

LICENSE HEARING MINUTES
Target Store T2229, 1300 University Avenue West
Friday, July 17, 2015, 10:00 a.m.
330 City Hall, 15 Kellogg Boulevard West
Nhia Vang, Deputy Legislative Hearing Officer

The hearing was called to order at 10:00 a.m.

Staff Present: Jeff Fischbach and Kris Schweinler, Department of Safety and Inspections (DSI)

Applicant: Nancy Husnik, attorney representing the applicant, Target Corporation; Jonathan Redberg and Lydia Bjorge, Target Corporation

Others Present: Ellen Saffron and Nancy Rosenberg, co-owners of Big Top Liquors, 1574 University Avenue West; Tim O'Connell, Manager of Big Top Liquors, 1574 University Avenue West; Scott Banas, attorney representing Big Top Liquors; Tom Goldstein, 1399 Sherburne Avenue

Target Store T229: Liquor Off Sale

Ms. Vang stated that this was an informal legislative hearing for a license application. This particular license required a Class N notification which means the neighborhood was notified and people had the chance to voice their concerns. The City received a letter of concern/objection which triggered the hearing. There were three possible results from this hearing: 1) recommend the City Council issue this license without any conditions; 2) recommend the City Council issue this license with agreed upon conditions; or 3) recommend the City Council not issue this license but refer it to the city attorney to take an adverse action on the application, which could involve review by an administrative law judge. The applicant will be required to sign a Conditions Affidavit demonstrating the understanding of the conditions.

DSI staff will explain their review of the application and state their recommendation. Ms. Vang said she will then ask the applicant to discuss their business plan. At the end of the hearing, she will make a recommendation for the City Council to consider. Her recommendation will be on the Consent Agenda; the City Council is the final authority on whether the license is approved or denied.

Mr. Fischbach reviewed the license conditions as mandated by state statute:

1. Per State of Minnesota Statute 340A.412, Subd. 14) - a liquor store may sell only the following items: (1) alcoholic beverages; (2) tobacco products; (3) ice; (4) beverages for mixing with intoxicating liquor; (5) soft drinks; (6) liqueur-filled candies; (7) food products that contain more than one-half of one percent alcohol by volume; (8) cork extraction devices; (9) books and videos on the use of alcoholic beverages; (10) magazines and other publications published primarily for information and education on alcoholic beverages; and (11) home brewing equipment.

The District 13 Union Park District Council submitted a letter requesting a public hearing to address issues related to the half mile separation requirement for off-sale establishments as required under City Ordinance, include a discussion on the following: 1) the means of measurement that were used, including the specific points used for the measurement, and 2) the means of measurement that should be used under the ordinance, including the definition of "establishment" and "location" in the ordinance.

Zoning reviewed the license application and recommended approval; building permit approval was pending the approval of the license application. Licensing was recommending approval with the proposed conditions.

Ms. Vang invited the Applicant to explain their business plan.

Ms. Husnik stated that Target had applied for an exclusive liquor store license which was designed to be a store within the Target Store, with its own separate entrance door off a main entrance door into the store. There would also be a separate door for ‘employees only’ that would also be used for moving deliveries into the liquor store. They expected deliveries to be somewhere between two to three times per week depending upon the volume of sales. (*See correspondence from Ms. Husnik dated July 15, 2015 detailing the Applicant’s business plan.*)

Ms. Vang asked how many employees they expected will work in the liquor store and what type of alcohol they planned to sell. Mr. Redberg responded that it was a small store and he believed there would be approximately 12 staff dedicated to working in the liquor store. They planned to sell a variety of alcoholic products with a focus on the sale of craft beers. Ms. Husnik stated that this store location currently had a 3.2 license to sell liquor and once the full liquor license was issued, they were required by state law to surrender the license to sell 3.2-liquor.

Ms. Vang asked whether there were any other separate liquor stores Target was currently operating in Minnesota. Ms. Husnik responded that they currently had two stores; one in Otsego and the other at the Knollwood Mall store in St. Louis Park.

Ms. Vang invited testimony from members of the audience.

Ms. Saffron and Mr. O’Connell appeared on behalf of Big Top Liquors (*see written testimony provided by Ms. Saffron outlining her rationale for denying the liquor license*). Ms. Saffron’s argument was she believed the proposed liquor store would violate three city ordinances: 1) that an off-sale liquor location cannot be within 300 feet of residentially zoned property or park; 2) that an off-sale liquor location cannot be within 300 feet of a licensed child care facility; and 3) an off-sale liquor location cannot be within a half-mile radius of an existing establishment. Ms. Saffron indicated that Skyline Towers, 1247 St. Anthony Avenue, was an apartment complex with approximately 504 units with social services provided by Common Bond. Given the close proximity of the residential facility to the Target liquor store location, she believed a petition waiving the distance requirement should have been obtained from the residents of the apartment complex. She also argued that she believed the petition and consent waiver executed by Community Action Partnership – Head Start Program (Head Start), 450 Syndicate Street North (a licensed child-care center), was flawed. It was her contention that Target agreed to three conditions on the consent waiver, at the request of Head Start, which she interpreted to mean that Target was agreeing to supportive efforts for the child care center; she believed this was a direct conflict of interest. It was her position that the half-mile distance requirement was also not met. It was her interpretation that the distance was to be measured from the eastern corner of Big Top Liquors Store at 1574 University Avenue to the very western corner of the Target Store at 1300 University Avenue making it a distance of building to building. Instead, the measurement was made from the southeast edge of 1574 University Avenue to the east side of the western door entrance at 1300 University Avenue, giving Target an almost 12-foot advantage to the half-mile distance requirement. She believed the opinion of the City Attorney’s Office from July 2005 supported her claim that the measurement was to be made from building to building. Based on her arguments, she requested the application for the off-sale liquor license by Target be denied.

Ms. Husnik stated that she wished to clarify some of the statements made by Ms. Saffron. Regarding the distance measurement, the liquor store was going to be located within the store and the measurement used by Westwood Professional Services, who conducted the survey, was from the east side of the west doorway entrance of the Target Store to the southeast corner of the building for Big Top Liquors. It was her opinion that this met the intent for the required measurements as opined in the memorandum by the City Attorney's Office from July 2005 concerning this subject. Regarding the consent petition and waiver from Head Start, they had many meetings, including community meetings, to discuss issues concerning the proposed liquor establishment. Since Target was prohibited from adding any conditions to the license as suggested by the community, they included the community's input by way of conditions on the waiver. These conditions were in no way binding nor were they done as a 'favor' in return for support for Head Start.

Mr. Fischbach addressed the issue raised by Ms. Saffron concerning Skyline Towers being a residential facility and that a petition was required because of the distance requirement to the proposed liquor store. Skyline Towers at 1247 St. Anthony Avenue was zoned T4 which was a mixed use, commercial/residential district, the same as the Target Store. Only a residentially zoned district would require a petition for distance to a liquor store.

Mr. Banas, attorney representing Big Top Liquors, cited various references to the distance requirement for off-sale liquor establishments including the following: the online DSI Reference Manual; the July 28, 2005 Memorandum from Gerald Hendrickson, Deputy City Attorney to Marcia Moermond, Legislative Hearing Officer; and an email from Jeffrey Fischbach, DSI, to Julie Reiter, Union Park District Council. All of these sources indicated that the distance for measurement was from building to building requiring a half-mile radius of any existing establishment; nearest point to nearest point. There was no exception or waiver from these standards. He believed the calculation used in the distance survey by Westwood Professional Services was incorrect. It was his opinion that the distance measured should have been from the southeast corner of the building at 1574 University Avenue, Big Top Liquor, to the northwest corner of the building at 1300 University Avenue, Target; building corner to building corner. By measuring the distance to some random location at the east side of the west doorway to the Target Store, gave Target an unfair distance advantage of almost 12 feet of the half-mile distance requirement. He did not agree with DSI staff's interpretation of the distance requirement under the ordinance and suggested that the license application should be denied.

Mr. Fischbach responded that the measurement used was from the outer boundary of the licensed establishment to the outer boundary of the proposed licensed establishment. In this case, the distance used was to the actual liquor store inside the Target Store and not to the outside corner of the building/store itself. He calculated that the actual distance measurement from Big Top Liquors was 2,795 square feet to the liquor store entrance inside the Target Store. Mr. Fischbach then, in detail, explained to Mr. Banas and Ms. Rosenberg the map and how the measurements were determined.

Nancy Rosenberg, Big Top Liquors, stated that she did not agree that the liquor store inside the Target store should be considered a separate entity. It was her contention that in order for the liquor store to be able to conduct business, it was reliant on the entire Target Store in order to operate. All deliveries of alcohol would be made at the back of the store in addition to the storage of alcohol being in the back of the store. It was her opinion that the entire store, building to building, should be considered in measuring the distance between liquor establishments.

Ms. Husnik responded that she disagreed with the assertion that the proposed liquor store should not be considered a separate entity from the main Target Store. There was a separate entrance into the liquor

store from the main store with specific hours of operation. Dedicated managers would be operating the store. As for deliveries of alcohol, in consultation with Mike McManus with the Minnesota Department of Public Safety Alcohol Enforcement and Gambling Division, deliveries are permitted to be made at the back of the store and product is allowed to be moved to the licensed area of the premises within 24 hours. Alcohol can only be stored in the licensed liquor establishment. This is the procedure they follow at their stores in Otsego and Knollwood Mall.

Mr. Goldstein, neighbor, stated that although he did not live within the notification area for the proposed off sale liquor store at Target, he wished to voice his opinion and concerns. He was opposed to Target adding a liquor store inside their existing store and did not believe the area needed another liquor establishment. (*See written testimony from Mr. Goldstein requesting the liquor license be denied.*)

Ms. Vang asked the Applicant how they addressed exterior maintenance of the property. Ms. Bjorge responded that Target had an asset protection program where employees canvassed the store making sure merchandise, products, etc. were properly in their place. This included picking up litter, trash both inside and outside the store. There were also video monitors located inside and outside the store so employees could address any issues as they arose.

Since there was no further public testimony, Ms. Vang closed the public hearing. Concerning the distance requirement between the licensed liquor establishments, it was clear that the law had not changed and the City Attorney's opinion was still valid as to how the distance was measured. Therefore, Target's application did meet the requirement for distance under the law. There was one issue she wished to follow up on concerning deliveries of alcohol into the store. She said she would contact the responsible party with the State of Minnesota Alcohol Enforcement to find out what these requirements were concerning deliveries. Ms. Vang adjourned the hearing and said she would get back to the parties with her recommendation.

The hearing adjourned at 11:45 a.m.

Ms. Vang, in consultation with the State of Minnesota Alcohol Enforcement and the City Attorney's Office, recommended adding the following license condition:

2. Licensee may not store intoxicating liquors outside of the licensed premises, unless expressly permitted in writing by the Division of Alcohol and Gambling Enforcement of the Minnesota Department of Public Safety. Any such storage outside of the licensed premises must conform to the terms of the written permission, a current copy of which must be provided to the Department of Safety and Inspections.

Ms. Vang recommended approving the license with the following license conditions:

1. Per State of Minnesota Statute 340A.412, Subd. 14) - a liquor store may sell only the following items: (1) alcoholic beverages; (2) tobacco products; (3) ice; (4) beverages for mixing with intoxicating liquor; (5) soft drinks; (6) liqueur-filled candies; (7) food products that contain more than one-half of one percent alcohol by volume; (8) cork extraction devices; (9) books and videos on the use of alcoholic beverages; (10) magazines and other publications published primarily for information and education on alcoholic beverages; and (11) home brewing equipment.

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The Conditions Affidavit was signed and submitted on August 5, 2015.