

TABC DOCKET NO. 590078

TEXAS ALCOHOLIC BEVERAGE	§	BEFORE THE TEXAS
COMMISSION, Jurisdictional Petitioner	§	
	§	
ANNE HOUSSEIN, REPRESENTATIVE FOR	§	
BAGBY MIDTOWN RESIDENTIAL	§	
GROUP AND BLINI HOXHA	§	
Protestants	§	
	§	
VS.	§	ALCOHOLIC
	§	
ORIGINAL APPLICATION (MB, LB) OF	§	
ANTIQUE VINTAGE INC.	§	
D/B/A ANTIQUE BAR & GRILL	§	
Respondent	§	
	§	
HARRIS COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-10-3145)	§	BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION this 29th day of October 2010, the above-styled and numbered cause.

The hearing in the above matter was conducted by the State Office of Administrative Hearings, Administrative Law Judge Roshunda Pringle presiding. The hearing convened on April 16, 2010 and the record was closed on the same date. The Administrative Law Judge made and filed a Proposal for Decision (PFD) containing Findings of Fact and Conclusions of Law on June 14, 2010. The time for filing and ruling on any Exceptions and Replies to the PFD has passed. No Exceptions were filed.

The Assistant Administrator of the Texas Alcoholic Beverage Commission reviewed and considered the Proposal for Decision. After such review, the Assistant Administrator adopts the Findings of Fact and Conclusions of Law made and entered into the Proposal for Decision by the Administrative Law Judge. The adopted Findings of Fact and Conclusions of Law are incorporated into this Order as if such were fully set out and separately stated herein. All requests for action not specifically addressed in this Order are denied.

IT IS THEREFORE ORDERED that the Original Application of Antique Vintage Inc. d/b/a Antique Bar & Grill for the issuance of a Mixed Beverage Permit and Mixed Beverage Late Hours Permit be **GRANTED**.

This Order will become final and enforceable on the 23rd day of November, 2010, unless a Motion for Rehearing is filed **before** that date.

SIGNED this the 29th day of October 2010 at Austin, Texas.



Sherry K-Cook, Assistant Administrator
Texas Alcoholic Beverage Commission

CERTIFICATE OF SERVICE

I certify that service has been made upon all parties in the manner indicated below on this the 29th day of October, 2010.



Martin Wilson, Assistant General Counsel
Texas Alcoholic Beverage Commission

Hon. Roshunda Pringle
Administrative Law Judge
State Office of Administrative Hearings
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Antique Vintage Inc.
d/b/a Antique Bar & Grill
RESPONDENT
1429 Caywood Lane
Houston, TX 77055
VIA FIRST CLASS U.S. MAIL

Bagby Midtown Residential Group
Attn: Anne Houssein
PROTESTANT
410 Anita
Houston, Texas 77006
VIA FIRST CLASS U.S. MAIL

Blini Hoxha
PROTESTANT
409 Rosalie Street
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Shelia A. Lindsey
TABC Attorney
Houston Legal Division

Licensing Division-Austin

Lt. Harold Schreffler
TABC Enforcement Division – Houston

State Office of Administrative Hearings



Cathleen Parsley
Chief Administrative Law Judge

RECEIVED

JUN 24 2010

**FABC HOUSTON
LEGAL**

June 14, 2010

Alan Steen
Administrator
Texas Alcoholic Beverage Commission
5806 Mesa Drive
Austin, Texas 78731

VIA REGULAR MAIL

**RE: Docket No. 458-10-3145; Texas Alcoholic Beverage Commission vs. Antique
Vintage Inc. d/b/a Antique Bar & Grill**

Dear Mr. Steen:

Please find enclosed a Proposal for Decision in this case. It contains my recommendation and underlying rationale.

Exceptions and replies may be filed by any party in accordance with 1 TEX. ADMIN. CODE § 155.59(c), a SOAH rule which may be found at www.soah.state.tx.us.

Sincerely,

A handwritten signature in cursive script that reads "Roshunda Pringle".

Roshunda Pringle
Administrative Law Judge

RP/mr
Enclosure

xc: Docket Clerk, State Office of Administrative Hearings- **VIA REGULAR MAIL**
Shelia Lindsey, Staff Attorney, Texas Alcoholic Beverage Commission, 427 W 20th Street, Suite 600, Houston, TX 77008- **VIA REGULAR MAIL**(with Certified Evidentiary Record and 1 hearing CD)
Emily Helm, Director of Legal Services, Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Austin, TX 78731- **VIA REGULAR MAIL**
Seth Nichamoff, Attorney for Respondent, 2444 Times Boulevard, Suite 270, Houston, Texas 77005 -**VIA REGULAR MAIL**
Bagby Midtown Residential Group, Anne Houssein, Protestant, 410 Anita, Houston, Texas 77006 - **VIA REGULAR MAIL**
Blini Hoxha, Protestant, 409 Rosalie Street, Houston, Texas 77006 - **VIA REGULAR MAIL**

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I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

No contested issues of notice, jurisdiction, or venue were raised in this proceeding. Therefore, these matters are set out in the findings of fact and conclusions of law without further discussion here.

On April 16, 2010, a public hearing was held before Roshunda Pringle, ALJ, in Houston, Harris County, Texas. Protestants were represented by Anne Hussein, a non-attorney. The TABC was represented by attorney Shelia Lindsey. Respondent was represented by attorneys George Tsioros and Seth Nichamoff.

II. LEGAL STANDARDS AND APPLICABLE LAW

The Commission or Administrator may refuse to issue a permit if it has reasonable grounds to believe that the place or manner in which the applicant may conduct his business warrants the refusal based on the general welfare, health, peace, morals, and safety of the people and on the public sense of decency. TEX. ALCO. BEV. CODE ANN. § 11.46(a)(8). Additionally, case law states that in order to deny a permit to a qualified applicant proposing to operate a lawful business in a wet area and in compliance with zoning laws, an unusual condition or situation must be shown. Kermit Concerned Citizens Committee v. Colonial Food Stores, Inc., 650 S.W.2d 208 (Tex. App. – El Paso [8th Dist.] 1983).

III. EVIDENCE

A. Protestants' Witnesses

1. Testimony of Frank Tilton

Frank Tilton lives in a townhouse at 3106 Brazos. Mr. Tilton is also the owner of other townhomes in the area. Mr. Tilton protested the original application of Antique Bar & Grill for

himself and other concerned citizens, mainly his tenants. Mr. Tilton testified that the area was mainly residential. He believes that the bar would create several problems and increase some existing problems. He testified that the bar will add to the existing traffic problem. The area is congested with traffic and is a high risk area for accidents. Mr. Tilton stated that street parking is very limited and bar traffic would totally eliminate guest parking for his tenants. The residents are individuals that work during the day and sleep at night. He believes that patrons will be coming and going well into the late hours of the night because of the nature of bars. Mr. Tilton stated that the bar's opening will result in excessive noise and intoxicated individuals wandering the neighborhood. There is only an 8-foot difference between his property and the bar. He believes that intoxicated people wandering the neighborhood create a safety concern. Finally, Mr. Tilton testified that the bar would decrease the value of his property and limit his ability to rent his properties. He stated that there are currently 12 to 16 bars within the four block area and another bar would be detrimental to the area.

2. Testimony of Blini Hoxha

Blini Hoxha resides at 409 Rosalie Street, a townhome directly behind Respondent's property. Mr. Hoxha owns two bars in the area and is very familiar with the atmosphere of bars. Mr. Hoxha's concerns were excessive noise late into the night and limited parking. He stated that he does not oppose a restaurant, but believes that a late night bar would greatly affect his quality of life. Mr. Hoxha advised that Respondent's property and his townhome were only separated by a 6-foot wooden fence. In his opinion, Respondent's property is a bad location for a late night bar because of the close proximity to the residential complex. He believes that location is very important when opening a bar because of the noise that a bar naturally generates. On cross-examination, Mr. Hoxha admitted that he spoke with Respondent about his concerns. Respondent advised him that Antique Bar & Grill would operate primarily as a restaurant with a bar inside. Mr. Hoxha believes that if Respondent is granted a late night permit, the establishment will operate primarily as a bar. He would like for the bar to close before midnight. Mr. Hoxha admitted that it was not unusual in the neighborhood to have a bar next to a residential area. He explained that the difference with Respondent's bar is the fact that it will

share a fence with a residential complex. He is aware that Respondent proposes to install a sound proof wall but does not believe that it will be adequate and will be distracting.

3. Testimony of Anne Houssein

Anne Houssein lives at 410 Anita and is the representative for Bagby Midtown Residential Group. In addition to living on the property, Ms. Houssein also leases apartments in the area. She and other residents enjoy the unique quality of life they currently have in the residential neighborhood. Ms. Houssein stated that the neighborhood is unique because the tenants have a set lifestyle in the area. The tenants are professionals who work in the day and retire to bed by 11 p.m. Her main concerns were excessive noise and increased traffic. She believes that the continuous noise and activity would change the composition of the area. Ms. Houssein testified that she spoke with several residents including her tenants and all of them were opposed to the bar. They advised her that they would not re-new their leases if the bar opens. Ms. Houssein also expressed a safety concern for the residents and the potential patrons of the bar. Ms. Houssein testified that Respondent has failed to provide security for the property, failed to maintain the property by removing trash from the back porch, and failed to prevent vagrants from sleeping on the property. She advised that the tenants do not feel secure in the complex. Ms. Houssein stated that the area has limited parking and the potential patrons would have to park a distance away and then walk to the bar. In her opinion, walking on the busy street is dangerous. Finally, Ms. Houssein testified that the presence of the bar would decrease the value of her property.

B. Respondent's Witnesses

1. Fahimeh Ansari

Fahimeh Ansari is one of the owners of Respondent. She has experience operating and managing a restaurant. Ms. Ansari testified that she owned a cafe in downtown Houston for several years. She expressed excitement about the project at 3015 Bagby because the bar and

grill will operate similar to the downtown cafe. Ms. Ansari testified that they have plans to restore the building and create a gathering place for professionals to meet after work. Ms. Ansari believes that the location is perfect for the bar and grill because of the young professionals who currently reside in the area. She anticipates that most patrons will be residents of the neighborhood who will walk to the bar and grill. Respondent owns and operates a club called Vintage that is also located in the area. Ms. Ansari testified that Vintage is located near a residential complex. She testified that Respondent has a good relationship with the neighborhood. In her opinion, the bar and grill will increase the value of the neighborhood.

2. Amir Ansari

Amir Ansari is one of the owners of Respondent. He has been in this type of business for several years and is also the owner of Vintage, a nearby bar. Mr. Ansari testified that he has tried to work with the residents, has made several attempts to contact them regarding the plans for the bar, and is aware of their concerns regarding the excessive noise, increased traffic, and limited parking. He has taken measures to ensure that the concerns will not exist once the bar is operating. Mr. Ansari testified that the bar and grill will operate primarily as a restaurant. He explained that they applied for a late night liquor license as opposed to a food and beverage permit because the percentage of food sale and beverage sale is unknown. Mr. Ansari stated that the building was purchased because the downtown cafe was closing and they wanted to relocate the business. He believes that the patrons will consist of the existing cafe patrons and the residents in the area. Mr. Ansari testified that he canvassed the community and had an architect perform research regarding the rules and regulations to ensure that they met the standards of commercial approval. In canvassing the area, he surveyed existing bars in the area and noticed that several of them were located near townhomes and other residential complexes. He spoke with several residents in the area who were excited about the bar and grill because they did not want a run-down vacant house in the neighborhood. Mr. Ansari testified that he was aware of the limited parking concerns and has secured parking for the bar's patrons. He has secured 10 spaces for every 1,000 square feet of usable space per City of Houston requirements. Mr. Ansari stated that the lot was 4,500 square feet and the building was 2,400 square feet and will

accommodate less than 100 people. He believes that the location is perfect because the neighborhood is a high traffic area and it is common for people to walk around in the area to different establishments.

Mr. Ansari stated that he currently operates Vintage, a nearby bar in the same community. He took measures to limit excessive noise at Vintage and will do the same for Antique Bar and Grill. Mr. Ansari testified that he has a good relationship with the residents near Vintage because there is an open line of communication between Respondent and the residents. There is a Houston police officer on duty Friday through Saturday outside of Vintage. Mr. Ansari explained the expensive sound proofing measures that were taken at Vintage which includes a sound proof wall outside of the property. He said that the measures have been very effective. Mr. Ansari plans to execute the same measures for Antique Bar & Grill.

IV. ANALYSIS AND RECOMMENDATION

Protestants seek denial of Respondent's permit on the basis of the general welfare, health, peace, morals, and safety of the people and on the public sense of decency. Protestants must prove their case by a preponderance of the evidence. Additionally, where a qualified applicant requests to operate in a wet area, some unusual condition or situation must be shown to exist. In re Simonton Gin., Inc., 616 SW2d 274 (Tex. App. – Houston [1st Dist] 1981, no writ).

Protestants cite concerns of increased traffic, excessive noise, decreased property values, intoxicated patrons, limited parking, and strongly oppose the opening of Respondent's bar. However, there are other residents who do not object to the opening of the bar. There are currently 12 to 16 existing bars in the area and it is not uncommon for a bar to operate along-side a residential complex in this community.

The Respondent has shown that he is well aware of the concerns of the neighbors and has incorporated sound barriers into the remodeling plans. In addition, Respondent has sufficiently addressed the parking concerns of Protestants. This ALJ believes that parking will be more than

adequate. Respondent has shown that the bar will cater to professional clients who currently reside in the area and existing clients of the downtown cafe who will utilize the bar as an after work gathering place. Based on the evidence presented, there will be no live music, no sub-woofer bass, and no dance floor. The establishment will operate primarily as a restaurant.

While not necessarily a determinative factor, the TABC has no objection to the opening of the bar or the granting of a TABC license. Additionally, there is insufficient evidence that the opening of this bar will constitute an unusual condition or situation.

After reviewing all the evidence, the ALJ finds insufficient evidence that the general welfare, peace, and safety of the surrounding residents warrants the refusal of the permit, and further, that no unusual condition or situation prohibits the permit's issuance. There is also insufficient evidence that the permit should be denied based on the health or morals of the people or on the public sense of decency.

V. FINDINGS OF FACT

1. Antique Vintage, Inc., d/b/a Antique Bar & Grill, (Respondent) filed an original application with the Texas Alcoholic Beverage Commission (TABC) for a Mixed Beverage Permit and a Mixed Beverage Late Hours Permit for the premises to be located at 3015 Bagby, Houston, Harris County, Texas.
2. The TABC as Petitioner filed a Protest on behalf of Anne Houssein, Representative For Bagby Midtown Residential Group and Blini Hoxha (Protestants), asserting that the application should be denied based on the general welfare, health, peace, morals, and safety of the people and on the public sense of decency.
3. A Notice of Hearing dated March 12, 2010, was issued by the TABC notifying the parties that a hearing would be held on the application and informing the parties of the time, place, and nature of the hearing.
4. On April 16, 2010, a public hearing was held before Administrative Law Judge (ALJ) Roshunda Pringle in Houston, Texas. The TABC appeared at the hearing, and was represented by Shelia Lindsey, attorney. Protestants were represented by Anne Houssein. Respondent was represented by George Tsioros and Seth Nichamoff, attorneys. Evidence was received and the record closed on the same date.

5. Respondent intends to open a bar called Antique Bar & Grill at the proposed premises.
6. Respondent has met all TABC requirements to hold the permit at the proposed location, and there are no zoning laws or deed restrictions prohibiting the opening of the proposed bar known as Antique Bar & Grill.
7. Respondent's bar will be approximately 2,400 square feet, with approximately 10 parking spaces for every 1,000 square feet of usable space.
8. Respondent intends to cater to a young professional clientele and will operate primarily as a restaurant.
9. Respondent will install sound barriers inside the proposed location and a sound proof wall outside the proposed location.
10. There are currently 12 to 16 bars in the neighborhood and it is not uncommon for a bar to operate along-aside a residential complex.
11. No unusual condition or situation exists to warrant refusing Respondent's permits.
12. The evidence fails to show that the place or manner Respondent plans to conduct its business will be detrimental to the general welfare, peace, morals, health, safety, and public sense of decency.

VI. CONCLUSIONS OF LAW

1. The Texas Alcoholic Beverage Commission has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE ANN. Subchapter B of Chapter 5, §§ 6.01 and 11.46(a)(8).
2. The State Office of Administrative Hearings has jurisdiction to conduct the hearing in this matter and to issue a Proposal for Decision containing findings of fact and conclusions of law pursuant to TEX. GOV'T CODE ANN. ch. 2003.
3. Proper and timely notice of the hearing was provided to all parties pursuant to the Administrative Procedure Act, TEX. GOV'T CODE ANN. ch. 2001, and 1 TEX. ADMIN. CODE § 155.501.
4. The place or manner in which the Respondent plan to conduct its business does not warrant the refusal of the permits based on the general welfare, peace, and safety of the people. TEX. ALCO. BEV. CODE ANN. §11.46(a)(8).
5. The place or manner in which Respondent intends to conduct its business does not present an unusual condition or situation that warrants the refusal of the permits.

6. Respondent's original application for a Mixed Beverage Permit and a Mixed Beverage Late Hours Permit for the premises to be located at 3015 Bagby, Houston, Harris County, Texas, should be granted.

SIGNED June 14, 2010.



ROSHUNDA PRINGLE
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS