

Via Hand-Delivery

April 14, 2006

Ms. Stephanie O'Malley
Director
Department of Excise and Licenses
City and County of Denver
210 West Colfax
Denver, Colorado 80202

Mr. Richard Wehmhoefer
Hearing Officer
Department of Excise and Licenses
City and County of Denver
210 West Colfax
Denver, Colorado 80202

*Re: Recommended Decision: In the matter of the Application of HGWA, LLC,
doing business as Sterling, for a Hotel and Restaurant Liquor License to be issued
for the premises known and designated as 3940 West 32nd Avenue, Denver,
80212*

Dear Ms. O'Malley and Mr. Wehmhoefer:

As representative of those persons opposing the License, I have reviewed the recommended decision submitted by Mr. Wehmhoefer and approved by Ms. O'Malley and dated April 5, 2006 (the "Recommended Decision"). I submit to you this letter of rebuttal with regard to this recommendation.

Re: Applicant Witness Testimony (Ref Para. 6 of Recommended Decision)

The Applicant witness testimony included three residents of the designated area and the Applicant, Mr. Bautsch.

Mr. West, a resident of the designated area for some 11 months, testified that he had moved to the area for the variety of dining experiences on offer. He testified that he had on occasion to wait for dining, *though not for cocktails*, "frequently" on Friday and Saturday evenings. He did not indicate how many of the 13 (Revised City Exhibit C-5) restaurants providing equivalent liquor service within the designated area he had visited

on those Friday and Saturday nights, nor (other than a throw-away 45 minute guesstimate) how unendurably lengthy those Friday and Saturday night waits were.

Mr. Grady, a resident of the designated area for 3 ½ years, testified that he had to wait for an unstated period of time at 3 of the 13 restaurants providing equivalent liquor service within the designated area. He testified that he would like someone to bring “something a little different” into the designated area.

Mr. Krehan, a resident of the neighborhood for some 13 years, stated that “new restaurants” are “a good thing” and that he, too, would like to see more variety in the establishments on offer. He stated that there was “too much” of a wait on Friday and Saturday nights. When discussing in detail which of the 13 restaurants with equivalent liquor service in the designated area he was familiar with and had occasion to visit on weekends, he testified that there were many he had not tried.

Finally, Mr. Bautsch, the Applicant, who does not live in the designated area and has not for a number of years, testified on his own behalf. He spoke primarily to the “concept” of his proposed restaurant and his belief that it would fill a niche for something “different”. Living in Golden, he does not frequently dine in the designated area and could not credibly testify to the issue of “need” as a personal experience.

So, according to the applicant witness testimony:

- 1) There are no adequacy of service problems at lunch or dinner service on weekdays or Sundays (remember the Applicant plan is for lunch and dinner, 7 days per week) anywhere in the designated area.
- 2) There may be a wait at some of the 13 restaurants with equivalent liquor service in the designated area on some Friday or Saturday evenings, but not at all such establishments, and applicant witness testimony provides no basis for drawing any conclusion regarding the size of the purported “problem”, or more specifically, the purported “neighborhood need”.
- 3) The interest in variety of dining experiences is a theme and motif for these witnesses and, indeed, for the Applicant himself. Needless to say, the police power of the State of Colorado does not exist to provide its resident citizens with a “variety of dining experiences”, but to ensure the reasonable availability of spirituous liquors.

Applying the reasonable person test to the testimony, it is inconceivable that the City and County of Denver would consider a delay of dining (not cocktails) for any period, no matter how short, by any one or two persons within a designated area served by 13 restaurants with equivalent liquor service, only on an occasional Friday and Saturday evening, and only at some subset of those existing restaurants, to credibly present a *prima facie* case for “neighborhood need”.

Desire is clearly present in the witness testimony, but it is the desire for “variety of dining experience”, not desire for additional liquor service *per se*.

In conclusion, applicant witness testimony is absent sufficient evidence to conclude that the neighborhood is not adequately served by existing licensed outlets in the designated area.

Re: Protestant Witness Testimony

Given the failure of the Applicant to sustain a *prima facie* case for approval based on “neighborhood need”, the Protestants had no requirement to present a rebutting case. Yet through the testimony of three long-term residents of the designated area (19, 5, and 11 years respectively), statements were made testifying to the adequacy and, indeed, delight of the existing mix of restaurants with equivalent liquor service in the designated area, especially along the six-block stretch of West 32nd Ave from Julian Street to Perry Street. Each testified that the adult inhabitants of the designated area can readily obtain cocktail and/or dinner service at one or more locations, even on Friday or Saturday evenings.

Re: En Masse Testimony (Ref Para. 7 of Recommended Decision)

Because the Applicant and applicant witness testimony failed to demonstrate that the neighborhood is not adequately served by the existing licensed restaurants, no weight should be afforded to applicant *en masse* testimony.

Re: Petitions (Ref Para. 8 of Recommended Decision)

The number of signatures for or against a license application are not determinative of the issues of “neighborhood needs” or “adult resident desires”. Though entitled to consideration, they are neither conclusive nor controlling. This wise policy position of the City and County of Denver recognizes the uneven playing field in this arena as between the Applicant, who may hire professional canvassers, and the Protestants, who typically must rely on the volunteer efforts of working residents of the neighborhood.

In Conclusion:

Contrary to the conclusions presented in the Recommended Decision, the Applicant did fail to construct and credibly present a *prima facie* case for “neighborhood need”. Further the Protestants witnesses did credibly testify to the adequacy of the existing distribution of restaurants with equivalent liquor service within the designated area.

We urge you to deny this application.

Very truly yours,

Greg Bettridge,
on behalf of those opposing the License

cc: Jon Stonebreaker, attorney for the Applicant, via U.S. Mail
Michael Joyce, Assistant City Attorney, via U.S. Mail

INC ACADEMY