

VIRGINIA ALCOHOLIC BEVERAGE CONTROL BOARD

RICHMOND

IN THE MATTER OF MOSBY EXPRESS MART, LLC
 MOSBY EXPRESS MARKET & DELI
 715 Mosby Street
 Richmond, Virginia 23223

APPLICATION FOR WINE AND BEER OFF PREMISES

INCIDENT NO. 201004280073

HEARING HELD At Richmond, Virginia
 August 3, 2010

ADMINISTRATIVE
HEARING OFFICER Sara M. Gilliam

APPEARANCES FOR THE BOARD:

Anthony R. Jimenez, Special Agent

FOR THE OBJECTORS:

Matthew A. Conrad, Spokesperson for the
Objectors, Immediate Past President of Union
Hill Civic Association And a Member of its
Board of Directors

Michael H. Leskin, Resident

Dr. Justin G. Myers, Resident

Elaine P. Odell, Resident

Kathleen E. Flanigan-O'Toole, Resident

Ann L. Wortham, Resident

MOSBY EXPRESS MARKET & DELI

Cynthia C. Oliver, Property Owner

William P. Laffon, Resident
(Present but did not testify)

FOR THE APPLICANT:

William T. Lehner, Esquire
Sands Anderson
P. O. Box 1998
Richmond, VA 23218-1998

Sadeq M. Murshed, Sole Owner

Sharleen E. Battle, Supporter

Cite As:

IN RE: Mosby Express Mart, LLC, #064880 (10/27/2010)

Recorded by ABC FTR Unit 1

O B J E C T I O N S

(Wine and Beer Off Premises)

Incident No. 201004280073

1. ~~The characteristics of the business conducted upon the premises are such that the establishment fails to qualify as a "convenience grocery store" within the meaning of Section 4.1-209 (4.) of the Code of Virginia and 3 VAC 5-50-100. (Withdrawn)~~
2. The place to be occupied by the applicant is so located that violations of the ABC Act or of the laws of the Commonwealth relating to peace and good order would result from issuance of the license and operation thereunder. REF: Section 4.1-222 A.2.b. of the Code of Virginia.
3. The number of licenses existent in the locality is such that the granting of a license is detrimental to the interest, morals, safety or welfare of the public. REF: Section 4.1-222 A.3. of the Code of Virginia.
4. The place to be occupied by the applicant is so located with respect to a residence and residential area that the operation of such place under the

license will adversely affect real property values or substantially interfere with the usual quietude and tranquility of such residence and residential area.

REF: Section 4.1-222 A.2.d. of the Code of Virginia.

5. ~~The place to be occupied by the applicant is so located with respect to Martin Luther King Junior High and numerous churches that the operation of such place under the license will adversely affect or interfere with the normal orderly conduct of the affairs of such institution. REF: Section 4.1-222 A.2.c. of the Code of Virginia. (Withdrawn)~~

FINDINGS OF FACT:

1. The hearing was convened to consider the objections set forth in the Notice of Informal Conference/Hearing Before Hearing Officer involving the application of Mosby Express Mart, LLC, trading as Mosby Express Market & Deli (Mosby Express), for a wine and beer off-premises license. Objection 1 was withdrawn by Matthew A. Conrad, the immediate past president of Union Hill Civic Association and a member of its Board of Directors. The hearing officer withdrew Objection 5, because no school or church representative requested the objection. The applicant file was adopted as part of the record. An informal conference, during which appearance information was obtained, hearing procedures were explained, and objections were discussed, was held prior to the formal hearing.

2. Mosby Express is located at 715 Mosby Street in the neighborhood known as Union Hill. To the left of the store is a vacant lot and to the right of the store is the applicant's parking lot which is next to a narrow alley. On the other side of the alley is Acme Grocery which went out of business after a fire in January 2009. Acme Grocery is located on the corner of Mosby Street and Venable Street.

3. Special Agent Anthony R. Jimenez testified that to the best of his knowledge the applicant location has never had an ABC license. He said there are approximately 17 licensed

establishments in Union Hill. The closest licensee is Big John's Grill which is located on the corner of Venable Street and Mosby Street and is less than 200 feet from Mosby Express. Big John's Grill has a wine and beer on-premises license. ABC Store #187, which does not sell 50 ml bottles of distilled spirits, is located at 2421 Venable Street and is approximately 3 blocks from Mosby Express. The approximate distances from the following off-premises licensed establishments to Mosby Express are as follows: Ocean Market (3 or 4 blocks); Market Place #14 (3 or 4 blocks); Night and Day Grocery (.5 of a mile); and Shop and Go (.8 of a mile).

4. Michael H. Leskin lives at 2002 Venable Street next to Acme Grocery. The rear of his property is separated from the applicant's parking lot by a narrow alley. Mr. Leskin testified that when Acme Grocery, which held an off-premises license, was operating, people constantly urinated on the fence behind his house which is adjacent to the alley and threw malt beverage and beer bottles into his yard. The malt beverage and beer bottles were mainly 40 ounces or larger.

5. When Acme Grocery would close at 7:00 p.m., people loitered for several hours in the alley consuming alcohol and often shouting and sounding inebriated. Mr. Leskin said that since Acme Grocery stopped operating, people no longer consume alcohol in the alley, and the block has become much quieter.

6. Since Mosby Express opened, Mr. Leskin said that people are using the alley to walk to and from the applicant's parking lot, and he has seen a large amount of litter. He is

concerned about noise increasing and real estate values in the area decreasing if Mosby Express receives a wine and beer off-premises license.

7. Big John's Grill is located directly across the street from Acme Grocery on Venable Street. Mr. Leskin testified that Big John's Grill has a great reputation, and there are no problems associated with this restaurant.

8. Dr. Justin G. Myers lives at 709 North 24th Street which is approximately 4.5 blocks from Mosby Express. He testified that from May 15, 2009 through June 13, 2010, the police made approximately 60 stops/arrests in Union Hill related just to alcohol or drugs. A lot of the charges were for public intoxication. As a physician, he knows the consumption of a 40-ounce bottle of malt liquor will make a person drunk. A copy of the police incidents from May 15, 2009 through June 13, 2010 was admitted into evidence as Exhibit 6.

9. Elaine P. Odell lives at 2010 Princess Anne Avenue which is approximately 2.5 blocks from Mosby Express. She owns Church Hill Photography which is located at 2134 Jefferson Avenue and is about 5.5 blocks from the applicant's location. While driving on Venable Street on Friday, July 30, 2010 at approximately 9:30 p.m., Ms. Odell saw a man falling-down drunk in the middle of the street.

10. Ms. Odell testified that people consume alcohol in Jefferson Park, which is located approximately 2.5 blocks from Mosby Express. It is a family-oriented park with two children's playgrounds. Ms. Odell has seen individuals in Jefferson Park

holding alcoholic beverages while urinating in plain view of children, and she tells them to stop urinating in public. On August 2, 2010, she picked up 5 beer cans from the intersection at the park's entry. Ms. Odell said there is an "epidemic of public drunkenness" in the community.

11. Ms. Odell picks up large beer containers and fortified wine containers in the alley behind her house. Everyday she sees people leave neighborhood convenience stores with alcohol who then publicly consume the alcohol they have just purchased. Ms. Odell believes quart bottles of alcohol encourage overconsumption.

12. When Church Hill Photography first opened, Ms. Odell testified that the block was quiet and peaceful. After Family Supermarket, a licensed convenience grocery store, opened across the street from Church Hill Photography, she said crime picked up.

13. Ms. Odell stated that the neighborhood became quieter for a little bit after Acme Grocery closed, "then things picked up." She thinks that public intoxication and crime will increase if another off-premises license is issued in this community. She pointed out that most of the owners of the neighborhood licensed establishments do not live in the community. As for real property values, Ms. Odell is concerned about the negative impact another licensed establishment may have on the homes in the neighborhood.

14. Kathleen E. Flanigan-O'Toole lives at 2235 Venable Street which is approximately 3 to 4 blocks from Mosby Express.

Since Acme Grocery went out of business, she said the area has been calmer and quieter. People consume alcohol in the alley behind her house, urinate in the alley and discard cans and 40-ounce glass bottles of beer and malt liquor in the alley.

15. Ms. Flanigan-O'Toole observed 15 to 20 people, who did not appear to be residents, having a party on the sidewalk while holding open containers of alcohol. There is a constant amount of alcohol moving through the neighborhood, and she believes that issuing another ABC license will be detrimental to the neighborhood. As for real property values, Ms. Odell said property values are extremely low and houses are not selling in the area.

16. Ann L. Wortham lives at 2239 and 2241 Venable Street which is about 2.5 blocks from Mosby Express. Due to the large number of vacant homes and empty lots in Union Hill, there is a fairly large homeless population in the area. Ms. Wortham, a former Richmond police officer, testified that there was a licensed convenience grocery store, known as 2300 Venable Street, located directly across the street from her house. When the licensed establishment was in business, there was documented prostitution, documented drug transactions, alcohol abuse, loitering, and she was shot at by people arguing outside the store. Individuals would purchase beverages from 2300 Venable Street and sit on the store's steps where they would consume their beverages from plastic bags.

17. Ms. Wortham cleaned up trash, including plastic bags containing 40-ounce bottles of alcohol and bottles of fortified

wine, discarded by the customers of 2300 Venable Street. After an ownership change, the store went out of business in September or October 2008. Ms. Wortham said that it really became quiet when the store closed. The drug transactions, prostitution and plastic bag debris stopped. In the last few years, the neighborhood has been improving and it has become cleaner and quieter. Ms. Wortham walks her dog almost everyday by Mosby Express and said she has been "awed" by the increase in debris since Mosby Express opened for business.

18. Cynthia C. Oliver owns property at 805 Mosby Street which is less than a block from Mosby Express. She currently owns five houses in Union Hill which she rents to medical students.

19. Since Mosby Express opened, Ms. Oliver testified that there has been an increase in foot traffic and an unbelievable increase in trash. Much more trash has been thrown in her yard, on the sidewalk and in the street. She called the City of Richmond and asked for trash cans to be placed on the street. The city said it would put a trash can in front of Mosby Express and another trash can at Mosby and O Streets.

20. Ms. Oliver said another licensed convenience grocery store will not have a positive impact on the community. She is concerned that the issuance of an ABC license to Mosby Express will impact her being able to rent her Union Hill houses. She has received a lot of comments from potential renters and their parents about the types of people that wander around the neighborhood especially in the alleys and behind the houses.

21. Matthew A Conrad lives at 819 North 24th Street which is approximately 4 blocks from Mosby Express. He is the immediate past president of Union Hill Civic Association and currently serves on its Board of Directors. Mr. Conrad has lived in Union Hill for five years.

22. When he first arrived in the neighborhood, there were ABC licensed establishments up and down Venable Street. He said that when licensed stores closed, there would be a dramatic decrease in crime. Mr. Conrad is concerned about the increased density of ABC licenses, especially off-premises licenses, in the neighborhood, because he knows the impact it will have on the surrounding community from his experience as a former prosecutor and as former counsel to the ABC Bureau of Law Enforcement.

23. Using the ABC website, Mr. Conrad generated a list of all active wine and beer licenses located within the zip code for Union Hill. He focused on licensed convenience grocery stores, but pointed out that many licensed grocery stores in the community were acting just like the licensed convenience grocery stores. The distances from the following off-premises licensed establishments to Mosby Express are as follows: Ocean Market (4 to 5 blocks); Clay Street Market (1 mile); Night & Day (.5 of a mile); Maris Mini Mart (1.1 mile); Stop & Go (.8 of a mile); Love Seafood & Love Food Market (1 mile); Mo Convenience Store (1 mile); 360 Express Mart and Deli (1.1 miles); Market Place (1.2 miles); Shockhoe Market (.7 of a mile); Cool Lane Express (1.2 miles); Uppys XXIII (.4 of a mile); Church Hill Market (6

blocks); Bloomfield's Market (3 to 4 blocks); and Family Supermarket II, Inc. (6 blocks). A copy of the list of active wine and beer licenses within the Union Hill zip code that Mr. Conrad prepared was admitted into evidence as Exhibit 2.

24. Mr. Conrad was contacted by Sean Murshed, because his name was on the Union Hill Civic Association's objection to Mosby Express' application for an off-premises license. Mr. Sean Murshed described Mosby Express as a family business and purported to have the authority to negotiate with Union Hill Civic Association on behalf of the applicant. Union Hill Civic Association's primary concerns are the sale of (i) single servings of alcohol in any size, including 40-ounce servings; (ii) single cigarettes; and (iii) single blunt wrappers which are used for smoking marijuana. When Mr. Conrad asked Mr. Sean Murshed to address these concerns, he said, "Matt, if I don't sell these things, someone else is going to."

25. Mr. Sean Murshed, who owns and operates Clay Street Market and runs Blue Wheeler Supermarket, never mentioned his brother, Sadeq M. Murshed, the sole owner of Mosby Express, to Mr. Conrad. Mr. Conrad said that he has seen public alcohol consumption behind Clay Street Market and public urination behind that store. Ms. Odell testified about trash at the Clay Street Market and trash and loitering at Blue Wheeler Supermarket.

26. A letter from Donald A. Coleman, the 7th District School Board member, supporting the Union Hill Civic Association's objections to Mosby Express Market & Deli's

application was read into the record. Mr. Coleman is very concerned about the impact another off-premises licensee selling single containers of alcohol will have on the children in the community. A copy of Mr. Coleman's letter was admitted into evidence as Exhibit 1.

27. Mr. Sadaq Murshed testified that he is the only owner of Mosby Express Mart, LLC, and he has no ownership interest in Clay Street Market. Most of his customers walk to Mosby Express. Mr. Sadaq Murshed purchased several large trash cans on August 2, 2010 which he plans to put outside his store after the hearing. He stated he cleans up the trash around the store. Mosby Express has a security system which allows him to see what is going on outside the establishment.

28. Mr. Sadaq Murshed voluntarily agreed to place restrictions on the off-premises license to prohibit the sale of single servings of beer and malt beverages which are no larger than 12-ounces and to prohibit the sale of single cigarettes. Copies of 17 photographs of the interior and exterior of Mosby Express and its surroundings were admitted into evidence as Exhibit 4. A petition signed by 314 people supporting the issuance of an ABC license to Mosby Express was admitted into evidence as Exhibit 5.

29. Sharleen E. Battle lives in Church Hill and attends the Temple of Judah Baptist Church which is located at 2110 Venable Street, about 4 blocks from Mosby Express. She supports Mosby Express' application for an ABC license. Ms. Battle is

not concerned about increased access to alcohol, because she said an alcoholic can always obtain alcohol somewhere. She testified that Mosby Express makes contributions to the church to help feed the hungry.

30. Dave and Beth Sarrett, who live in Church Hill approximately 10 blocks from the applicant's location, sent an email dated April 14, 2010, to Agent Jimenez supporting the issuance of an off-premises license for Mosby Express. Mr. Conrad said that an email was sent by the Union Hill Civic Association to its members and the adjoining community for comments on Mosby Express' application. It is his understanding that Ms. Sarrett misread the email as a request to support the applicant. A copy of the Sarretts' email was admitted into evidence as Exhibit 3.

CONCLUSIONS:

Objection 2 is substantiated by a preponderance of the evidence which establishes that the place to be occupied by the applicant is so located that violations of the ABC Act or the laws of the Commonwealth relating to peace and good order would result from the issuance of the license and operation thereunder. The evidence established that there is a significant amount of drinking in public, littering, public intoxication, noise, public urination and loitering throughout the neighborhood as a result of the sale of alcohol by off-premises licensees in the community. When Acme Grocery, which is separated by only a narrow alley from Mosby Express, went out

of business, alcohol consumption stopped in the alley, the block became much quieter, and there was a reduction in litter. This was not an isolated event, because there was repeated testimony from residents that when licensed convenience grocery stores stopped operating in the neighborhood, there was a reduction in these crimes.

When an objection is brought pursuant to Virginia Code Section 4.1-222 A.2.b., "... there must be a causal nexus between the interference complained of and the situs of the licensed establishment." *Muse v. Alcoholic Beverage Control Board*, 9 Va. App. 74 at 80 (1989). Mosby Express' location will be a magnet for people to purchase and consume alcohol in public and to engage in other illegal activities such as public intoxication, littering, public urination and loitering. Under these circumstances, the causal connection is firmly established by the evidence.

Objection 3 is not substantiated. While there are ABC licenses in the neighborhood, the evidence is insufficient to establish that an additional ABC license, in and of itself, is detrimental to the interest, morals, safety and welfare of the public. The objectors failed to establish that the number of licensees in the locality is such that the granting of a license is detrimental to the interest, morals, safety and welfare of the public.

Objection 4 is partially substantiated by a preponderance of the evidence which establishes that the place to be occupied

by the applicant is so located with respect to a residence and residential area that the operation of such place under the license will substantially interfere with the usual quietude and tranquility of such residence and residential area. As a result of the sale of alcohol by off-premises licensees in the neighborhood, the residents are subjected to drinking in public, littering, public intoxication, noise, public urination and loitering which disturb the tranquility of the neighborhood including the area surrounding Mosby Express. The availability of alcoholic beverages at Mosby Express will aggravate these illegal activities which are interfering with the tranquility of the residents.

Objection 4 is not substantiated as to adversely affecting real property values. There was no evidence of the real estate values of nearby residences before and after Mosby Express opened to show any adverse affect on the real property values of nearby residences.

DECISION:

(Wine and Beer Off Premises)

Objection 2

That the license be refused.

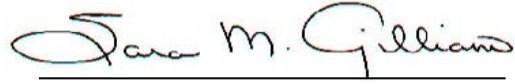
Objection 3

That the objection be dismissed.

Objection 4

That the license be refused.

Entered this 27th day of October 2010.

A handwritten signature in cursive script that reads "Sara M. Gilliam". The signature is written in black ink and is positioned above a horizontal line.

Sara M. Gilliam

Administrative Hearing

Officer