signs advertising alcoholic beverage is strictly limited by Sec. 30-6-A31a of the Regulations of Connecticut State Agencies. Remonstrants note that over the years traffic has increased significantly in this area of Simsbury. No evidence was presented that any increase in traffic is attributable to the operation of a package store at this site.

Based upon the testimony and documents presented, we cannot find substantial evidence which would cause us to deny Mr. Hall's pending package store application. 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).

Accordingly, we hereby deny the remonstrance and grant the final package store permit to Brian J. Hall and Tommy's Package Store, subject to the agent's final requirements.

**DEPARTMENT OF CONSUMER PROTECTION
LIQUOR CONTROL COMMISSION**

Elisa A. Nahas, Esq.
Designated Hearing Officer

Angelo J. Faenza, Commissioner

Stephen R. Somma, Commissioner

Parties:

Frank L. Haviland, Agent for Remonstrants, 4 Whitewater Turn, Tariffville, CT 06081

(Via US Mail and Certified Mail # 7009 1680 0001 2915 5848)

Brian J. Hall, Applicant, c/o Henry Eli Jacobs, Esq., 65 Memorial Road, Suite 550, West Hartford, CT 06107

Nonparties:

John Suchy, Director, Liquor Control Division

Connecticut Beverage Journal

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