

**STATE OF CONNECTICUT**  
**DEPARTMENT OF CONSUMER PROTECTION**

**In the Matter of**

Warehouse Wine & Liquor  
Fatih Yagar, Permittee  
Warehouse Wine & Liquor LLC, Backer  
Liquor Permit No. LIP.14652  
Docket No. 10-1411

Case No. 2010-329  
December 14, 2010

**MEMORANDUM OF DECISION**

This matter involves an application for a package store liquor permit for Warehouse Wine & Liquor, 211 High Street, Torrington, Connecticut. A formal administrative hearing was held before the Department of Consumer Protection on September 23, 2010. Fatih Yagar, applicant and a member of the backer limited liability company, and Paul Baudouin, a member of the backer limited liability company, appeared with counsel. At the outset of the hearing, counsel for the applicants filed a Motion to Dismiss the remonstrance. The Motion to Dismiss the remonstrance is denied. The matter proceeded to a hearing on the remonstrance. The hearing was held in accordance with Section 30-39(c), Connecticut General Statutes, as the result of a legally sufficient remonstrance questioning the suitability of the proposed place of business. Remonstrants appeared to oppose the granting of this permit. This location is currently operating under the auspices of a provisional permit.

At the conclusion of the hearing, the record was left open for 30 days for the sole purpose that the Liquor Control Commission be apprised of the outcome of an October 13, 2010 meeting of a meeting of the Torrington Planning and

Zoning Commission as it related to possible reenactment of Sec. 5.3 of the Torrington Zoning Regulations.

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 an on-site inspection and also conducted a remonstrance investigation. At the time of Agent Kuria's on-site inspection, the package store was not yet in operation. The store is located in a large shopping plaza anchored by a Stop & Shop store; the shopping plaza contains a bank, restaurant and many retail stores. As part of Agent Kuria's remonstrance investigation, he utilized a walking wheel to measure the distance between the front door of the proposed location and the front door of Westside Package Store and the front door of a nearby church. Determining distances between like outlets is standard protocol for remonstrance investigations. Utilizing Agent Kuria's calculations, we find the nearest package store to this premises is Westside Package Store, 2,292 feet distant, and the nearest church is Faith Tabernacle Church, 528 feet distant.

The determination of factual issues on conflicting testimony is within the province of the Liquor Control Commission. Noyes v. Liquor Control Commission, 151 Conn. 524, 527, 200 A.2d 467 (1964). The Liquor Control Act vests in the Commission a liberal discretionary power to determine credibility of witnesses and factual matters with regard to liquor permits. Fenton v. Liquor Control Commission, 151 Conn. 537, 539, 200 A.2d 481 (1964).

The Planning and Zoning Commission reviewed the application in October 2009 and determined that it was in compliance. The Torrington City Planner,

Martin Connor, approved the application on November 18, 2009 as in compliance with its zoning regulations. At that time, Torrington Zoning Regulations Sec. 5.3 required a 1,500 foot distance between package stores and a 500 foot distance between a package store and a place of worship. This package store application met the requirements of the regulation and was thus in compliance. Mr. Connor had no concerns about approving the application. Subsequent to the zoning approval of this permit application, on May 26, 2010, Sec. 5.3 was repealed. An application to re-enact Sec. 5.3 was denied by the Torrington Planning and Zoning Commission in October 2010.

Diane Greene, a member of the Faith Tabernacle Church and resident of Waterbury, testified and stated that the package store would not have a detrimental effect on her church. Two resident remonstrants who are also owners of package stores in Torrington spoke in opposition to the granting of this final liquor permit and expressed displeasure that the zoning ordinance had been changed. We note, however, that the change occurred subsequent to approval of Warehouse Wine and Liquor's application.

The remonstrance seeks denial of this application "...as the same would violate §5.3.1 of the Zoning Ordinances of the City and, therefore, denial is mandatory under §30-44(2)." We find that at the time the application was signed, this location did not violate §5.3.1 of the Torrington Zoning Ordinances. The Commission has the authority to determine whether or not its issuance of a permit would result in the violation of a local zoning law, and in this case, it does not. Town of Greenwich v. Liquor Control Commission, 191 Conn. 528, 469 A.2d

382 (1983). We note that since the approval of this permit, §5.3.1 has been repealed and has not been reenacted.

Section 30-47 of the Connecticut General Statutes enumerates the parameters for the department to consider when addressing the suitability of the location. It provides that,

The Department of Consumer Protection may, except as to a store engaged chiefly in the sale of groceries, in its discretion, suspend, revoke or refuse to grant or renew a permit for the sale of alcoholic liquor if it has reasonable cause to believe: (1) That the proximity of the permit premises will have a detrimental effect upon any church, public or parochial school, convent, charitable institution, whether supported by private or public funds, hospital or veterans' home or any camp, barracks or flying field of the armed forces; (2) that such location is in such proximity to a no-permit town that it is apparent that the applicant is seeking to obtain the patronage of such town; (3) that the number of permit premises in the locality is such that the granting of a permit is detrimental to the public interest, and, in reaching a conclusion in this respect, the department may consider the character of, the population of, the number of like permits and number of all permits existent in, the particular town and the immediate neighborhood concerned, the effect which a new permit may have on such town or neighborhood or on like permits existent in such town or neighborhood; (4) that the place has been conducted as a lewd or disorderly establishment; (5) that the backer does not have a right to occupy the permit premises; (6) that drive-up sales of alcoholic liquor are being made at the permit premises; or (7) that there is any other reason as provided by state or federal law or regulation which warrants such refusal.

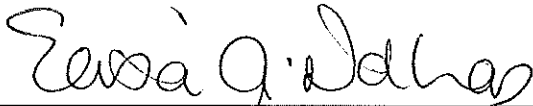
The remonstrance did not question the proximity to churches and schools or the proximity to a no-permit town. However, we note that the sole member of Faith Tabernacle Church, the nearest church to Warehouse Wine and Liquor, who appeared at the hearing did not feel the operation of this package store would have a detrimental effect upon her church. The remonstrance did not question the number of existing liquor permits close to the proposed location nor

did it allege that this premises has been conducted as a lewd or disorderly establishment by this applicant. This is the first package store to be operated at this location. There is no question that the backer has the right to occupy the premises and is there no issue of drive-up sales of alcohol.

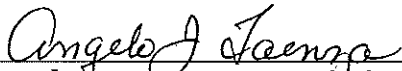
There was no substantial evidence which was presented which would necessitate a finding of unsuitability of the proposed location. It is well-settled that the determination of factual matters with respect to applications for liquor permits is vested with in the liquor control commission, which has a liberal discretion in determining the suitability of the proposed liquor permit premises. Gulia v. Liquor Control Commission, 164 Conn. 537, 325 A.2d 455 (1973).

Accordingly, we hereby deny the remonstrance and grant the final package store liquor permit to Fatih Yagar and Warehouse Wine & Liquor, subject to the agent's final requirements.

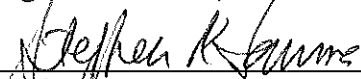
**DEPARTMENT OF CONSUMER PROTECTION  
LIQUOR CONTROL COMMISSION  
BY**



Elisa A. Nahas, Esq.  
Presiding Officer



Angelo J. Faenza, Commissioner



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John Suchy, Director, Liquor Control Division, Department of Consumer Protection

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