



STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LIQUOR CONTROL COMMISSION

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In the matter of the request of)	
BILL'S BEER GARDEN, L.L.C.)	
218 S. Ashley)	Request ID No. 653631
Ann Arbor, Michigan 48104)	
)	
Washtenaw County)	
_____)	

At the October 2, 2012 hearing of the Michigan Liquor Control Commission
(Commission) in Lansing, Michigan.

PRESENT: Teri L. Quimby, Commissioner
Dennis Olshove, Commissioner

LICENSING APPEAL ORDER

On March 5, 2012, Bill's Beer Garden, L.L.C. (applicant) filed a request to transfer ownership of an escrowed 2011 Class C license with Specific Purpose Permit (Food) from Pizza Hut of America, Inc., a Delaware corporation; requested to transfer location (governmental unit) of the license under MCL 436.1531(1) from 3045 Carpenter, Ypsilanti, Pittsfield Township, Washtenaw County to above-mentioned location; and requested to cancel the Specific Purpose Permit (Food). The applicant also requested a new SDM license to be held in conjunction with the license and permit; a new Sunday Sales Permit (P.M.); requested a new Dance-Entertainment Permit; requested new authorization for the outdoor sale, service and consumption of alcoholic liquor in an area measuring up to 85' x 66', located directly adjacent to the building located within the outdoor service area, which will be enclosed by 8' high wrought iron fencing; and requested authorization to maintain two (2) direct connections to the unlicensed premises. The license and permit were renewed in escrow for the 2012-2013 licensing year on April 18, 2012.

At a meeting held on August 15, 2012, the Commission denied the applicant's request as the licensed establishment will not contain a "public room" as described in

administrative rule R 436.1001(1)(q) to be utilized by the general public for eating, drinking, or amusement. This is also required for an on-premises licensee pursuant to the requirements of administrative rule R 436.1405(1).

The Commission also denied this request under administrative rule R 436.1023(3) and administrative rule R 436.1105(2)(j) as the applicant will not retain control of the proposed outdoor service area. This area will contain five (5) vehicle parking spaces. The Concession Agreement between Bill's Beer Garden, L.L.C. and Downtown Home & Garden, Inc. dated March 1, 2012 provides exclusive right for Downtown Home & Garden, Inc. to use the parking lot area during all hours other than 5:00 P.M. and 11:00 P.M. and this vehicular traffic could have a negative effect on the health, welfare and safety of the general public.

Terrance Conlin, legal counsel on behalf of the applicant, submitted a timely request for an appeal in this matter and represented the applicant at the August 2, 2012 hearing, held at the Commission's Lansing office. After hearing arguments, reviewing the MLCC file and documents presented, and discussion of the issue on the record, the Commission tabled this matter to its October 2, 2012 meeting agenda held at the Commission's Lansing office.

Attorney Conlin submitted written documentation to the Commission, including an amended Concession Agreement which sufficiently demonstrates complete control of the outdoor service area at all times of operation in the beer garden.

Further, the applicant has demonstrated sufficient structure for an adequate physical plant, which also shows the public service area constitutes a public room.

After hearing arguments, reviewing the MLCC file and discussion of the issue on the record, the Commission finds that the applicant sufficiently demonstrated through photographs, diagrams, and updated agreements that the previous questions concerning this application have been satisfactorily addressed.

The Commission finds sufficient reasons to reverse its denial issued in this matter and to approve the applicant's request for the reasons stated on the record.

THEREFORE, IT IS ORDERED that:

A. The denial order of July 18, 2012 issued in this matter is reversed and the applicant's request is APPROVED, subject to the following:

1. The licensee shall pay all license fees by April 30th each year pursuant to administrative rule R 436.1107.
2. The licensee shall submit to a Final Inspection to be conducted by the Commission's Enforcement Division to determine that the establishment has been constructed as proposed; to determine that the dance floor is installed, is not less than 100 square feet, and is clearly marked and well-defined; to determine that the outdoor service area has been completed as proposed, is well-defined and clearly marked; and to determine that the establishment meets all requirements of Michigan Liquor Control Code and Administrative Rules.
3. The licensee shall submit to the Commission documentary proof that Mark Hodesh Enterprises received a loan in the amount of \$150,000.00 from Downtown Home & Garden, Inc.
4. The licensee shall submit to the Commission documentary proof that Bill's Beer Garden, L.L.C. realized a total capital contribution from each member Mark Hodesh Enterprises, LLC and Bill Z Enterprises, LLC of not less than \$150,000.00.
5. The licensee shall submit to the Commission an acceptable and executed Lease Agreement between Jeanne Properties, L.L.C. and Bill's Beer Garden, L.L.C.
6. The licensee shall submit to the Commission form LCC-3010 "Report of Stockholders/Members/Partners".
7. The licensee shall provide proof of financial responsibility providing security for liability as required under MCL 436.1803. Failure to maintain proof of financial responsibility providing security for liability will result in the immediate suspension of the subject licenses and permits until the licensee provides the Commission with proof of financial responsibility as required under MCL 436.1803.

8. The licensee shall provide documentary proof to the Commission to demonstrate that, at a minimum, supervisory personnel on each shift and during all hours in which alcoholic liquor is served have successfully completed a server training program approved by the Commission as required under MCL 436.1501(1), within 180 days from the issuance of the licenses and permits, as provided in administrative rule R 436.1060.

- a. The licensee shall maintain active certification of completion for server training on the licensed premises at all times as provided in administrative rule R 436.1060.
- b. Failure to provide this documentary proof to the Commission within 180 days of the issuance of the licenses and permits shall result in the licensee being charged with failure to comply with this order, under administrative rule R 436.1029, which may result in fines, suspension and/or revocation of the licenses and permits.

B. The applicant's request for new outdoor sale, service, and consumption of alcoholic beverages in an area measuring up to 85' x 66', located directly adjacent to the building located within the outdoor service area, which will be enclosed by 8' high wrought iron fencing located directly adjacent to the licensed premises, which is well-defined and clearly marked, is APPROVED subject to the following provisions:

1. The outdoor service area shall remain well-defined and clearly marked.
2. The licensee shall permit the sale, service and consumption of alcoholic liquor outdoors in the defined areas only.

C. Under administrative rule R 436.1003, the licensee shall comply with all state and local building, plumbing, zoning, sanitation, and health laws, rules, and ordinances as determined by the state and local law enforcements officials who have jurisdiction over the licensee. Approval of the licenses and permits by the Michigan Liquor Control Commission does not waive any of these requirements. The licensee shall obtain all other required state and local licenses, permits, and approvals before selling or serving alcoholic liquor.

D. Failure to comply with all requirements of licensure in the State of Michigan will result in the licensee being charged with a violation of the Michigan Liquor Control Code, MLCC Administrative Rules, and Commission order, which may result in fines, suspension, and/or revocation of the licenses and permits.

Teri L. Quimby, Commissioner

Dennis Olshove, Commissioner

Prepared by:
Terri Chase, Commission Aide

Date Mailed: _____