

**IN THE CHANCERY COURT FOR THE STATE OF TENNESSEE
TWENTIETH JUDICIAL DISTRICT, NASHVILLE AND DAVIDSON COUNTY**

THE PARKING GUYS, INC.,)
)
Petitioner,)
)
vs.)
)
METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY, acting by and through the TRAFFIC AND PARKING COMMISSION,)
)
Respondent.)

Case No. 17-970-II

CLERK & MASTER
DAVIDSON CO. CHANCERY CT.

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OF NASHVILLE
DAVIDSON CO.
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METRO DEPT. OF LAW

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MEMORANDUM AND ORDER

This matter is before the Court on the Petition for Writ of Certiorari filed by the Petitioner, The Parking Guys, Inc. ("the Petitioner"), seeking review of a June 8, 2017 decision by the Defendant, the Traffic and Parking Commission ("the Commission"), a commission formed by the Metropolitan Government of Nashville and Davidson County ("Metro") denying the Petitioner's application for a valet location permit to serve the business Déjà Vu at 1418 Church Street in Davidson County, Tennessee. This petition for review was heard by this Court on June 20, 2018. Upon consideration of the pleadings of the parties, the argument of counsel at the hearing of this matter, the administrative record filed with this Court that encompasses the Commission's decision below, and the entire record, this Court finds that the Petition should be denied.

Background

The Petitioner is in the business of providing valet parking services for clients throughout Davidson County, Tennessee. On May 25, 2017, the Petitioner applied to the Public Works

Department for the Metropolitan Government of Nashville and Davidson County ("Public Works") for a valet location permit to serve Déjà Vu, a business located at 1418 Church Street. The application was denied by the Public Works Department, and the Petitioner filed an appeal to the Commission on June 8, 2017. In order to operate a valet on a temporary basis pending its appeal, the Petitioner obtained three temporary lane closure permits from Public Works for the location at issue for the following dates: (1) June 14, 2017 through June 23, 2017, (2) June 26, 2017 through July 2, 2017, and (3) July 19, 2017 through July 25, 2017.

A hearing was first held before the Commission on July 10, 2017. The Commission heard from Craig Martin (owner of the Petitioner), as well as several neighboring business owners, including Lee Molette, Todd Roman (owner of Play, Tribe and Suzy Wong's), Linda Schipani (president of Clinical Research Associates), and Lisa Buoy (a representative of Frank Moore Holdings). Finally, the Commission heard from Public Works staff. The Commission also received correspondence from various neighboring businesses, which included photographs of the valet operations. The Commission then voted to defer the matter to allow the Public Works staff to obtain video of the valet operations and additional evidence on any operational issues.

In the interim before the next Commission meeting, the Commission solicited a traffic study by Collier Engineering ("Collier") to better understand what, if any, potential traffic and safety issues might result from the granting of this valet permit. This report summarized Collier's count of "valet maneuvers," a vehicle pick up and drop off each counting as one maneuver (such that a person dropping off and later retrieving their vehicle would total two maneuvers), as follows:

Valet Maneuver Counts

Time of Day (Hour Beginning)	Valet Maneuvers per Hour (by Day/Date)		
	Thursday (7/27/2017)	Friday (7/28/2017)	Saturday (7/29/2017)
6:00 PM	3	2	4
7:00 PM	6	3	4
8:00 PM	2	5	5
9:00 PM	5	4*	4
10:00 PM	1	4	4
11:00 PM	3	7	3
12:00 AM (Next Day)	5	4	1
1:00 AM	3	7**	4
2:00 AM	4	5***	5
3:00 AM	1	8	3
Total	33	49	37
* One (1) vehicle observed having to wait for on-coming traffic to clear before passing the valet stand. ** One (1) vehicle observed having to wait for on-coming traffic to clear before passing the valet stand. *** Three (3) vehicles observed having to wait for on-coming traffic to clear before passing the valet stand.			

The narrative summary of the Collier report further explained:

As shown in the table, approximately 49 valet maneuvers were counted on Friday, July 28th evening and Saturday July 29th early morning, which results in approximately 25 valeted vehicles, and was the busiest day observed. It should be noted that rideshare, taxi, and pedicab drop-off and pick-up activities were also observed occurring along the 15th Avenue North block frontage. The observations also showed that there were five (5) vehicles that experienced delay on 15th Avenue North due to congestion at the valet stand and curb face. One instance was observed during the 9:00 PM hour on Friday evening, one instance during the 1:00 AM hour of Saturday morning, and three vehicles were affected during the 2:00 AM hour on Saturday morning. When this occurred, the street operated with slow "Yield-Flow" conditions.

During the observations, northbound traffic on 15th Avenue North backed up into the crosswalk at its intersection with Church Street on two

occasions both during the 2:00 AM hour. One instance lasted approximately 10 seconds and the second lasted approximately 30 seconds. Both involved one vehicle turning onto 15th Avenue North from Church Street and did not extend beyond the crosswalk. The busiest time period for the valet stand and rideshare/occurred around closing time (3:00 AM) on Friday evening/Saturday morning when through traffic on 15th Avenue North and Church Street is fairly low. Parking and standing was observed on the west side of 15th Avenue North within 20-30 feet of the stop line for southbound 15th Avenue North traffic at Church Street during portions of the observations. A couple of vehicles were observed making U-turns from the valet stand to go south on 15th Avenue North and access the traffic signal; however, it is not clear from the data whether those were made by valet staff or the customers/vehicle owners. The traffic signal goes into Flash Mode at 3:00 AM.

It should be noted that the observations were conducted over one weekend, and it is not known how it compares to typical operations and number of customers.

[A.R. 47-48].

The valet location permit application came before the Commission again during the Commission's August 14, 2017 meeting. The Commission heard from Mr. Burch, a representative of Collier Engineering, who presented Collier's report. Although the study by Collier did not find any unusual traffic concerns related to the valet from July 24th through July 31st, the report noted that "the observations were conducted over one weekend, and it is not known how it compares to typical operations and number of customers." (A.R. 48.)

The Commissioners acknowledged that the study appeared to contradict the photographs and evidence produced by the neighboring businesses:

20 COMMISSIONER KERN: Well, I think the report and
21 the pictures seem to be a little bit at odds from -- just
22 based on -- on -- kind of that -- but I do think the letter
23 from Councilman O'Connell should stand for a lot since he
24 hopefully has a -- the -- a good feeling of what's going on
25 on his street. So I would move to deny the valet stand.

(A.R. 141).

The Commission again heard from several neighbors in the area where the valet would be located. These neighbors included Amy Burch (a representative of Collier Engineering), Eric Steer (plant manager of Country Delite) and Obleem Bolet. The Commission also heard from Mr. Martin, the owner of the Petitioner. The Commission received additional correspondence and photographs from various neighboring businesses and an email from Councilman Freddie O'Connell, which explained his opposition to the valet stand.

The administrative record reflects that the adjoining neighboring business owners generally opposed the granting of a valet permit to the Petitioner. Specifically, at the July 10, 2017 meeting, Mr. Molette testified that he was a neighboring property owner concerned about the traffic congestion at Church and 15th caused by the valet stand operations. He testified that this congestion had resulted in a pedestrian being hit by a vehicle a week prior to his testimony. Mr. Molette explained as follows:

9 We've -- and we've -- we've appealed this because
10 what we've seen and what we've also sent in as evidence via
11 pictures from cameras shows that although Mr. Martin's --
12 his process or his policies may be one thing, his employees
13 aren't necessarily following those policies.
14 And you will see when you -- when you look at the
15 tape, or the video, and the pictures that we sent in, that
16 during what -- when it's very -- it gets very congested
17 there. And it gets to the point where if it -- if an
18 ambulance had to go through or a police officer had to come
19 through, they can't get down that street.
20 You see -- you see you have traffic backed up onto
21 Church Street off of 15th because there's just no -- there's
22 no way to get around. It's just -- and it's just -- and
23 that -- that street is about 30 feet wide, so it's just very
24 narrow. And the congestion that we see there day in and day
25 out is -- is evidence that this really just isn't a good

1 idea.

2 Someone did get hit, a pedestrian got hit last
3 week because of this. And it's just -- we don't see it as a
4 good idea for this area. And -- and again, we have sent in
5 evidence.

6 And I know the police have been out. Tow trucks
7 have been out. We've had to -- it's -- and -- and as a land
8 -- property owner, we've had increased expenses because we
9 -- the valet parkers are not doing -- are not following the
10 -- the actual -- actual policies that he may have in place.

(A.R. 94-95).

Mr. Roman owns three businesses, Play, Tribe and Suzy Wong's, in the vicinity of the valet stand. At the July 10, 2017 meeting, he explained that the backup of traffic on Church Street due to the valet stand creates a dangerous situation for the large number of pedestrians in the neighborhood. He stated:

23 MR. TODD ROMAN: Play, Tribe, and Suzy Wong's. I
24 have three businesses there. In reference, the -- the
25 pedestrian that was hit this weekend was a good indication

1 of why we are so concerned about it.

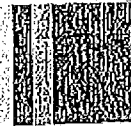
2 That -- the traffic turning onto 15th from Church,
3 the valet stand sets approximately 30 feet off of the turn.
4 And so anyone coming from Church Street turning in to visit
5 the -- the business has to wait, or sometimes is -- is in
6 the middle of parking or -- the Church Street as they're
7 turning.

8 And that creates a really dangerous situation in
9 our eyes, that you have people being upset over waiting for
10 the parking, people trying to rush around. And there's a
11 great deal of pedestrians in the -- the neighborhood. On
12 any given weekend, there's, you know, 1,000 or -- plus
13 people in the neighborhood. And so we're concerned about
14 that.

(A.R. 95-96).

Ms. Schipani is president of Clinical Research Associates, which is a business directly across the street from the valet stand. She submitted a letter and emails on behalf of the Midtown Church Street Business & Residential Association and spoke at the July 10, 2017 meeting. She described traffic congestion, near-accidents and multiple disruptions to nearby businesses caused by the valet stand. Her letters and emails in opposition asserted as follows:

Midtown Church Street Business & Residential Association
1533 Church Street #130 Nashville, TN
6153037862



June 9, 2017

Diane Marshall
Metro Public Works
750 South 5th Street
Nashville, TN 37206

Chip Knauf
Nashville Traffic and Parking Commission
50 Hermitage Ave
Nashville, TN 37210

Dear Ms. Marshall and Mr. Knauf,

The Members of the Midtown Church Street Business & Residential Association respectfully request that you deny the recent application by DeJa Vu, any of their agents and/or any vendor contracted by them for valet parking spaces to be designated on 15th Avenue.

On May 22nd, DeJa Vu opened for business and The Parking Guys (Craig Martin, Founder/President) has provided valet service. Since opening, our members have witnessed near miss accidents and traffic congestion which makes safety and emergency access void. Vehicles are being parked on both sides of 15th Avenue which is a narrow side street. Metro Police temporarily restricted their valet service from parking on 15th Avenue last week as they deemed it hazardous.

The entrance into DeJa Vu is located on 15th Avenue in a no parking zone. As required in the Metropolitan Code for valet service, there are not 2 parking spaces between the No Parking sign and the adjacent entrance to gated private parking (for a different business) to be designated for this purpose. In addition, valet service has located their station approximately 4-5 car lengths from the light at 15th Avenue and Church Street. Thusly, visibility is limited and a quick north turn off of Church Street would result in injury to both cars and pedestrians particularly if there are multiple cars waiting for service. The ingress and egress of customers utilizing shared car services, cabs, and cycle rickshaws are unloading at the same place as the valet is piling up vehicles to be parked and impedes the flow of traffic. According to Chapter 12.41.010 - Definitions of the Metropolitan Code pertaining to the licensing and operation of valet services, "Valet parking," "valet parking operation," "valet operation" or "valet service" means the process by which patron's vehicles are removed

Diane Marshall
June 9, 2017
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from designated spaces on the public street to private parking areas for storage and subsequent retrieval upon patron's demand. " The current service is simply moving vehicles from their valet stand (on the public street) to other public street parking which is detrimental to public safety.

Employees of one of our member businesses were blocked out of their gated parking area due to this valet service. A paid trash pickup truck barely missed hitting parked cars as the cars were parked so close to the alley that they didn't allow good clearance for the trucks passage. Street parking between the alley and entrance into the private parking lot at 1500 Church is only one car length and employees are having to pull out into the oncoming lane in order to pull into the lot. Another of our member businesses operates large trucks for 24 hour pickup and delivery service. These truck drivers are experiencing difficulties maneuvering on 15th Avenue when vehicles are parked on both sides of the street and meet oncoming traffic. This particular business has been operating at this location since 1921.

Again, we fervently ask your support in our request for denial of a valet permit for this location. Please consider the safety and welfare of our employees, residents and motorists in this area.

Thank you for your service.

Association members:

(A.R. 16A-16B).

From: Linda Schipani
To: Knaut, Craig (Public Works); Marshall, Diane (Public Works); laddres@jeffco.com; linda@schipani.com; James, Michele
Subject: Valet permit for Deja Vu
Date: Friday, July 07, 2017 1:53:58 PM

Dear Mr. Knaut and Ms. Marshall,

It is my understanding that Craig Martin/The Parking Guys and/or agents representing Deja Vu will be seeking a valet parking permit at your meeting on July 10th. The Midtown Church Street Business and Residential Association would respectfully ask you to decline their application. We have had consistent problems with valet parking on both sides of the street which impedes the flow of traffic, blocking private parking and presenting safety issues for drivers plus pedestrians. The police, fire and emergency personnel will have difficulty navigating in our area. As you know, time is of essences in an emergency.

Among many other concerns, vehicles are waiting to be parked in the area used for ingress and egress of folks going to Deja Vu. There is no area available for two parking spaces for the valet operation despite the fact they are doing so. The no parking zone, a designed driveway, a dumpster on the sidewalk does not allow for such near the entrance to the building. Thusly, shared rides, cabs etc are parking in the middle of the street causing further congestion. One particular night, the valet put their cones/signs in the middle of the street!
The valet has also parked vehicles in private parking areas with clear signs indicating private and/or NO Deja Vu parking.

A picture speaks as thousand words, we have often heard. As such I will be forwarding you a series of pictures that were taken from our cameras on several different nights. I believe these photos will demonstrate our concerns regarding the safety and welfare of our businesses and residents.

Again, we would fervently ask you to deny this application.

Sincerely,
Linda Moore Schipani

(A.R. 19).

From: Linda Schipani [mailto:cralms@aol.com]
Sent: Friday, August 11, 2017 11:40 AM
To: Knauf, Chip (Public Works)
Cc: Jones, Michelle; lock1roman@me.com; lee.fsdevelopers@gmail.com; O'Connell, Freddie (Council Member); Barry, Megan (Mayor); erk_steel@deanfoods.com; jwildur@wildurmotor.com; dparks@essnashville.com
Subject: Valet Parking for Deja Vu/Craig Martin-The Parking Guys

Dear Mr. Knauf,

The Midtown Church Street Business and Residential Association is again respectfully requesting that you deny a permanent valet parking permit to Craig Martin/The Parking Guys and or agents representing Deja Vu for valet parking spaces designated on 15th Ave. As you are aware, the application for a permanent permit was deferred at your July meeting and to be reviewed at the August meeting of the Traffic and Parking Commission.

Our neighborhood continues to witness public safety hazards due to the heavy pedestrian and vehicle traffic. We have had two pedestrians hit by cars in the past two months. The corner of Church Street and 15th is in gridlock most nights. The valet stand is located about 5-6 car lengths from Church. Valet service is not able to keep up with the flow and blocking the street. Cars are turning off Church onto 15th thus blocking the traffic light as no one can move due to the back up of cars, cabs, and cycle rickshaws. The ingress and egress of customers are occurring at the same time rendering more safety concerns. Cabs are turning around in middle of the street, vehicles are driving on the side walk and parking as people are wondering around in the street and on the side walk trying to avoid being struck. It is simply a disaster! There is absolutely no way the police and emergency services could get through this tangled situation.

One of our member businesses, which operates large trucks 24/7, has had their drivers divert their usual drive on 15th due to the difficulty in traversing the street. If our residents at 221 15th Ave. return home after 9:00 PM, they can not find parking.

The valet workers continue to trespass by parking cars on private property. Cars were booted in the DCI parking lot located at 306 and 308 15th Ave. the past two weekends. They had been parked there by the valet company and the company paid for the boots to be taken off. Another business, Wilder Motor and Equipment located at 301 15th Ave., has his parking lots completely full most nights as the valet is utilizing his lot despite the fact there's a no trespassing & private parking signage. They are valetting before 7:00 PM and after their 3:00AM temporary permit. Cars are being parked between the alley and the entrance to our parking lot at 1500 Church St. which is only one car length. Our employee was almost hit by an oncoming car as he was leaving the parking lot because there was no visibility. On many occasions, the valet cones are placed in the no parking zone. The list goes on...

Pictures can tell the story sometimes better than words. Therefore, I am sending you a series of pictures that validate our concerns regarding the safety and welfare of our businesses and residents.

Your earnest deliberate support in denying this application will help secure the safety and well-being of our community.

Sincerely,
Linda Moore Schipani

Linda Moore Schipani, RN, MSN
President & CEO
Clinical Research Associates, Inc.
1500 Church Street
Nashville, TN 37203
615-329-0197

(A.R. 62-63). She also stated as follows at the Commission hearing:

5 MS. LINDA SCHIPANI: The white building is ours.
6 And the parking lot behind there is ours. I will tell you
7 that we have "No Trespassing" and -- signs, and "No
8 Parking." But despite that we have had -- we've had parking
9 there.

10 Particularly we've had parking from -- the valet
11 parkers themselves are parking there. We have had --
12 there's traffic up and down the street. They are parking
13 between my -- my exit, or entrance, right there from the
14 alley to -- to my parking lot. And you can hardly get out
15 of there. It's constantly there.

16 On the other side they're parking between our --
17 our parking lot so that you can't get out of our parking lot
18 safely without going into the other lane of traffic. I will
19 assure you that with -- with what we're seeing, there's so
20 much traffic down there, there's traffic up and down the
21 street. And the police have been called multiple times.

(A.R. 97).

Ms. Buoy represented Frank Moore Holdings at the July 10, 2017 meeting. She indicated she had concerns about the safety of the residents of the apartments she managed due to street parking issues and concerns with emergency vehicles being able to navigate the narrow street. She testified:

5 MS. LISA BUOY: My name is Lisa Buoy. And I
6 represent Frank Moore Holdings. And I reside in the same
7 building there. We are property management. And we have
8 that building as well as across the big parking lot there's
9 a building back behind there that houses apartments.
10 I've noticed on cameras that the -- the lanes of
11 traffic have been blocked to the point for the valet and the
12 traffic so that I'm really concerned as far as fire and
13 ambulance. And I do know that there have been occasions
14 since they've opened -- which has not been that long -- in
15 which they've been required to go down through there, and
16 it's been very congested.
17 And the parking allowed to the residents is very
18 difficult because they have street parking as well. And so
19 I would like to -- as far as safety for the inhabitants of
20 the building and the residents behind...

(A.R. 98).

Mr. Steer wrote a letter on behalf of Country Delite Farms and spoke at the August 14, 2017 meeting. He explained that the valet stand was causing increased traffic and congestion which resulted in business interruptions and increased cost to Country Delite, along with safety concerns for his employees. His letter states:



Chip Knauf
Traffic and Parking Commission
700 Second Avenue South
Nashville, TN 37203

August 14, 2017

Eric L. Steer
1401 Church Street
Nashville, TN 37202
615-913-1836

Mr. Knauf,

This letter is to ask that you deny the request for a valet parking permit for Parking Guys to provide parking on 15th Avenue. The increased traffic and congestion already causes business interruptions and increased costs to local companies such as Country Delite.

Country Delite is a dairy, juice, drink, and beverage company that traces its history to 1922 when the facility was first built on Church Street. The dairy has employed 80-100 full-time employees in Nashville for the better part of 100 years under the banners of Nashville Pure Milk Co., Malone & Hyde, Fleming, and now Country Delite Farms.

We supply trailers of refrigerated milk, juice, drink and other beverages to customers in 18 states across the southeast. We operate 24 hours a day, 7 days per week. In order to move our refrigerated trailers and ingredients, we often use 14th, 15th, and Church streets. With the start of the Deja Vu business and the subsequent additional vehicles parked on 15th Avenue, we often find the road blocked for traffic. This causes delays in our shipping and receiving, and increases the time that our employees must wait. Many times, our drivers complain about the increased time that it takes to navigate our facility with the increased nightly traffic.

As the various pictures show, 15th Avenue is impassable throughout the night due to cars parked on both sides of the street. This causes business interruption and increased cost to the Country Delite facility. Increased costs reduce our competitive edge and could risk our ability to stay in business.

While we wish to be good neighbors to all businesses in and around Church Street, and have no disagreements with the facility, our business continues to be interrupted due to the parking situation on 15th Avenue.

For these reasons, we ask that the parking permit be denied.

Thank you for your consideration.

Eric L. Steer

(A.R. 71). He testified before the Commission as follows:

5 MR. ERIC STEER: So I'm Eric Steer. I'm the plant
6 manager of Country Delite, which is on Church Street across
7 from the establishment. We use the streets, you'll see in
8 the pictures attached.

9 I would like to start by saying one clarification.
10 We are a 24/7 operation. So I know the study was done and
11 -- and they did say that the businesses were closing. We
12 are a very old, very well established Nashville pure milk
13 company, Sealtest, Truly Pure (Unintelligible) and now
14 Country Delite.

15 CHAIRPERSON GREEN: Okay.

16 MR. ERIC STEER: So we are a long-term business.
17 As you can see, it impacts us both because we have 86 to 100
18 employees. So we have employees that are trying to walk to
19 a parking lot. And we also have tractor trailer traffic
20 that is trying to move. So this is both a safety and an
21 operational thing because we have both people that are
22 trying to walk to their parking, and we have tractor
23 trailers that are going on during this.

24 There has been a numerous operational -- our
25 trucks are actually wanting to circumvent this neighborhood.

1 And being dairy operations we load our trucks early in the
2 morning so we can get out to our establishments before
3 significant traffic.

4 So I think the pictures speak for themselves. I
5 left letters also. Many, many, many of the business owners
6 -- or all the business owners that are here are having side
7 effects both from their employees, from their people that
8 are coming from both a safety and a business perspective.
9 And I think as you look through the pictures you can see.

10 I would challenge the -- the number of events that
11 occurred, because you can see more than those events in the
12 pictures that we listed. And also please note the number of
13 emergency vehicles that travel Church Street going to the
14 number of hospitals that are down there. And you can see
15 from many of the pictures that they back up across Church
16 Street.

(A.R. 136-137).

Mr. Wilder of Wilder Motor & Equipment Co. explained in an email to the Commission that the valet stand had been parking cars on his property without his permission, explaining:

From: Jack Wilder
To: Knarf, Chip (Public Works); "Uncle Schlem"
Cc: Kras, Michael; kcd@manBing.com; lee,fs@reuters@gmail.com; O'Connell, Freddie (Council Member); Gray, Michael (Mayor); ed, stes@leaffood.com; drake@steezeville.com; Williams, Edin (Mayor's Office of Public Works); Marshall, Dana (Public Works)
Subject: RE: Valet Parking for Déjà Vu/Craig Martin-like Parking Guys
Date: Monday, August 14, 2017 2:30:00 PM
Attachments: DMG_1512.jpg

Chip, I want to also express my concern about the nightly parking issues in and around 15th Ave North due to the Déjà Vu strip club. Attached is a picture taken a few days after the club opened. Obviously these cars are parked on my property without my permission. When I became aware of this parking situation I confirmed with my insurance company that I have liability exposure for any criminal incident, accident, or damage that occurs on my property. Since then I have contracted with Nashville Booting and Parking Enforcement Co in an attempt to discourage illegal parking. Last Friday night, just a couple of hours before the shooting on McMinn Street, I had someone doing surveillance of my property from 9:30-11:45. A "parking attendant" with a flashlight was directing Déjà vu traffic on 15th Ave No. to park on my property, telling them to ignore the booting warning signs and saying he would "take care of" the booting company. OMG. I strongly urge the parking commission to deny the valet parking permit request. Thanks for your service to our community and specifically our midtown neighborhood.

Jack Wilder
Wilder Motor & Equipment Co.
301 15th Ave, North
Nashville, Tn.

(A.R. 77).

Finally, Councilman Freddie O'Connell, who is the elected representative for this area on Metro's Council, opposed the valet location permit based on the fact that area property owners had demonstrated an "extraordinary amount of inappropriate vehicular activity," such that he believed a valet stand at the location at issue would create "unfortunate public safety concerns, traffic and parking issues that could affect performance of emergency vehicles, and general negative traffic and parking issues for area users of the public right of way." His email stated:

From: O'Connell, Freddie (Council Member)
To: Knauf, Chlo (Public Works)
Subject: Please Deny Approval of Valet for The Parking Company on 15th Ave N
Date: Monday, August 14, 2017 12:45 PM

Mr. Knauf,

I'm writing in support of the position of the Midtown Church Street Business and Residential Association that The Parking Company, Inc. should be denied a valet permit for 15th Ave N.

Having begun operation before the availability of a permit should be consequential enough, but the traffic and parking impact of their client at the corner of 15th Ave N and Church St is sufficiently significant that I would recommend denial even without evidence of prior inappropriate behavior.

Area property owners have demonstrated to me an extraordinary amount of inappropriate vehicular activity at the intersection in question (not to mention other inappropriate behaviors), and I believe a valet here would present unfortunate public safety concerns, traffic and parking issues that could affect performance of emergency vehicles, and general negative traffic and parking issues for area users of the public right of way.

I believe the business owner needs to find a traffic and parking solution for this corner that does not involve valet.

Please share my opposition to this valet permit with commissioners.

Many thanks, and my best,

--
Freddie O'Connell
Metro Councilman, District 19

<http://readyforfreddie.com/>
<http://twitter.com/freddieconnell>
<http://facebook.com/FreddieForNashville>

615-260-0005

(A.R. 67).

Upon consideration of all the evidence, including the statements and materials outlined above, the Commission unanimously denied the Petitioner's request for a valet permit.

Legal Analysis

This matter is now before this Court on the Petitioner's common law writ of certiorari. This Court possesses authority to review the Commission's decision by such a writ pursuant to Tenn. Code Ann. § 27-8-101, given the Commission is a local board exercising judicial functions in reviewing this permit application. *See Harding Academy v. Metropolitan Government of Nashville and Davidson Cnty.*, 222 S.W.3d 359, 363 (Tenn. 2007).

The standards governing this Court's review of the Commission's decision on a writ of certiorari are well established under Tennessee law. Tennessee courts have observed that a trial

court's review under the writ of certiorari process is very limited. As the Tennessee Court of Appeals has explained:

A common law writ of certiorari is an extraordinary judicial remedy. It is not available as a matter of right, but rather is addressed to the trial court's discretion. . . . The scope of review under a common law writ of certiorari is extremely limited. Courts may not (1) inquire into the intrinsic correctness of the lower tribunal's decision, (2) reweigh the evidence, or (3) substitute their judgment for that of the lower tribunal. Rather, the writ permits the courts to examine the lower tribunal's decision to determine whether the tribunal exceeded its jurisdiction or acted illegally, fraudulently, or arbitrarily.

Lanier Worldwide, Inc. v. State, No. M2006-02630-COA-R3-CV, 2007 WL 1145281, *6 (Tenn. Ct. App. April 17, 2007) (quoting *Robinson v. Clinic*, 65 S.W.3d 632, 635 (Tenn. Ct. App. 2001)) (internal citations omitted). See also *Harding Academy*, 222 S.W.3d at 363.

Decisions of local boards acting in a judicial capacity are “accompanied with a presumption that they were made in good faith.” *Heyne v. Metropolitan Nashville Bd. of Public Educ.*, 380 S.W.3d 715, 729 (Tenn. 2012). Persons challenging such decisions on a writ of certiorari have the burden of establishing that the board’s decision (1) exceeded its jurisdiction, (2) followed an unlawful procedure, (3) acted illegally, arbitrarily, or fraudulently, or (4) acted without material evidence to support its decision. *Id.*, at 730-31. The determination whether the administrative record contains sufficient material evidence to support a board’s decision is a question of law. *Kaplow v. City of Gatlinburg Bd. Of Adjustments and Appeals*, No. E2014-00347-COA-R3-CV, 2015 WL 3964212, at *4 (Tenn. Ct. App. June 30, 2015) (citing *Leonard Plating Co. v. Metro. Gov’t of Nashville & Davidson Cnty.*, 213 S.W.3d 898, 904 (Tenn. Ct. App. 2006)). “Material evidence” constitutes “relevant evidence that a reasonable person would accept as adequate to support a rational conclusion.” *Kaplow*, 2015 WL 3964212, at *4.

In this case, in denying the Petitioner's valet permit, the Commission was proceeding under Chapter 12.41 of the Code of the Metropolitan Government of Nashville and Davidson County, Tennessee (the "Metro Code" or "MC"), entitled "Valet Services." The Metro Code provisions for Valet Services define a "license" as "the license issued by the department of public works allowing a person to engaged [sic] in the business of valet parking within the area of the metropolitan government." Metro Code § 12.41.010. A "permit" or "valet parking permit" is "the permit issued by the department of public works allowing a valet parking operator to conduct a valet service at a specified location or locations." *Id.* "Valet parking," "valet parking operation," "valet operation," or "valet service" all mean "the process by which patron's vehicles are removed from designated spaces on the public street to private parking areas for storage and subsequent retrieval upon patron's demand." *Id.* Thus, a commercial valet operator must be generally licensed by Metro, and must also obtain a permit to conduct a valet at a specific location.

Metro Code § 12.41.030 governs review of permits to conduct a valet at a specific location, stating that Public Works

shall issue parking permits to valet parking operators to conduct their operations on public streets as a commercial enterprise or in furtherance of a commercial enterprise. A separate permit is required for each location where valet parking services are provided. Permits will be issued only where valet parking would not be detrimental to the public safety, health and welfare of the inhabitants of Nashville and Davidson County and only after approval of the commission.

In seeking this writ, the Petitioner asserts that the Commission's decision was arbitrary and/or not supported by material evidence. This Court, like the Petitioner, is puzzled that the Commission would adjourn its first hearing to obtain the input of the independent consultant Collier Engineering and then, upon obtaining that report, would disregard or not follow up on that consultant's findings that essentially the Petitioner's temporary operation of the valet permit

did not cause significant traffic issues during the time period the consultant observed the Petitioner's business operation. Of course, as Metro correctly observes, the Collier report acknowledged that Collier's observations occurred over a single weekend, and Collier lacked knowledge how this time period would compare "to typical operations and number of customers." Nonetheless, the Commission could have requested Collier to follow up on these initial findings to confirm whether they were correct.

However, as previously stated, it is not this Court's role to reevaluate or reweigh the Commission's decision. This Court may not second-guess the Commission's decision, and should defer to an administrative agency such as the Commission where the Commission is acting within its area of specialized knowledge, experience, and expertise. *See Starlink Logistics, Inc. v. ACC, LLC*, 494 S.W.3d 659, 669 (Tenn. 2016); *Holmes v. City of Memphis Civil Service Commission*, No. W2016-00590-COA-R3-CV, 2017 WL 129113, at *5-9 (Tenn. Ct. App. Jan. 13, 2017).

Upon a careful review of the record, the Court finds the Commission's decision was not arbitrary and that material evidence exists in the administrative record to support the Commission's decision. Six persons with businesses located near the proposed valet permit location unanimously testified that they opposed the granting of this valet permit because it would increase traffic congestion in the neighborhood and could cause safety problems. The area Councilman, as the elected representative for this council district, echoed these neighbors' concerns.

The neighbors' testimony included first hand observations of traffic problems caused by the temporary operation of this valet permit. Mr. Molette talked about the current traffic congestion on Church and 15th streets, near where the valet would be located, and how the valet

stand would enhance this congestion and create a “really dangerous situation.” Ms. Schipani, an owner of a business directly across the street from the valet stand and a representative of the Midtown Church Street Business & Residential Association, described members of the association witnessing “near miss accidents and traffic congestion which makes safety and emergency access void” since the opening of the valet stand. She identified specific concerns as well, stating that “[w]e have had consistent problems with valet parking on both sides of the street which impedes the flow of traffic, blocking private parking and presenting safety issues for drivers plus pedestrians.” Ms. Buoy, another nearby business owner, stated she had observed “the lanes of traffic have been blocked to the point for the valet and the traffic so that I’m really concerned as far as fire and ambulance” and that during the time the valet was in temporary operation the traffic was “very congested.” Mr. Steer, the owner of another neighboring business, stated that “with the start of the Déjà Vu business and the subsequent additional vehicles parked on 15th Avenue, we often find the road blocked for traffic” which caused delays in the shipping and receiving of the “refrigerated milk, juice, drink and other beverages” received and then delivered by Mr. Steer’s business operation. He also noted that this increased traffic congestion was particularly a concern given “the number of emergency vehicles that travel Church Street going to the number of hospitals that are down there.” Mr. Wilder, another business owner, observed that a parking attendant from Déjà Vu was directing traffic to park in his parking lot without permission.

Finally, Mr. O’Connell, the councilman for the district, summed up the concerns observed by these business owners and other of his constituents by observing that approval of this valet permit would create “unfortunate public safety concerns, traffic and parking issues that could affect performance of emergency vehicles, and general negative traffic and parking issues

for area users of the public right of way.” The Petitioner asserts before this Court that the Councilman and others who spoke against the permit are actually opposing the permit due to the adult nature of the Déjà Vu business, but the administrative record contains no evidence that this is the case and indeed the record reflects the Petitioner did not raise this concern to the Commission. In any event, the decision to deny this permit was made by the Commission and not by those who spoke against the permit, including Councilman O’Connell.

This evidence is sufficient to establish that the Commission’s denial of this valet permit was not arbitrary, and was supported by material evidence in the record. Accordingly, the Petitioner’s request for writ of certiorari is denied.

It is so ORDERED.


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