

STATE OF CONNECTICUT

DEPARTMENT OF CONSUMER PROTECTION

In the Matter of

Lenny's On the Beach
Leonard Corto, Permittee
On The Beach LLC, Backer
Permit No. LCA.6937
Docket No. 11-189

Case No. 2010-836, 2010-830
April 28, 2011

MEMORANDUM OF DECISION

This matter involves a remonstrance filed on the renewal application for a café liquor permit for Lenny's On the Beach, 88-90 Hartford Avenue, Old Lyme, Connecticut. A formal administrative hearing was held before the Department of Consumer Protection, Liquor Control Commission, on February 24, 2011, at which time Leonard Corto, permittee, appeared with counsel. The hearing was held in accordance with Section 30-39(c), Connecticut General Statutes, as the result of a legally sufficient remonstrance questioning the suitability of the location. Remonstrants appeared at the hearing and testified in opposition to the granting of the renewal of this liquor permit.

Based upon the evidence adduced at the hearing, the following facts are found. Liquor Control Special Agent Jennifer Sturgeon conducted a thorough investigation in connection with the renewal application and the remonstrance filed in opposition to the renewal application. Remonstrants testified in opposition to the granting of the renewal application, primarily due to the live bands entertainment, the

noise generated by the live bands, nighttime music, amplified music from speakers, and intoxicated patrons.

The initial café liquor permit for this premises, hereinafter referred to as “Lenny’s”, was received by this department in January 2008. The front page of such application did not bear the signatures of the local fire marshal, zoning authority or town clerk, as required. A fully executed liquor application was subsequently submitted to the department in April 2008, bearing the required signatures and indicating approval by the fire marshal, zoning authority and town clerk for the proposed liquor premises; on such application, the only live entertainment sought by the applicant and approved by local authorities was for “solo acoustic permit”. In 2009, the permit premises expanded the type of live entertainment offered at Lenny’s and included live bands, however, such entertainment was not approved by the local zoning authority. In fact, as of the date of the remonstrance hearing, the only type of live entertainment which is permitted and approved for this location is “solo acoustic”. The 2010 renewal application submitted by Mr. Corto, which is the subject of this remonstrance hearing, indicates that “Bands” have been added as “live” entertainment at Lenny’s. On July 15, 2010, a Cease and Desist Order was issued by the Zoning Enforcement Officer, Town of Old Lyme, against Lenny’s for – among other issues – bands playing, in violation of its zoning regulations. As of the date of this remonstrance hearing, an appeal of the town’s order is pending, however,

the fact remains that there is no local zoning approval or authority for the applicant to have the type of entertainment identified on its renewal application. A review of the previous liquor permit applications submitted by various applicants for the years 2003, 2006, 2007 and 2008 for this location, 88-90 Hartford Ave., Old Lyme, Connecticut, reveal that the only type of live entertainment sought and approved by zoning was for “solo acoustic”.

The Liquor Control Act vests in the Commission a liberal discretionary power to determine factual matters with regard to liquor permits. Gulia v. Liquor Control Commission, 164 Conn. 537, 325 A.2d 455 (1973). The determination of factual matters with regard to the suitability of an applicant or the location of proposed liquor permit premises is vested with the Liquor Control Commission. Crescimanni v. Department of Liquor Control, 41 Conn. App. 83, 674 A.2d 851 (1996).

Accordingly, based upon the foregoing facts, we find that the granting of this renewal application, with “live bands” as entertainment, is prohibited by the zoning ordinances of the Town of Old Lyme, and cannot be approved, as submitted. The renewal liquor permit application for Lenny’s is hereby denied and the remonstrance is granted for unsuitability of location.

However, in view of the ramifications of the denial of a liquor permit, we will **STAY** such denial until May 12, 2011, to allow Lenny’s an opportunity to withdraw its request for “Bands” or any live

entertainment other than “solo acoustics.” If such withdrawal is received by the department by May 12, 2011, the department will grant the 2010-2011 renewal application for Lenny’s, based upon the substantial evidence. If no such withdrawal has been received by May 12, 2011, Lenny’s renewal liquor application will be denied and the remonstrance will be granted for unsuitability of location.

**DEPARTMENT OF CONSUMER PROTECTION
LIQUOR CONTROL COMMISSION
BY**

Elisa A. Nahas, Esq.
Presiding Officer

Steven Somma, Commissioner

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