

**BEFORE THE ALCOHOLIC BEVERAGE CONTROL APPEALS BOARD
OF THE STATE OF CALIFORNIA**

AB-7350c

File: 47-340761 Reg: 98044362

BARBARA D. KELLY, et al.
Appellants/Protestants

v.

IL FORNAIO AMERICA CORPORATION
dba Il Fornaio

1333 First Street, Coronado, CA 92118

Respondent/Applicant

and

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

Administrative Law Judge at the Dept. Hearing: Rodolfo Echeverria

Appeals Board Hearing: June 7, 2001
Los Angeles, CA

ISSUED JUNE 8, 2001

Barbara D. Kelly, Carolyn A. Kephart, Michael D. Kephart, Patricia M. Kieffer, Robert W. Kieffer, Daniel K. Pope, Evelyn R. Pope, Barbara O. Roswell, Ervin B. Rubey, Mary R. Rubey, Galen Schelb, Geraldine H. Shaw, A. Swagemarkers, Margaret V. Swagemakers, Annabelle A. Talmadge, Charles J. Talmadge, Betty J. White, Charles E. White, Barbara Wood, and Betty Yerger (protestants), appeal from a decision of the Department of Alcoholic Beverage Control¹ which overruled their protests against a person to person/premises to premises transfer of an on-sale general bona fide public eating place license to Il Fornaio America Corporation (applicant), under certain conditions.

Appearances on appeal include appellants Barbara D. Kelly, et al., appearing

¹The decision Following Appeals Board Decision, dated March 22, 2001, is set forth in the appendix.

through their counsel, Gerald Cardinale; applicant Il Fornaio America Corporation, appearing through its counsel, Ralph Barat Saltsman and Stephen Warren Solomon; and the Department of Alcoholic Beverage Control, appearing through its counsel, Matthew G. Ainley.

FACTS AND PROCEDURAL HISTORY

On March 17, 1998, applicant filed an application for a person to person/premises to premises transfer of an on-sale general bona fide eating place license, for placement on a site abutting the San Diego Bay on the Coronado side.

On May 26, 1998, and during the Department's investigation of the transfer, applicant consented to the imposition of 17 conditions on the license if the license were to be issued. One of the reasons for the imposition of the conditions was that there were many residents living within 100 feet of the parking lot. The conditions imposed limitations on the premises' operation as follows: (1) sale of alcoholic beverages (these conditions are not applicable in this present appeal); (2) interior considerations (these conditions are not applicable in this present appeal); and (3) exterior considerations (adequate parking lot lighting, loitering, litter and trash disposal, and exterior noise).

An administrative hearing before the Department was initially held on November 3, 1998. Subsequent Department decisions were issued with appellant appealing each, including the present decision. This is the fourth appeal.

Appellants raise the following issue in the present appeal: appellant's operation, and mainly, the parking of cars with resultant ingress and egress in the later hours, will interfere with protestants' quiet enjoyment of their property.

DISCUSSION

Protestants argue that the Department should limit the hours of operation and add a condition that the parking lot be locked during the hours the premises is not operating.

The major concern of protestants is that the conditions do not “realistically effectuate the desired purpose” of protecting nearby residents from parking lot noise during normal sleeping hours. The Department in its first decision stated that “The critical issue to establish noninterference [with protestants’ quiet enjoyment] will be the use and control of the parking lot in the evening hours.”

The pertinent conditions imposed on the license, if issued, are as follows:

- “1. Sales, service and consumption of alcoholic beverages shall be permitted only between the hours of 8:00 AM and 12:00 Midnight, Sunday through Wednesday, and 8:00 AM and 1:00 AM, Thursday through Saturday.
2. Sales, service and consumption of alcoholic beverages shall be permitted in the patio area only between the hours of 8:00 AM and 11:00 PM, Sunday through Wednesday, and 8:00 AM and 12:00 Midnight, Thursday through Saturday.
13. The parking lot of the premises shall be equipped with lighting of sufficient power to illuminate and make easily discernible the appearance and conduct of all persons on or about the parking lot. Additionally, the position of such lighting shall not disturb the normal privacy and use of any neighboring residences.
14. Trash shall not be emptied into outside trash containers between the hours of 10:00 PM and 8:00 AM.
15. Loitering is prohibited on these premises or this area under the control of [applicant]
16. No noise shall be audible beyond the area under the control of [applicant].
18. [a]. [Applicant] shall provide valet parking services for its patrons at all times when the restaurant is open for business. The valet stand, where patrons leave and retrieve their vehicles, is to be situated in the parking area adjacent to [applicant’s] restaurant as far as possible away from the residential uses abutting the parking lot. The persons working as valet parkers are to be individually advised of the noise sensitive nature of the entire parking lot and that car alarms are not to be used, car engines are not to be revved unnecessarily, car doors are not to be slammed, and conversation is to be kept at a minimum.
- [b]. No self-parking is to be permitted after 8:30 p.m.
- [c]. [Applicant] shall provide and have present at least one uniformed security guard to patrol the parking area adjacent to the premises. The guard shall be on duty between at least one-half hour before sunset through one-half hour after the

restaurant closes each evening the restaurant is open for business. The guard shall be responsible for enforcing the parking restrictions of this condition and to ensure that patrons leaving the restaurant do not engage in conduct in the parking lot, which could disturb residential neighbors.

19. [Applicant's] employees shall park in parking areas designated by mutual concurrence between [applicant] and protestant's authorized representative(s)[,] not on the premises parking lot from 8:00 PM until closing and not on the street at any time.

20. [Applicant] shall establish a 24 hours a day, seven days a week "hotline" telephone number for use by protestants. [Applicant] shall notify protestants of the names of senior on-site management responsible for responding to said "hotline."

21. [Applicant] shall erect and maintain signage indicating the time of parking lot closure and indicating no ingress after said lot closure.

22. [Applicant] shall erect and maintain signage stating that the premises parking lot is for use of patrons of the restaurants only. Said signage shall include a Tow Away statement complying with Municipal and State law.

23. [Applicant's] on-site senior management shall be available to meet with protestants' authorized representative(s) at the licensed premises on a monthly basis.

24. [Applicant] shall utilize outside recycle facilities for bottles and cans only after 10 AM and not later than 10 PM."

Protestants argue that the hours of operation should be reduced to 10 pm, apparently, nightly.

Protestants raised the issue of hours of operation, somewhat, in the Board's first decision (AB-7350), but not in subsequent decisions (AB-7350a and AB-7350b). We determine that considering the record as a whole, the raising of that issue is untimely.

Protestants raise the issue of locking the parking lot after closing of the premises. We determine that we are without jurisdiction to speculate as to the ramifications of the failure to lock the parking lot after restaurant closing, and the absence of sufficient testimony on this issue.

Protestants raise the issue of lack of adequate control of the parking lot during business hours. With the configuration of the premises, parking lot, and residential groupings, the area will not maintain the solitude it had prior to the placement of

applicant's restaurant. The Department's rule demands that all realistic controls be crafted in some significant measure, to control projected unacceptable noise from the parking, ingress and egress, of cars.

In our last decision (AB-7350b), we considered this same issue, and concluded that the conditions imposed were inadequate. In response to our reversal in AB-7350b, the Department has apparently concluded that a comprehensive program of valet parking, and control of the parking area by a security guard during the later hours, would resolve the ongoing dilemma for the protestants, applicant, and the Department.

We have reviewed the Department's conditions, supra, newly revised and of prior vintage, and conclude that the Department has exercised its discretion reasonably.

ORDER

The decision of the Department is affirmed.²

TED HUNT, CHAIRMAN
RAY T. BLAIR, JR., MEMBER
E. LYNN BROWN, MEMBER
ALCOHOLIC BEVERAGE CONTROL
APPEALS BOARD

²This final order is filed in accordance with Business and Professions Code §23088, and shall become effective 30 days following the date of the filing of this order as provided by §23090.7 of said code.

Any party, before this final order becomes effective, may apply to the appropriate court of appeal, or the California Supreme Court, for a writ of review of this final order in accordance with Business and Professions Code §23090 et seq.