



FRIEBERT, FINERTY & ST. JOHN, S.C.

ATTORNEYS AT LAW

Two Plaza East - Suite 1250 • 330 East Kilbourn Ave. • Milwaukee, Wisconsin 53202

Phone 414-271-0130 • Fax 414-272-8191 • www.ffijs.com

ROBERT H. FRIEBERT

JOHN D. FINERTY

THOMAS W. ST. JOHN

WILLIAM B. GUIB

S. TODD FARRIS

TED A. WARPINSKI

MATTHEW W. O'NEILL

SHANNON A. ALLEN

JEREMY P. LEVINSON

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CHRISTOPHER M. MEULER

M. ANDREW SKWIERAWSKI

JOSEPH M. PELTZ

April 28, 2011

VIA MESSENGER

Honorable Common Council of the City of Milwaukee

c/o Mr. Ronald D. Leonhardt

City of Milwaukee Clerk

City Hall, Room 205

200 East Wells Street

Milwaukee, WI 53202

Re: Asian Moon, LLC/City of Milwaukee – (Objections to the Report of the Renewal Application of May Y. Xiong, as agent for “Asian Moon, LLC” d/b/a The Moon for Class “B” Tavern, Tavern Amusement, and Billiard Hall licenses for the premises located at 3419 West Forest Home Avenue in the City and County of Milwaukee, Wisconsin in the 8th Aldermanic District)

Dear Honorable Members of the Common Council:

This office represents the above-referenced licensee and May Y. Xiong, the agent for the licensee. Pursuant to § 90-12-5-c-2, *Milwaukee Code of Ordinances* (“MCO”), the licensee does respectfully file these written objections to the April 21, 2011 Report of the Licenses Committee (the “Committee”) including its Findings of Facts and Conclusions of Law that were filed as a result of the renewal hearing on April 18, 2011, recommending to deny renewal of the licensee’s Class “B” Tavern License, Tavern Amusement License, and Billiard Hall License (collectively “Licenses” unless otherwise noted). The Licenses will expire at midnight on May 12, 2011.

The licensee requests that these written objections be considered by the Common Council at its May 3, 2011 meeting during the time in which the Committee’s recommendations are considered. Ms. Xiong and/or the undersigned will be present at the meeting to present oral argument and to answer questions.

BACKGROUND

The Moon is a bar with two formats made possible by the building itself. In the lower level, The Moon offers its customers a neighborhood bar open on Wednesday and Sunday nights with free pool tables and karaoke singing; it also serves as a venue for birthday parties and other special even gatherings. On the upper level, The Moon offers its customers a dance club open only on Thursday, Friday and Saturday nights with one pool table and a dance floor. The Moon has its own house DJs but on Saturday nights presents guest DJs from the Milwaukee area and the

Midwest region. No live performers are allowed and the music is limited to Pop, R&B, Easy Listening, Latin Pop, New Age, Reggae, Techno and Top 40.

The following is the license renewal history over the past 5 years:

- In 2006, the Licenses were renewed with a warning letter;
- in 2007 the Licenses were renewed with a 10-day suspension of the Class "B" Tavern License and a 30-day suspension of the Tavern Amusement License;
- in 2008 the Licenses were renewed with a change of entertainment;
- in 2009 the Licenses were renewed with a 15-day suspension of the Class "B" Tavern License and a 30-day suspension of the Tavern Amusement License;
- in 2010 the Licenses were renewed with a 30-day suspension of the Class "B" Tavern License and a 60-day suspension of the Tavern Amusement License.

At the April 18, 2011 hearing, the police report was read into the record which indicated that the City issued two (2) citations for the same building code violation, a failure to obtain an occupancy permit for an adjacent garage, which has since been issued; and that the licensee received four (4) citations for excessive noise, one (1) citation for the presence of minor/underage persons (but no citations for underage drinking because there were not as part of fundraiser), and that the police have been dispatched to the tavern four (4) times as a result of verbal and/or physical altercations (on two occasions ending with gunshots fired).

The Findings of Fact, ¶¶ 5.L.-M., indicate that MPD sent the licensee a nuisance letter and found the plan of action to be unacceptable. However, the Findings failed to include the facts established and exhibits presented at the hearing that the licensee submitted a plan of action dated December 21, 2010 and a follow-up plan from then-legal counsel dated February 26, 2011. The licensee further represented desire to work with MPD to establish an acceptable plan of action during the period of time that the Licenses would be suspended as requested by the licensee.

At the conclusion of the evidentiary portion of the hearing, Alderman Zielinski moved to renew the Licenses subject to a **30-day suspension of the Class "B" Tavern License and a 90-day suspension of the Tavern Amusement License**. This motion failed as a result of a 2-2 vote: Aye (Alderman Zielinski and Alderwoman Coggs) and No (Alderman Bohl and Alderman Hamilton); Alderman Kovac Abstaining.

Subsequently, Alderman Hamilton moved to renew the Licenses subject to a **90-day suspension of the Class "B" Tavern License and a 90-day suspension of the Tavern Amusement License**. This motion *also failed on a 2-2 vote but with different affirming and dissenting votes*. The votes were as follows: Aye (Alderman Hamilton and Alderman Zielinski) and No (Alderwoman Coggs and Alderman Bohl); Alderman Kovac Abstaining.

Alderman Zielinski then moved to deny renewal of the Licenses. This motion passed with the following votes: Aye (Alderman Zielinski, Alderman Hamilton, and Alderman Bohl) and No (Alderwoman Coggs); Alderman Kovac Abstaining. The Committee's recommendation was based upon the police report, testimony from Alderman Donovan, and an incident report dated September 9, 2010 of the Milwaukee Police Department.

LEGAL OBJECTION TO THE RECOMMENDATIONS

In recommending denial of the Licenses, the Committee failed to follow its customary and required principles of progressive discipline. Customarily, the Committee applies progressive discipline principles to applicants before it when considering imposing sanctions. In fact, Wisconsin courts have noted that such principles are appropriate in order to satisfy the equal protection requirements of the U.S. Constitution, 14th Amendment. *See Village of Menomonee Falls v. Michelson*, 104 Wis. 2d 137, 145-46, 311 N.W.2d 658 (Ct. App. 1981).

Rather than attempting to find an appropriate middle ground in light of the previously made motions and different vote results, and in accordance with a reasonable progressive discipline step, the Committee essentially gave up and just non-renewed the Licenses. The Committee could have – and should have – recommended suspension of the Class “B” Tavern License for 60 days and suspension of the Tavern Amusement License for 90 days giving the licensee a chance to remedy the concerns and impressing upon it the importance of the matters. Alternatively, the Committee could have renewed the Class “B” Tavern License with a suspension and non-renewed the Tavern Amusement License if the latter was considered to be the source of most of the problems.

The Committee instead arbitrarily voted to deny all three of the licenses effectively giving the bar a death sentence.

The licensee submits that **a significant suspension (60-day suspension to Class “B” Tavern” License and 90-day suspension to Tavern Amusement License) is more appropriate** and that denying the Licenses was an unreasonable penalty in light of the City's progressive discipline principles that should have applied in this situation.

CONCLUSION

For all of the foregoing reasons, the licensee respectfully requests that the Common Council renew its Class “B” Tavern License and Billiard Hall License with a 60-day suspension and the Tavern Amusement License with a 90-day suspension or, in the alternative, non-renew the Tavern Amusement License only. Such a sanction is appropriate in order to comply with progressive discipline principles and to provide the licensee with an opportunity to remedy the concerns that the Committee expressed by working with MPD to establish an appropriate action plan.

Honorable Common Council of the City of Milwaukee
April 28, 2011
Page 4

Thank you for your consideration of these objections and the matter before the Common Council.

Very truly yours,

FRIEBERT, FINERTY & ST. JOHN, S.C.

A handwritten signature in blue ink, appearing to read "Brian C. Randall". The signature is fluid and cursive, with the first name "Brian" being more prominent than the last name "Randall".

Brian C. Randall
bcr@ffsj.com

BCR/ier

cc: Ms. May Y. Xiong – Via E-mail