



**Town of Arlington
Legal Department**

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Christine Bongiorno, Director of Health and Human Services

From: Douglas W. Heim, Town Counsel

Date: June 1, 2023

Re: **Package Store License Application and Criteria**

In advance of your consideration of the Application of Nilkant 232 Inc., d/b/a "City Wine, Spirits and Smoke Shop" (Yashika Patel Owner and Manager) for an all-alcohol retail liquor store license, I write to briefly refresh the Board on the history and criteria for consideration of package store license applications in Arlington.

In brief, following the introduction of package store licenses to Arlington in 2006, the Town expanded its initial allotment from three (3) to five (5) in 2012, and then from five (5) to seven (7) in 2019. For the most part, the Select Board has invited applications for package store licenses pursuant to its policy and practices in the interests of soliciting interested parties into a competitive process for licenses depending on when and whether licenses are available. However, such practice does not preclude interested parties from submitting applications without a solicitation under G.L. c. 138 sec. 15 and 15A.

Standards for License Application Review & Issue

The baseline standards for eligibility for a sec. 15, retail liquor license, commonly referred to as a “package store” license are simple. An individual applying for a license must be a citizen, a resident of the Commonwealth, and at least 21 years of age. A partnership or a corporation may hold a liquor license so long as every partner meets such criteria or the corporation is organized within the Commonwealth with a majority of the directors meeting the same qualifications *and* an appointed a duly authorized license manager who is also 21 or older and a citizen. Further, a license may not issue to any applicant convicted of a felony, or to a firm, corporation or other similar entity with more than one (1) of the same license in Arlington, or more than five (5) of the same licenses throughout the Commonwealth.

Beyond basic eligibility requirements, the Board must determine whether a license will “...serve the public need and in such a manner as to protect the common good and, to that end, to provide, in the opinion of the licensing authorities, an adequate number of places at which the public may obtain, in the manner and for the kind of use indicated, the different sorts of beverages for the sale of which provision is made.” G.L. c. 138 sec. 23. In furtherance of such discernment, the Board should conduct an assessment of “public want and the appropriateness of a liquor license at a particular location.” See *e.g. Ballarin v. Licensing Bd. of Bos.*, 49 Mass. App. Ct. 506, 511-12, (2000)(upholding reversal of local licensing authority’s denial of license on the basis of the number of existing liquor licenses in the immediate area) citing *Connolly v. Alcoholic Bevs. Control Commn.*, 334 Mass. 613, 617-618, (1956)(upholding denial based upon proximity of bar to public school); *Beacon Hill Civic Assn. v. Ristorante Toscano, Inc.*, 422 Mass. 318, 322 n.4 (1996)(allowing consideration of viewpoints of residents).

In making your determination of want and appropriateness, Courts have approved consideration of the following:

- Traffic considerations;
- Noise concerns;
- Size of establishment;
- The type of establishment seeking a license (bar, restaurant, club, etc.);
- The reputation of the applicant;
- The total number of licenses in the community; and
- The views of inhabitants of the Town.

Ballarin, Inc. at 511.

In previous hearings on package store license applications the Board expanded upon and articulated such criteria as:

- Character, reputation and financial stability of the applicant;
- Experience with other license alcoholic beverage operations;
- Appearance of the proposed establishment and the quality of the products to be offered;

- Level of direct involvement of the owners or stockholders;
- Location compliant with zoning and geographic distribution;
- Size of store, traffic and noise in relation to location appropriately serving all areas of Town;
- Variety of product strategies consistent with local demand;
- Quality of the training program and related procedures to ensure compliance with laws and regulations with respect to liquor sales (for example, TIPS certification and training);
- Completeness of the application; and
- Input received from abutters and the general public at hearing or in writing.

Decision Requirements

Should the Board decide to grant a license, the Board may place appropriate conditions on such license. Should the Board decide to deny a license, it must prepare and issue a written decision setting forth the reasons for denial under G.L. c. 138 sec. 23. A denial may be subject to review by both the Alcoholic Beverages Control Commission and the Superior Court. Accordingly, the Board should be able to articulate with specificity and citation to facts on the record, the reasons issuing the license would not serve the public need or common good within the framework outlined above.

Additional Permitting Required

Finally, in addition to the foregoing, an affirmative Board decision should not be construed as satisfactory for all permitting requirements for operation. Given the proposed location of the establishment on Massachusetts Avenue, its present zoning status (upon information and belief R-6), and prior commercial uses, the Applicant *may* be required to obtain additional permitting from the appropriate zoning authority. Similarly, any tobacco product sales would require permitting from the Board of Health. The Board may consider the zoning district as well as intention to sell other products at the location, but is not required to do so, and such considerations are not dispositive.