



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

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In the matter of the request of)
RITE AID OF MICHIGAN, INC.)
7887 Twenty Six Mile) Request ID No. 613791
Washington, Michigan 48094)
)
Washington Township Macomb County)
_____)

At the February 26, 2013 hearing of the Michigan Liquor Control Commission
(Commission) in Lansing, Michigan.

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

LICENSING APPEAL ORDER

On May 9, 2011, Rite Aid of Michigan, Inc. (applicant) filed a request for a new SDD license and a new Sunday Sales Permit (P.M.), to be held in conjunction with an existing SDM license at the above noted location.

At a meeting held on October 3, 2012, the Commission denied the subject request under administrative rule R 436.1133 because there are two (2) existing SDD licensees located within 2,640 feet of the proposed location (Meijer, Inc. and Frank Dimaria, Inc.). The applicant qualifies for a waiver for Meijer, Inc., but did not appear to qualify for any waivers relative to Frank Dimaria, Inc.

Michael Brown, legal counsel on behalf of the applicant, submitted a timely request for an appeal in this matter and represented the applicant at the October 23, 2012 hearing, held at the Commission's Lansing office.

After hearing arguments, reviewing the MLCC file, and discussion of the issue on the record, the Commission tabled this matter to its February 26, 2013 meeting agenda, held at the Commission's Lansing office.

After hearing arguments at both hearings held in this matter, reviewing the MLCC file and documents presented, and discussion of the issue on the record, the Commission finds significant that Commission records indicate the SDD license held by Frank Dimaria, Inc. was placed in escrow on March 12, 2012 as the business closed. Further, information provided to the Commission indicates that Frank Dimaria, Inc. no longer holds a lease for that address, and has no plans to enter into a new lease or establish a physical plant at that location; and that the subject location now houses a restaurant "Pizza Nostalgia" which would not qualify for the SDD quota license. Based on this information, the Commission finds that Frank Dimaria, Inc. is not an existing licensee at this address inasmuch as the license is in escrow and they have no ownership or leasehold interest in the property where their license was formerly located. Since Frank Dimaria, Inc. is not an existing licensee at this address, the half-mile rule is not applicable.

Under Article IV, Section 40, of the Constitution of Michigan (1963), the Commission shall exercise complete control of the alcoholic beverage traffic within this state, including the retail sales thereof, subject to statutory limitations. Further, the Commission shall have the sole right, power, and duty to control the alcoholic beverage traffic and traffic in other alcoholic liquor within this state, including the manufacture, importation, possession, transportation and sale thereof under MCL 436.1201(2).

The applicant is authorized to do business in Michigan, as required under MCL 436.1535 for licensure. Under MCL 436.1537(1)(f)(j), the licensee may sell beer, wine, spirits and mixed spirit drink for consumption off the premises only.

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 October 3, 2012 issued in this matter is REVERSED, and the applicant's request is APPROVED, subject to the following:

1. The licensee shall purchase an initial minimum order of \$5,000.00 of spirits, divided among not less than 50 brands as a condition precedent to receiving a new SDD license as required by administrative rule R 436.1139.
2. The Commission grants a waiver of administrative rule 436.1133(c) relative to Meijer, Inc.

B. The applicant's request for a new Sunday Sales Permit (P.M.) is APPROVED, subject to the following:

1. A reference to the time of day includes daylight savings time, when observed.
2. This permit is subject to revocation by operation of law or otherwise if the Commission receives notice from a county, city, village or township that it prohibits the sale of spirits, mixed spirit drink, or beer and wine during the time authorized by this permit.

C. The licensee shall maintain proof of financial responsibility providing security for liability and failure to do so 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.

D. 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 must obtain all other required state and local licenses, permits, and approvals before serving or selling alcoholic liquor.

E. 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.

MICHIGAN LIQUOR CONTROL COMMISSION

Teri L. Quimby, Commissioner

Dennis Olshove, Commissioner

Prepared by:
Terri Chase, Commission Aide

Date Mailed: _____