



JENNIFER M. GRANHOLM
GOVERNOR

NIDA R. SAMONA
CHAIRPERSON

STATE OF MICHIGAN
LIQUOR CONTROL COMMISSION
DEPARTMENT OF LABOR & ECONOMIC GROWTH
STANLEY "SKIP" PRUSS, DIRECTOR

December 18, 2008

REQ ID: 473021

Apex Drug Store, Inc.
C/O Michael J. Brown
6017 W. St. Joe Hwy, Suite 202
Lansing, MI 48917

Dear Applicant:

This is with reference to your request to transfer ownership of escrowed 2008 SDD license only with Sunday Sales Permit from Buster's Dollar and More, Inc. and to transfer location from 3050 Platt, Ann Arbor, MI 48108, Washtenaw County, to 2980 Packard, Ann Arbor, MI 48108, Washtenaw County, to be held in conjunction with existing 2008 SDM licensed business with drive-up window (without alcoholic beverage sales), which was denied on August 13, 2008.

Upon written request, a formal hearing was held on September 2, 2008, at the Commission offices in Lansing.

Attached is a copy of the order that was issued on November 25, 2008, affirming the Commission's previous order of denial.

Please be advised, we are marking our records accordingly.

Very truly yours,

MICHIGAN LIQUOR CONTROL COMMISSION

Julie A. Wendt, Director
Licensing Division

jl

Enclosure

cc Farmington District Office w/encl:
Ann Arbor Police Department w/encl:
Ann Arbor City Council w/encl:
Buster's Dollar and More, Inc. w/encl:
Constantin Chiparus w/encl:
Frank J. Palazzolo, Attorney w/encl:

STATE OF MICHIGAN
LIQUOR CONTROL COMMISSION
DEPARTMENT OF LABOR & ECONOMIC GROWTH

Apex Drug Stores, Inc.
2980 Packard
Ann Arbor, Michigan 48108

Washtenaw County
Request ID #473021

Hearing Held in Lansing
Tuesday, September 2, 2008

Before: Chairperson Samona
Commissioner Gagliardi
Commissioner Weatherspoon

FINDINGS AND ORDER

The Michigan Liquor Control Commission, (hereafter "Commission"), has before it a request from Apex Drug Stores, Inc., (hereafter "applicant"), to transfer ownership of 2008 Specially Designated Distributor ("SDD") license, in escrow, with Sunday Sales Permit only from Buster's Dollar and More, Inc.; and to transfer location from escrow at 3050 Platt, Ann Arbor, Washtenaw County; to be held in conjunction with existing Specially Designated Merchant ("SDM") licensed business with Drive-Up Window (without alcoholic beverage sales) at that location.

Commission Rule 436.1133 provides as follows: "An application for a new specially designated distributor license or for the transfer of location of an existing specially designated distributor license shall not be approved by the commission if there is an existing specially designated distributor license located within 2,640 feet of the proposed site. . . . This rule may be waived by the commission for any of the following reasons: (a) If the existing specially designated distributor has purchased less than \$10,000.00 in spirits from the commission during the last full calendar year. (b) If the existing specially designated distributor has a B-hotel or A-hotel license. (c) If the proposed location and the existing specially designated distributor's licensed establishment are separated by a major thoroughfare of not less than 4 lanes of traffic. (d) If the proposed licensed establishment is located in a neighborhood shopping center which does not have an existing specially designated distributor's licensed establishment and if the proposed licensed establishment is located not less than 1,000 feet from any existing specially designated distributor's licensed establishment. . . (e) If an existing specially designated distributor licensee is located within 2,640 feet of 1 or more existing specially designated distributor licensees and requests a transfer of location, which location is within 2,640 feet of the same existing specially designated distributor licensee or licensees, upon a showing of good cause by the licensee who is requesting the transfer of location."

The customary survey and investigation conducted by the Commission's Enforcement

Apex Drug Stores, Inc. – Request ID #473021
Page 2

Division relative to this request reflects that there is one (1) existing SDD licensed outlet located within 2,640 feet of the applicant's proposed SDD licensed establishment: Constantin Chipparus holds an SDD license 1,404 feet away at 3240 Packard, Ann Arbor, Washtenaw County and is separated from the proposed SDD licensed establishment by Platt Road, identified as a major thoroughfare of not less than four lanes of traffic as defined in Commission Rule 436.1001(k), supra; and that the applicant has submitted a written request for a waiver of Commission Rule 436.1133, supra, under subsection (c) of that rule relative to the aforementioned licensed SDD retail outlet.

The investigation conducted by the Commission's Enforcement Division relative to this request further reports that the subject location is the same location as the existing SDD licensee, Buster's Dollar and More, Inc. at 3050 Platt, Ann Arbor; and that Apex Drugs purchased the land and constructed a new building approximately 15 feet from the site of Buster's Dollar and More, Inc. and the City of Ann Arbor assigned a Packard road address to Apex Drug Stores, Inc. instead of the Platt Road address. Thus, the applicant also qualifies for waiver of Commission Rule 436.1133, supra, under subsection (e) of that rule inasmuch as the proposed transfer of location is within 2,640 feet of the same existing SDD outlet, Constantin Chipparus, and the current licensed location of Buster's Dollar and More, Inc.; and the applicant has submitted a written request for same.

A letter of notification was released to the one (1) aforementioned existing SDD licensed outlet notifying them of the applicant's request and a letter of objection was submitted to the Commission by Constantin Chiparus.

Therefore, at a meeting held on August 13, 2008, the Commission denied the applicant's pursuant to Commission Rule 436.1133, supra, inasmuch as there is an existing SDD outlet located within 2,640 feet of the applicant's proposed location.

A timely request for a hearing in the matter of this denial was received from legal counsel on behalf of the applicant and such a hearing was held on September 2, 2008 at the Lansing office of the Commission. Present at the hearing on behalf of the applicant was Michael J. Brown, legal counsel. Present at the hearing on behalf of the existing proximity SDD licensed retail outlet was Constantin and Lucia Chiparus.

At the hearing, Attorney Brown advised the Commission that the applicant was approved by the Commission for a new SDM license at the applicant location in May 2008 and is currently operating; that the applicant also holds SDD and SDM licenses at 2564 Packard, Ann Arbor, Washtenaw County, which is approximately 1.2 miles away from the proposed transfer of location, and placed those licenses into escrow simultaneously when the applicant was approved for SDM licensure at the applicant location; that the applicant currently has no plans for its existing escrowed licenses but may possibly move or sell the licenses or develop another Rite Aid Pharmacy in the future; that the applicant is requesting to acquire the subject SDD license at its corner location to better serve and add convenience to its customers; and that by obtaining SDD licensure at the applicant location sets competition apart from convenience stores similar in nature. Attorney Brown further

Apex Drug Stores, Inc. – Request ID #473021
Page 3

stated that the existing SDD licensed outlet of Constantin Chipparus is located within a half of mile of the current site of the SDD license being transferred in addition to being located within a half mile of the applicant's proposed site; and indicated that the applicant qualifies for a waiver of Commission Rule 436.1133, supra, under exception (e) relative to that proximity outlet.

At the hearing, Constantin and Lucia Chipparus advised the Commission that they were approved by the Commission for licensure when Buster's Dollar and More, Inc. went out of business approximately 3 ½ years ago; that in 2007 the City of Ann Arbor reconfigured the intersection of Platt Road and Packard Road reducing it from 4 to 3 lanes of through traffic; that they have invested a large amount of money into the success of their business; that they currently operate as a convenience store with inventory consisting of grocery type items and have 18 doors of coolers carrying a full line of imported beer, wine and liquor; that they cannot compete with big business as they sell similar items at much lower prices; and that another licensed establishment in close proximity to their business will result in too much competition and will be detrimental to their business.

At the hearing, Attorney Brown refuted the statements of Constantin and Lucia Chipparus, stating that he was not aware that the intersection in question had been reconfigured; that he had not recently personally traveled to the applicant location and was not made aware of that fact by the Commission's Investigator; that the applicant still qualifies for subsection (e) of Commission Rule 436.1133, supra; and that Constantin Chipparus was granted the same waiver when approved for licensure and the applicant should be afforded the same opportunity.

In conclusion of the appeal hearing held in this matter, the Commission advised all parties that the Commission will hold its decision in abeyance pending confirmation of the status of the intersection of Platt and Packard Roads.

Subsequent to the hearing held in this matter, a staff member on behalf of the Commission contacted the City of Ann Arbor in regard to the intersection of Platt and Packard Roads and was advised that in late 2007 the aforementioned intersection was indeed reduced from four (4) lanes of through traffic to two (2) lanes of through traffic, one (1) center turn lane and two (2) bicycle lanes and a memorandum outlining the specific plans was obtained from the website of the City of Ann Arbor confirming same and was made a part of the applicant's file in this matter.

Subsequent to the hearing held in this matter requests to supplement the September 2, 2008 hearing record were submitted by Attorney Brown and Attorney Frank Palazzolo, legal counsel on behalf of Buster's Dollar and More, Inc., the seller in this transaction, and the Commission took both letters into consideration while deliberating its decision in this matter.

In arriving at its decision in the instant matter, the Commission has considered its file in this matter and the overall circumstances attending this request.

Apex Drug Stores, Inc. – Request ID #473021
Page 4

Based upon such review, the Commission finds that the determination made through the survey and investigation conducted by its Enforcement Division indicates that the applicant's proposed SDD location is within 2,640 feet of one (1) existing SDD licensed outlet and is part of the record in this matter. The Commission also finds that the applicant's site does qualify for a waiver of the 2,640-foot proximity restriction of Commission Rule 436.1133, supra, under the exception found in subsection (e) relative to the existing SDD outlet Constantin Chipparus; and that the applicant's site no longer qualifies for a waiver of the 2,640-foot proximity restriction of Commission Rule 436.1133, supra, under the exception found in subsection (c) relative to the aforementioned existing proximity SDD outlet inasmuch as Platt Road now consists of only two (2) lanes of through traffic.

Although it can be argued that the applicant's location could qualify for the necessary waiver of Commission Rule 436.1133, supra, under subsection (e) of that rule, inasmuch as both the applicant's proposed location and the former location of Buster's Dollar and More, Inc. are within 2,640 feet of the existing SDD outlet Constantin Chipparus, subsection (e) also requires a showing of good cause for granting such a waiver. Legal counsel on behalf of the applicant contended that the proximity SDD licensed retail outlet was afforded the same requested waiver when granted licensure and the Commission should afford the same to the applicant in this matter.

The Commission takes note that when Constantin Chipparus transferred location of its SDD license in 2008 they were granted a waiver of Commission Rule 436.1133, supra, under subsection (e) as they were originally licensed by the Commission in 2005 and were merely transferring location of the SDD license.

As the Commission has noted in many previous orders, when making a determination of whether to grant or not to grant a waiver of the provisions of Commission Rule 436.1133, supra, (the waiver of the rule being optional rather than mandatory) the Commission does not find that good cause was shown by the applicant why the requested waiver of Commission Rule 436.1133, supra, under subsection (e) should be granted in this matter.

Therefore, based upon the facets of this request as outlined heretofore, the Commission is not convinced that the requested waivers of Commission Rule 436.1133, supra, under subsections (c) or (e) should be granted in this matter; and that its order of August 13, 2008 should be upheld.

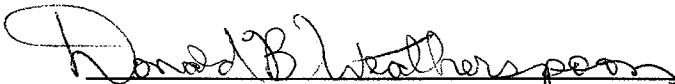
Apex Drug Stores, Inc. – Request ID #473021
Page 5

Therefore, it is the Order of the Commission that its order of denial of August 13, 2008, be affirmed.

Dated: November 25, 2008


Nida R. Samona, Chairperson


Pat Gagliardi, Commissioner


Donald B. Weatherspoon, Commissioner

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