

Sangamon County, Illinois
ZONING BOARD OF APPEALS

The Zoning Board of Appeals met on August 21, 2014, at 7:00 P.M. in the County Board Chamber in the County Complex.

ATTENDANCE (X) denotes present

(X) Chairman Chimento

(X) Committee Member Wulf

(X) Committee Member Spiro

() Alt. Committee Member Dobrinsky

(X) Committee Member Herbert

(X) Alt. Committee Member Lucchesi

STAFF PRESENT:

Abby Bybee, Associate Planner, Spfld-Sang County Regional Planning Commission

Dwayne Gabb, Assistant States Attorney, States Attorneys Office

Cyndi Knowles, Zoning Administrator, Sangamon County Zoning

Chairman Chimento called the meeting to order.

Docket 2014-022 for property located at 501 No. Dirksen Parkway, Springfield, IL. 62702

PETITIONER(S): Evergreen Market Incorporated

OBJECTOR(S): Yes, written and in person

PRESENT ZONING CLASSIFICATION: "I-1" Restricted Industrial District

REQUESTING: A variance to allow a liquor store property line to be five (5) feet from a residential structure instead of the required one-hundred (100) feet, a variance to allow three (3) uses on one (1) parcel and a Conditional Permitted Use to allow for the sale of alcohol.

STAFF RECOMMENDATION: The petitioner's request for the Conditional Permitted Use to allow the sale of liquor is not necessary as it is allowed in the I-1 zoning district per section 17.28.010 of the Sangamon County Zoning Ordinance. The regulations state that permitted uses in the I-1 district include "...Conditional Permitted Uses in the B-1, B-2 and B-3 districts...". Since a liquor store is an at-will use outlined under Conditional Permitted Uses in the B-3 district, the request of the petitioner is not needed therefore staff did not address these standards. The variance requests still apply. Staff recommends approval of the requested variance to allow the sale of packaged liquor to be within 5 feet of a residential structure. The standards for variation are met. In 1984, Mr. Michael Welch filed a petition requesting that the County Board grant an amendment to

rezone the property to I-1 (Zoning Case 84-A-13). Variances to reduce the transitional yard requirements were also granted. The Zoning Board of Appeals' Findings of Fact for the case state that the "neighbors on both sides of the property have been notified and are not in objection to the rezoning." The subject property is located on the corner of a major thoroughfare with significant traffic. The parcels to the north, east and south of the subject property are being utilized with commercial and retail uses. While there is a residence adjacent to the west of the subject property, given the commercial nature of the area, it is unlikely the variance will negatively affect the surrounding parcels. Staff recommends approval of the requested variance to allow three uses on one parcel. The request is compatible with the immediate area as there is a trend to allow multiple uses in a building as a strip-mall. No negative impacts are anticipated.

Talal Alammari was sworn.

Patrick Smith, Attorney for Talal Alammari, asked Mr. Alammari if he was the owner of Evergreen Market.

Mr. Alammari stated that yes he is.

Patrick Smith then asked how long he has been there.

Mr. Alammari stated that they have been there for 1 year and 8 months.

Patrick Smith then asked if he was the only full time employee there.

Mr. Alammari stated that he is the only one who works there.

Patrick smith asked if he is there 7 days a week.

Mr. Alammari stated yes.

Patrick Smith stated that you have a family member or friend who relieves you now and then.

Mr. Alammari stated that sometimes his brother will come help out for a little bit.

Patrick Smith asked how the business has been.

Mr. Alammari stated that the business has been so-so.

Patrick Smith stated that you wish to sell alcohol to assist you in your enterprise.

Mr. Alammari stated I wish to sell alcohol to help pick up my business, because, it is that a lot of people come there and ask me for it.

Patrick Smith asked if any of the neighbors have ever come and complained to you about the traffic you generate there.

Mr. Alammari stated that no one has made any complaints.

Patrick Smith asked if his customers have any trouble getting in or out of his place.

Mr. Alammari stated that he has had no trouble or complaints. Have been here a year and 8 months and have not had any problems with anybody.

Committee Member Spiro asked, the only reason you are making this request is to assist you in your business.

Mr. Alammari stated yes.

Patrick Smith stated that he sees a lot of protesters for this, which he was not aware of. I did get a written objection by Jerry Stasukinas. He raised some several points which I will address. The question with regard to the alcohol across the street, is Dillon's Pizzeria Place and Northern Lights, they sell alcohol. Down the street, there is Parkway Pub, which is another place that sells alcohol, to be consumed on the property. This is just an effort to sell packaged liquor, the pick it up and they leave. There is a widening of Dirksen Parkway. As I have viewed the place on the map, they may lose 2 parking spaces. The entire area surrounding this place is zoned commercial. There was a concern with trucks coming and going. There are trucks coming and going down that street all the time. They are loading and unloading across the street. I don't see that that creates any particular hazard. The circumstances that he finds himself in, the property is zoned "I-1", which allows for a liquor store. By the unique circumstances of the zoning ordinance, even though the zoning allows you to have that, you still need the CPU. I understand the residence behind there, but there are residences behind Parkway Pub, there are residences behind Dillon's and Northern Lights. There is a substantial screening behind this building and between the neighbors behind there. I do not know if it will increase the amount of traffic there, he certainly hopes so because, that generates more money for him and for the County in sales tax. This effort is to try to help a business succeed more than he is currently doing. Success is never a given, we do not know if he is going to be successful. He should at least be allowed the opportunity to try. There will be no increase in traffic; this is already a heavily traveled road. There are already trucks running up and down. There is a trucking business to the south of him. There are car dealerships to the north of him. I just don't see traffic as any bearing on this at all.

Committee Member Spiro asked if you intend to keep the same hours or be open later.

Patrick Smith stated they would keep the same hours.

Chairman Chimento asked what the hours of operation are.

Mr. Alammari stated that they open at 8:30 and close around 10:00.

Committee Member Spiro stated so you will be closed at 10:00 still.

Mr. Alammari stated yes however, sometimes when it is slow, I go ahead and close at 9:30.

Committee Member Spiro stated, Parkway Pub is open until 3 AM if I remember correctly.

County Board Member Ratts asked legal counsel for clarity, when asked to state your address, he stated the address of 501 No. Dirksen Parkway, is that the address that you live at?

Mr. Alammari stated no, I have my house at 1901 So. 6th.

Chairman Chimento stated that staff may want to clear things up on the CPU; I think maybe counsel is misunderstanding.

Staff, Cyndi Knowles stated, upon reflection and review by staff, the liquor store is an actual "at will" use in the Industrial District because it is a Conditional Permitted Use in the B-3 District and all Conditional Permitted Uses in the B-3 District, with the exception for heliports, taverns and adult uses, are permitted in the I-1 District. The CPU is no longer needed however, the variance to be within 100' of a residence and for the 3 uses already existing on the property are still needed.

Chairman Chimento asked if County Board had any questions. Then asked for objectors.

Attorney Carl Hoffee stated that he is there representing Jerry Stasukinas, who is the owner of the property South across Carpenter St. 441 No. Dirksen Parkway. We filed written objection, which I will summarize. One of our primary objections has to do with parking. The parking plan, which is exhibit A of our objection, does not take into account land that the state has already acquired, which will wipe out between 7 to 9 places, according to that exhibit. Which will take away adequate parking for these 3 uses from the Counties minimum requirements. There are plans for Carpenter Street which is shown in Exhibit B. You can see that all these parking spaces on the south side will be gone. It creates a dangerous situation, even now, for my clients because, customers leaving Evergreen Market sometimes crisscross Carpenter onto the Stasukinas lot to get to Dirksen. Another example of the danger is shown in exhibit C. It is a truck unloading merchandise at this convenience store. How the truck is sitting, it is taking up the parking off Carpenter St and out in the right-of-way off Dirksen. If the improvements were already there, this truck would be out in a driving lane and that is a very dangerous situation. I do not feel that the request for variations have been met. As far as the industrial zoning, this property was only leased 3 years ago. The fact that there are 3 uses on this property, none of which are industrial, which I feel is a hindrance to the successful operation of this building. The variance for alcohol does not appear to be necessary. I feel that the south side should be fenced and parking regulations should be met in order to make things less dangerous.

Chairman Chimento asked if there were any questions.

County Board Member Stumpf stated he would like to ask, under this objection, they are talking about inadequate parking, especially along Carpenter St. and this land has already been conveyed by IDOT. With the IDOT upgrade to Dirksen Parkway, does that affect zoning?

Staff, Dwayne Gab, stated that he is going to ask staff for their analysis on that part, before I render any kind of legal advice.

Staff, Cyndi Knowles stated that the building and existing parking spaces all existed well before the early 80's. Because IDOT has come in and acquired part of that parking, it actually becomes grandfathered. That is the way we have looked at it all along Dirksen with these improvements.

Staff, Dwayne Gab stated in his legal opinion, it is relevant or not if the variance should be granted but I don't think it is legally prohibited.

County Board Member Stumpf asked, you had stated that you mostly close at 9:30 or 10 o'clock, so my question for the staff, if this was approved under the County Board at the next meeting, even though he said he closes at 9:30 – 10:00, under this zoning rules and case, does he have to close at that time? Would that be through the liquor committee?

Staff, Dwayne Gab stated that it would depend on the liquor code. I do not have it in front of me but, I believe it is 1:00 am. He would be under no legal obligation to the county, so if he changes his hours to 1:00, the County would have no legally actionable ability to deny him.

Committee Member Wulf asked staff, you said the property would be grandfathered in based upon the previous granting of the request.

Staff, Cyndi Knowles, stated that the parking would be grandfathered in because IDOT has come and taken part of the parking. It was not at the property owners doing, it was IDOT's doing.

Tim Moore stated that he has been asked by neighbors around the area to speak on their behalf, I may not know all of their opinions, they may have additional ones. Mr. Hoffee did a great job presenting a number of our objections. It is 5 feet away from the closest house, it is too close to permit alcohol. We all know that that neighborhood has been in decline. We feel that allowing packaged liquor or open pour liquor of any kind in that establishment would further contribute to the downfall of that neighborhood. These folks who live on Carpenter, Dirksen and around that neighborhood, are there because they like being there, that is their home. We are thrilled that Evergreen is there and that they have their businesses there. We don't pretend to want to close their businesses down, we just simple ask them to be good neighbors. On the good neighbor front, I have some examples, I have some 135 signatures opposing this project, collected by Mr. Welch.

There is also several businesses that are in there. If you look at the pictures in here, it was painted FU which my clients and the neighborhood feels is a threat. There is also a picture of a gang sign there and the traffic, foot traffic that comes through there at night, after hours is already in need of additional supervision. We feel that allowing liquor sales in that store, folks will be walking down the street with open canisters, 40 40's and so forth. We think it really is not good for the neighborhood. That is our primary focus beyond what Mr. Hoffee said. We do not think there is enough parking. We do think that you should deny the variance request.

County Board Member Ratts, asked staff, is there any other packaged liquor within the adjacent several blocks.

Staff, Cyndi Knowles, stated, I do not know if it is within a 2 block radius but, believe it is fairly close. The Casey's on Clear Lake Ave. sells packaged liquor.

County Board Member Hall stated that on this property here, I always feel that good zoning is based on the effect of are we going to affect the quality of the adjacent homes or whatever. These hours of operation, are you able to be open until 1:00 according to our liquor. Am I correct on that?

Staff, Dwayne Gab, stated that he is correct.

County Board Member Hall, stated that you could have someone open until 1:00, in an area that is already concerns, crime. I went out there and I looked, I saw the traffic moving in and out. As a Board Member, I need to make this a question, not a statement. Is there going to be any affect to the adjacent property owners, either in quality or in value, can anyone answer that?

Tim Moore, stated that he would answer that question. If they built a convenience store next to your house and were serving packaged liquor out of there until 1 in the morning, would it affect the value of your house...of course it would. It is going to affect everyone up and down that street. These folks that are there are trying to preserve the residential nature of that neighborhood. We ask that Evergreen clean up their property and not go down this avenue with liquor sales.

County Board Member Ratts asked how long they have owned this property.

Staff Cyndi Knowles stated that they lease the property.

Mr. Alammari stated he has been leasing for 18 months.

County Board Member Stumpf stated, it is already industrial, what are the usages that can be there, right now, without them having to come in for a variance.

Tim Moore stated, that is an exhausted list as you know Mr. Stumpf, my clients' uncle asked to rezone that to industrial back in 1984. The reason he did that was, they were, at

the time, the owners of that property and wanted to sell it or lease it to Ziebart, so it had to be industrial so, that choice was made back then. I don't know if the Board, at the time, had the option to put conditions on industrial uses.

Staff, Cyndi Knowles stated, among the things outside of the things allowed in the B-1, B-2 & B-3 zoning districts and CPU's allowed in all 3 of those districts, you are looking at things such as auditoriums, stadiums, contractor's offices, shops & yards, fire stations, police stations, hotels, wholesale greenhouses, motor freight terminal, weigh stations, other types of warehouses, welding shops. Some of which would be even more detrimental than what is currently there.

County Board Member Stumpf stated, whether this passes or does not pass through tonight and/or with the County Board, this is zoning so just because, if this would pass, does not mean you would get a liquor license for that area...just so you know. This does not have anything to do with the liquor license.

Patrick Smith stated with regards to the photos, the property and building is not owned by Mr. Alammari here, it is owned by someone else and I do not know when these signs were put up. As far as the gentleman across the street, talking about people cutting through his property, someone would have to be out there to make sure they were coming from the store and not the hair salon or auto place. If he is concerned about people crossing his property, at the end of the night he could just put up some cones along Carpenter Street and then that would not be a problem. As far as the trucks are concerned, every business along there has deliveries by trucks. If by having a packaged liquor store degrades the neighborhood, then when they put the Hi-Vee store in, all those people around Hi-Vee, lost because they have a huge packaged liquor store. I cannot believe that someone's property values are going to decrease because of someone opening a packaged liquor store. More appropriate might that be, if I was having sales of liquor for consumption on the premises and I would have people being inebriated and then go out into the area. I am an old man, I have seen a lot of stuff, rarely have I seen someone walk out of a packaged liquor store and instantly start popping open cans and start drinking. Not that it doesn't happen but, that is not something that you can say is going to be happening because he is selling it. I think it comes down to this, he made a commitment to try to put a store in there, he is not making the greatest success, he is surviving but, he is trying to improve his chances that he can stay in business. He believes that this is 1 way that he can continue to stay in business and have a convenience store in the area. If they do not want the convenience store in the area then he may have to leave and go someplace else if he can't survive there. You can't run a business if you don't make money.

Committee Member Luchessi asked staff, we are looking at 2 requests in 1 petition, if my understanding is correct. Number 1 of course is the variance for the setback to the residence, leading to liquor, and on that note, I am just going to say, perhaps, someone didn't come to object at the time the high request for the zoning was done, knowing very well that they reserve the right to come back at this date and object because liquor wasn't

an issue at that time. You are also in turn asking for a variance to make the 3 uses on 1 lot, is that correct?

Staff, Cyndi Knowles, stated that is correct.

Committee Member Luchessi asked if those variances can be split or is it all or nothing?

Staff, Dwayne Gab, stated that would be a question for the petitioner. They requested for various things, at this point, you are approving the petition, so the request is for 2 variances and the only way to follow through with the plan for the property would be to get both variances so I would say that you are voting on what the petitioner is asking for, which is for 2 variances.

Committee Member Luchessi asked if they were to be denied, could they come back and re-request one or both of the variances?

Staff,. Dwayne Gab, stated that they could however, there is a waiting period of 6 months to come back and re-request.

Committee Member Wulf asked, if denied, how would this affect the 3 existing businesses?

Staff, Cyndi Knowles, stated that the 3 businesses can actually remain, they have been in existence since at least '84. If 1 business was to move out and another business not established within a 6 month time frame, then the 3rd use would go away.

Committee Member Wulf makes a motion to recommend denial of the variances.

Committee Member Herbert seconds the motion.

Motion carries 3/2/0

Meeting adjourned.

Respectfully submitted,

Recording Secretary

Chairman

Minutes of August 21, 2014

Full record of minutes available upon request in the Zoning Department