

June 21, 2023

Dear Members of the Arlington Select Board,

Please accept additional information supporting my objection to an additional Package Store at 232 Mass. Ave.

I have read and included recent decisions by the Alcoholic Beverages Control Commission supporting denials of licenses by local licensing authorities. The ABCC shows deference to denials by an LLA if findings of fact are met.

Using the Town of Arlington GIS information on the Town's website it can be determined that the distance from the proposed store to Menotomy Beer & Wine at 80 Broadway, Arlington is 1,609 feet (.4 miles) and the distance from the proposed store to Mass Ave Wine & Spirits at 137 Mass Ave, Arlington is 1,374 feet (.3 miles). Distances measured using Google maps: Contan Liquors at 115 Alewife Brook Parkway, Somerville is 2,969 feet (.6 miles), and Norton's Liquors at 2451 Mass Ave, Cambridge is 4,542 feet (.9 miles). East Arlington is adequately served by existing liquor stores.

The crosswalk in front of 232 Mass Ave is dangerous enough that orange flags are placed on both sides of Mass Ave for pedestrians to wave if they attempt to cross. Orvis Road and its side streets are used as cut throughs by cars and trucks to avoid the traffic lights at Mass Ave and Lake Street. In an effort to control this traffic the Select Board has placed DO NOT ENTER 7 – 9 AM Mon – Fri signs on the Orvis Road end of Freeman, Newcomb, and Randolph Streets. The Board has also placed NO LEFT TURN 4- 7 PM Mon – Fri signs on the Lake Street (Hardy School) end of those streets. I have included photographs to verify these facts. Also, there is no traffic light at the intersection of Mass Ave and Orvis Road.

Thank you for your consideration.

Respectfully submitted,

Peter Fiore

58 Mott Street

Arlington, MA 02474



Commonwealth of Massachusetts
Alcoholic Beverages Control Commission
95 Fourth Street, Suite 3
Chelsea, Massachusetts 02150-2358

Jean M. Lorizio, Esq.
Chairman

DECISION

ST. ABRAAM, INC. D/B/A NEW ENGLAND MINIMART & GAS
814 WEST BOYLSTON ST.
WORCESTER, MA 01605
LICENSE#: NEW
HEARD: 1/30/2020

This is an appeal of the action of the City of Worcester Licensing Commission (the "Local Board" or "Worcester") for denying the M.G.L. c. 138, § 15 wines and malt beverages retail package store license application of St. Abraam, Inc. d/b/a New England Minimart & Gas ("the "Applicant" or "NE Minimart & Gas") to be exercised at 814 West Boylston Street, Worcester, Massachusetts. The Applicant timely appealed the Local Board's decision to the Alcoholic Beverages Control Commission (the "Commission" or "ABCC"), and a hearing was held on Thursday, January 30, 2020.

The following documents are in evidence as exhibits:

1. One and a half-mile Radius Area Map of Applicant's store;
2. Half – mile Radius Area Map of Applicant's store;
3. Floor Plan Drawing of Applicant's store;
4. Applicant's letter of support petition;
- A. Applicant's Section 15 Application packet;
- B. ABCC Notice of Hearing, dated November 22, 2019;
- C. Local Board's decision letter, dated November 14, 2019;
- D. City of Worcester Planning Board's Map of existing § 15 off-premises alcoholic beverages licenses;
- E. Written Transcript of Local Board hearing held on October 31, 2019.

There is one (1) audio recording of this hearing, and two (2) witnesses testified.

FINDINGS OF FACT

The Commission makes the following findings of fact:

1. St. Abraam, Inc. d/b/a New England Minimart & Gas operates a convenience store and gas station at 814 West Boylston Street, Worcester, Massachusetts. NE Minimart & Gas has been in business for over six (6) years. (Testimony)
2. The store is approximately 1500 square feet in size with two (2) employees and serves mostly local customers from the neighborhood. The store sells lottery, snacks, beverages, coffee, candy, groceries and cigarettes. (Testimony, Exhibit A)
3. The Applicant applied for a \$15 wines and malt beverages license at this location in an effort to provide one-stop shopping for customers. (Testimony)
4. There are seven (7) existing \$ 15 package stores within a 1.5-mile radius of NE Minimart & Gas' location: (Testimony, Exhibits 1, 2, C & D)
 - a. Market 32 by Price Chopper holds a \$ 15 all alcoholic beverages license less than one mile from NE Minimart & Gas. (Exhibits 1, 2, C & D)
 - b. KJ Barrons Fine Wine & Spirits holds a \$ 15 all alcoholic beverages license less than one mile from NE Minimart & Gas. (Exhibits 1, 2, C & D)
 - c. Burncoat Market Store holds a \$ 15 wine and malt beverages license less than one and a half miles from NE Minimart & Gas. (Exhibit D)
 - d. Holden Brattle Store holds a \$ 15 wine and malt beverages license less than one and a half miles from NE Minimart & Gas. (Exhibit D)
 - e. Greendale Liquor & Package Store holds a \$15 all alcohol beverages license less than one and a half miles from NE Minimart & Gas. (Exhibits 1 & D)
 - f. O'Hara's Liquor Store holds a \$15 all alcohol beverages license less than one and a half miles from NE Minimart & Gas. (Exhibits 1 & D)
 - g. Drake Petroleum holds a \$ 15 wine and malt beverages license less than one and a half miles from NE Minimart & Gas. (Exhibit D)
5. On October 31, 2019, the Local Board held a public hearing regarding the Applicant's application. Counsel for the applicant presented at the Local Board hearing and stated that the applicant was seeking the license for the convenience of store customers and to prevent traffic that would be caused by patrons leaving and traveling to an existing retail package store.
6. There were no public comments offered at the hearing. (Testimony, Exhibit E)
7. The Local Board denied the application based on the "lack of public need of a new package store license in that area", and concerns about the appropriateness of the physical space of the applicant's store. The Local Board considered that there were already seven (7) existing off premise liquor licenses within a 1.5-mile radius of the proposed new location. (Testimony, Exhibit C)

DISCUSSION

A local licensing authority has discretion to determine public convenience, public need, and public good, with respect to whether to grant a license to sell alcoholic beverages. See Donovan v. City of Woburn, 65 Mass. App. Ct. 375, 378-379 (2006); Ballarin, Inc. v. Licensing Bd. of Boston, 49 Mass. App. Ct. 506, 510-511 (2000). Accordingly, in reviewing the decision of a denial by a local licensing authority, the Commission gives “reasonable deference to the discretion of the local authorities” and determines whether “the reasons given by the local authorities are based on an error of law or are reflective of arbitrary or capricious action.” Great Atlantic & Pacific Tea Co., Inc. v. Board of License Comm’rs of Springfield, 387 Mass. 833, 837, 838 (1983); see Ballarin, Inc. v. Licensing Bd. of Boston, 49 Mass. App. Ct. 506, 512 (2000)(when reviewing the local licensing authority’s authority, court does not assess the evidence but rather “examine[s] the record for errors of law or abuse of discretion that add up to arbitrary and capricious decision-making”).

However, while this discretion of the local licensing authority is broad, “it is not untrammelled.” Ballarin, supra at 511. In the case of Donovan v. City of Woburn, the Appeals Court held, “[n]either the [local board’s] broad discretion nor the limitations on judicial review, however, mean that the [local board] can do whatever it pleases whenever it chooses to do so.” Donovan, supra at 379. “Instead, ‘[w]here the factual premises on which [the board] purports to exercise discretion is not supported by the record, its action is arbitrary and capricious and based upon error of law, and cannot stand.’” Id. (quoting Ruci v. Client’s Sec. Bd., 53 Mass. App. Ct. 737, 740 (2002)).

It is well-settled that the test for public need includes an assessment of public want and the appropriateness of a liquor license at a particular location. Ballarin, supra at 511. In Ballarin, the Appeals Court held that “[n]eed in the literal sense of the requirement is not what the statute is about. Rather the test includes an assessment of public want and the appropriateness of a liquor license at a particular location.” Ballarin, supra at 511, 512.

In Ballarin, the Court identified factors to be considered when determining public need:

Consideration of the number of existing licenses in the area and the views of the inhabitants in the area can be taken into account when making a determination, as well as taking into account a wide range of factors-such as traffic, noise, size, the sort of operation that carries the license and the reputation of the applicant. Id.

Furthermore, the statutory language is clear that there is no right to a liquor license of the type specified in M.G.L. c. 138, § 15. As section 23 provides in pertinent part:

“[t]he provisions for the issue of licenses and permits [under c. 138] imply *no intention to create rights* generally for persons to engage or continue in the transaction of the business authorized by the licenses or permits respectively, but are enacted with a view only to 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.” (Emphasis added) M.G.L. c. 138, § 23.

Despite no right to a liquor license, a local board must state the reasons for its decision whether or not to issue the liquor license. M.G.L. c. 138, § 23. "Adjudicatory findings must be 'adequate to enable [a court] to determine (a) whether the . . . order and conclusions were warranted by appropriate subsidiary findings, and (b) whether such subsidiary findings were supported by substantial evidence.'" Charlesbank Rest. Inc. v. Alcoholic Beverages Control Comm'n, 12 Mass. App. Ct. 879, 880 (1981) (quoting Westborough v. Dep't of Pub. Util., 358 Mass. 716, 717-718 (1971)). General findings are insufficient, and if the licensing board does not make sufficient findings, "it remain[s] the Commission's obligation to articulate the findings of fact, which were the basis of the conclusions it drew," and not merely adopt the findings of the board. Charlesbank Rest. Inc., *supra* at 880.

Here, the Local Board found after a hearing and deliberations, and consistent with the holding in Ballarin, that this area of Worcester is adequately served by the existing package stores and thus, the public need is already being met. Ballarin, *supra* at 511. In fact, there are seven (7) existing package stores in the immediate 1.5-mile radius of the proposed premises, NE Minimart & Gas. (Exhibits 1, 2 & D). In addition, the Local Board visited the proposed location and cited concerns with the physical space. Accordingly, the Local Board's determination is supported by the evidence. See Donovan, *supra* at 379 (The local board may deny a license even if the facts show that a license could be lawfully granted.).

This case is analogous to the Town of Middleton v. Alcoholic Beverages Control Comm'n where the applicant also owned a gas station and convenience store and applied for a retail package store license. The Town/Local Board of Middleton denied the application based on the Local Board's determination that its public need was being adequately served by the existing licensees. After a lengthy appeal process, the Appeals Court affirmed the Town's decision and upheld its denial based on the lack of public need. The Appeals Court further held that once a local board determines that an area is adequately served by the number of existing dispensaries, it need go no further. See Town of Middleton v. Alcoholic Beverages Control Comm'n, 64 Mass. App. Ct. 1108 (2005) (memo and order pursuant to Rule 1:28).

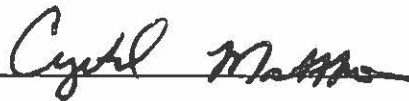
Furthermore, if a local authority's decision is supported by the evidence and based on "logical analysis," it is not arbitrary and capricious and must be affirmed. Great Atl. & Pac. Tea Co. Inc., *supra* at 839-840; Town of Middleton, *supra*. Accordingly, here, the Local Board's decision, that the area is adequately served by the existing package store licenses within a 1.5-mile radius of the proposed location, thus meeting the public need, was based on sufficient evidence. The Local Board's reliance on the City of Worcester Planning Department's map as well as their knowledge as to existing § 15 licenses in the area was reasonable and appropriate pursuant to the holdings in several well settled cases. Ballarin, *supra*; Donovan, *supra*; and Town of Middleton, *supra*. There is nothing in the record suggesting that the Local Board acted arbitrarily or capriciously. Therefore, the Commission finds that the decision of the Local Board is supported by the record and was not based upon an error of law.

CONCLUSION AND DISPOSITION

Based on the evidence and testimony at the hearing, the Commission **APPROVES** the action of the City of Worcester Licensing Commission for denying the M.G.L. c. 138, § 15 wines and malt beverages retail package license application of St. Abraam, Inc. d/b/a New England Minimart & Gas.

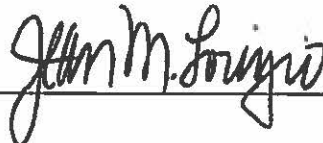
ALCOHOLIC BEVERAGES CONTROL COMMISSION

Crystal Matthews, Commissioner



I, the undersigned, hereby certify that I have reviewed the hearing record and concur with the above decision.

Jean M. Lorizio, Chairman



Dated: May 20, 2020

You have the right to appeal this decision to the Superior Courts under the provisions of Chapter 30A of the Massachusetts General Laws within thirty (30) days of receipt of this decision.

This document is important and should be translated immediately.
Este documento es importante y debe ser traducido inmediatamente.
Este documento é importante e deve ser traduzido imediatamente.
Ce document est important et devrait être traduit immédiatement.
Questo documento è importante e dovrebbe essere tradotto immediatamente.
Το έγγραφο αυτό είναι σημαντικό και θα πρέπει να μεταφραστούν αμέσως.
这份文件是重要的，应立即进行翻译。

cc: Gerald E. Shugrue, Esq.
Jared J. Madison, Esq.
Local Licensing Board
Frederick G. Mahony, Chief Investigator
Administration, File



*Commonwealth of Massachusetts
Alcoholic Beverages Control Commission
95 Fourth Street, Suite 3
Chelsea, Massachusetts 02150*

Jean M. Lorizio, Esq.
Chairman

DECISION

**MZS GROUP INC. D/B/A MANOMET GENERAL STORE
763 STATE ROAD
PLYMOUTH, MA 02360
LICENSE#: NEW
HEARD: 1/7/2021**

This is an appeal of the action of the Town of Plymouth Board of Selectmen ("Local Board" or "Plymouth") in denying the M.G.L. c. 138, § 15 annual wines and malt beverages retail package store license application of MZS Group Inc. d/b/a Manomet General Store ("Applicant" or "Manomet" or "MZS Group") to be exercised at 763 State Road, Plymouth, Massachusetts. The Applicant timely appealed the Local Board's decision to the Alcoholic Beverages Control Commission ("Commission" or "ABCC"), and a remote hearing via Microsoft Teams was held on Thursday, January 7, 2021.

The following documents are in evidence as exhibits:

1. Manomet General Store's § 15 Retail Package Store Application;
2. Town of Plymouth Map showing locations of existing § 15 licenses;
3. Local Board's Decision, 8/25/2020;
4. Manomet General Store's Appeal to ABCC, 9/10/2020;
5. ABCC Order to Local Board re: Insufficient Decision, 9/16/2020;
6. Local Board's Amended Decision, 10/21/2020;
7. ABCC Appeal Decision [Westborough Beverage Corp. Inc.], 4/16/2015;
8. ABCC Appeal Decision [Yankee Spirits Inc.], 11/10/2016.

There is one (1) audio recording of this hearing, and two (2) witnesses testified.

FINDINGS OF FACT

The Commission makes the following findings of fact based on the evidence presented at the hearing:

1. MZS Group Inc. d/b/a Manomet General Store ("Applicant" or "Manomet" or "MZS Group") is a Massachusetts entity. Mr. Zohaib Shahid is its sole officer, director, and proposed license manager. Mr. Shahid owns and operates three existing convenience stores with retail package store licenses in Massachusetts. (Testimony, Exhibit 1)

2. MZS Group, Inc. applied to the Local Board for one of the four (4) available M.G.L. c. 138, § 15 Wines and Malt Beverages license to be exercised at 763 State Road, Plymouth. Id.
3. The Local Board held a public hearing on August 23, 2020, regarding the application. The Local Board voted 4-1 to deny the application. In its written decision of August 25, 2020, the Local Board stated, “the four Selectmen in opposition of the license found that a public need of the license does not exist in this section of Plymouth.” (Testimony, Exhibit 3)
4. The Applicant timely appealed the Local Board’s decision. After reviewing the Local Board’s decision, the Commission issued an Order to Plymouth to amend its decision to include findings of fact. (Exhibits 5, 6)
5. On October 20, 2020, the Local Board voted to issue an Amended Decision. (Exhibit 6)
6. On October 21, 2020, the Local Board issued its Amended Notice of Decision denying the application of MZS Group, Inc.’s application and listed 12 findings of fact to support their decision. Id.
7. In support of its decision to deny the application, the Local Board found the area surrounding the proposed location is adequately served by two (2) existing Section 15 retail package stores. (Testimony, Exhibit 6)
8. Luke’s Liquors holds an all-alcoholic beverages retail package store license and is located approximately 0.2 miles from 763 State Road. Id.
9. Mayflower Package Store holds an all-alcoholic beverages retail package store license and is located approximately 0.8 miles from 763 State Road. Id.
10. The Local Board found “[t]he applicant did not present any evidence to suggest that it will be selling products other than those that are available in the two other establishments operating within less than a mile from the proposed location.” Id.
11. The Local Board found “[t]he Board has consistently found that the northern section of Plymouth is adequately served by the number of existing Section 15 licenses. In fact, between 2006 and 2016, the Board denied five applications to transfer licenses to the northern section of Town.” Id.
12. In 2020 Plymouth issued a license to Plymouth Food Mart which is located in the northern section of the town. Plymouth Food Mart replaced a similar business which had been in operation at the same location. Plymouth Food Mart is located approximately 12 miles from the proposed location of MZS Group. The nearest existing package store to Plymouth Food Mart is approximately 2.8 miles away. Id.

DISCUSSION

Licenses to sell alcoholic beverages are a special privilege subject to public regulation and control for which states have especially wide latitude pursuant to the Twenty-First Amendment to the United States Constitution. Connolly v. Alcoholic Beverages Control Comm’n, 334 Mass. 613, 619 (1956); Opinion of the Justices, 368 Mass. 857, 861 (1975). The procedure for the issuance

of licenses to sell alcoholic beverages is set out in M.G.L. c. 138. Licenses must be approved by both the local licensing authorities and the Commission. M.G.L. c. 138, §§ 12, 67; see Beacon Hill Civic Ass'n v. Ristorante Toscano, Inc., 422 Mass. 318, 321 (1996).

The statutory language is clear that there is no right to a liquor license of the type specified in M.G.L. c. 138, § 15. As Section 23 provides in pertinent part,

“[t]he provisions for the issue of licenses and permits [under c. 138] imply no intention to create rights generally for persons to engage or continue in the transaction of the business authorized by the licenses or permits respectively, but are enacted with a view only to 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.”

M.G.L. c. 138, § 23.

A local licensing authority has discretion to determine public convenience, public need, and public good, with respect to whether to grant a license to sell alcoholic beverages. See Donovan v. City of Woburn, 65 Mass. App. Ct. 375, 378-379 (2006); Ballarin, Inc. v. Licensing Bd. of Boston, 49 Mass. App. Ct. 506, 510-511 (2000). A local board exercises very broad judgment about public convenience and public good with respect to whether to issue a license to sell alcoholic beverages. Donovan, 65 Mass. App. Ct. at 379.

It is well-settled that the test for public need includes an assessment of public want and the appropriateness of a liquor license at a particular location. Ballarin, 49 Mass. App. Ct. at 511. In Ballarin, the Appeals Court held that “Need in the literal sense of the requirement is not what the statute is about. Rather the test includes an assessment of public want and the appropriateness of a liquor license at a particular location.” Ballarin, 49 Mass. App. Ct. at 511, 512.

In Ballarin, the Court identified factors to be considered when determining public need:

Consideration of the number of existing licenses in the area and the view of the inhabitants in the area can be taken into account when making a determination, as well as taking into account a wide range of factors – such as traffic, noise, size, the sort of operation that carries the license and the reputation of the applicant.

Ballarin, 49 Mass. App. Ct. at 511 (Italics supplied).

A board must state the reasons for its decision to deny the granting of a liquor license. M.G.L. c. 138, § 23. “Adjudicatory findings must be ‘adequate to enable [a court] to determine (a) whether the . . . order and conclusions were warranted by appropriate subsidiary findings, and (b) whether such subsidiary findings were supported by substantial evidence.’” Charlesbank Rest. Inc. v. Alcoholic Beverages Control Comm’n, 12 Mass. App. Ct. 879, 880 (1981) (quoting Westborough v. Dep’t of Pub. Util., 358 Mass. 716, 717-718 (1971)).

If a local authority’s decision is supported by the evidence and based on “logical analysis,” it is not arbitrary and capricious and must be affirmed. Great Atl. & Pac. Tea Co, Inc., v. Board of

License Comm'n of Springfield, 387 Mass. 833, 839-840 (1983); Town of Middleton v. Alcoholic Beverages Control Comm'n, 64 Mass. App. Ct. 1108 (2005).

In reviewing the decision of a denial by a local licensing authority, the Commission gives “reasonable deference to the discretion of the local authorities” and determines whether “the reasons given by the local authorities are based on an error of law or are reflective of arbitrary or capricious action.” Great Atlantic & Pacific Tea Co., Inc. v. Board of License Comm'rs of Springfield, 387 Mass. 833, 837, 838 (1983); see Ballarin, Inc. v. Licensing Bd. of Boston, 49 Mass. App. Ct. 506, 512 (2000) (when reviewing the local licensing authority’s authority, court does not assess the evidence but rather “examine[s] the record for errors of law or abuse of discretion that add up to arbitrary and capricious decision-making”). However, while this discretion of the local licensing authority is broad, “it is not untrammelled.” Ballarin, 49 Mass. App. Ct. at 511. In Donovan, the Appeals Court held, “Neither the [local board’s] broad discretion nor the limitations on judicial review, however, mean that the [local board] can do whatever it pleases whenever it chooses to do so.” Donovan v. City of Woburn, 65 Mass. App. Ct. 375, 379 (2006). “Instead, ‘[w]here the factual premises on which [the board] purports to exercise discretion is not supported by the record, its action is arbitrary and capricious and based upon error of law, and cannot stand.’” Id. (quoting Ruci v. Client’s Sec. Bd., 53 Mass. App. Ct. 737, 740 (2002)).

The Local Board held a public hearing, heard testimony and reviewed MZS Group’s application. The Commission finds the record demonstrates the Local Board considered a Ballarin factor in determining its decision to deny this application. Ballarin, 49 Mass. App. Ct. at 511. The Local Board considered the number of existing dispensaries in the area of the proposed location. Id. The Local Board found this area is adequately served by existing licenses, with one retail package stores located approximately 0.2 miles away, and another approximately 0.8 miles away. As a result, the Local Board determined there is no public need for an additional package store. (Testimony, Exhibit 6) The Massachusetts Appeals Court has held that once a local board determines that an area is adequately served by the number of existing dispensaries, it need go no further. Town of Middleton v. Alcoholic Beverages Control Comm'n, 64 Mass. App. Ct. 1108 (2005) (memo and order pursuant to Rule 1:28)

The applicant argued the decision is arbitrary and capricious because the Local Board seems to be saving licenses for the southern part of Plymouth. The Local Board acknowledged in its decision that the largest concentration of existing licenses is in the northern area of the town and that the Board believes additional licenses should go to the southern part of Plymouth. (Exhibit 6) However, in considering an application for a new license, the Local Board, as laid out in Ballarin, 49 Mass. App. Ct. at 511, is charged with assessing the appropriateness of a particular location and here that location is 763 State Road. The Local Board’s decision cites the proximity of existing licenses to 763 State Road and its determination that the public need is being met by those existing licenses.

Local licensing authorities are recognized as having expertise regarding the problems affecting the regulation of alcoholic beverages. Great Atl. & Pac. Tea Co., Inc., v. Board of License Comm'n of Springfield, 387 Mass. 833, 837 (1983). A local board may deny a license even if the facts show that a license could be lawfully granted. Donovan v. City of Woburn, 65 Mass. App. Ct. 375, 379 (2006). It is not for the Commission to substitute its own views with what the Local Board believes is in the best interest of its town. Because the Local Board’s decision is supported by the evidence before them at their August 25, 2020 hearing, and was based on a “logical

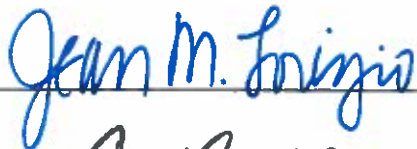
analysis,” its disapproval of a license for MZS Group is not arbitrary and capricious and must be affirmed. Great Atl. & Pac. Tea Co, Inc., v. Board of License Comm’n of Springfield, 387 Mass. 833, 839-840 (1983).

CONCLUSION

Based on the evidence and testimony at the hearing, the Commission **APPROVES** the action of the Town of Plymouth Board of Selectmen in denying the M.G.L. c. 138, § 15 annual wines and malt beverages retail package license application of MZS Group Inc. d/b/a Manomet General Store.

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Jean M. Lorizio, Chairman



Crystal Matthews, Commissioner



Deborah Baglio, Commissioner



Dated: March 3, 2022

You have the right to appeal this decision to the Superior Courts under the provisions of Chapter 30A of the Massachusetts General Laws within thirty (30) days of receipt of this decision.

This document is important and should be translated immediately.
Este documento es importante y debe ser traducido inmediatamente.
Este documento é importante e deve ser traduzido imediatamente.
Ce document est important et devrait être traduit immédiatement.
Questo documento è importante e dovrebbe essere tradotto immediatamente.
Το έγγραφο αυτό είναι σημαντικό και θα πρέπει να μεταφραστούν αμέσως.
这份文件是重要的，应立即进行翻译。

cc: Thomas H. Souza, Esq.
Gregg J. Corbo, Esq.
Local Licensing Board
Frederick G. Mahony, Chief Investigator
Administration, File



Commonwealth of Massachusetts
Alcoholic Beverages Control Commission
95 Fourth Street, Suite 3
Chelsea, Massachusetts 02150

Jean M. Lorizio, Esq.
Chairman

DECISION

RFS STORE 108, INC. D/B/A RICHDAL FOOD SHOPS
158 MAIN ST.
LEOMINSTER, MA 01453
LICENSE#: NEW
HEARD: 3/19/2019

This is an appeal pursuant to M.G.L. c. 138, § 67. RFS Store 108, Inc. d/b/a Richdale Food Shops ("Applicant" or "Richdale" or "RFS"), is appealing the action of the City of Leominster License Commission (the "Local Board" or "Leominster") in denying its M.G.L. c. 138, § 15 Wines and Malt Beverages Retail Package Store License application to be exercised at 158 Main Street, Leominster, Massachusetts. The Applicant timely appealed the Local Board's action to the Alcoholic Beverages Control Commission (the "Commission" or "ABCC"), and a hearing was held on Tuesday, March 19, 2019.

The following documents are in evidence:

1. RFS Store 108, Inc. c. 138, § 15 License Application;
2. Local Board's Letter/Notice of Hearing, 11/7/2018, to Applicant;
3. Local Board's Decision, 11/27/2018;
4. Applicant's Notice of Appeal, 12/10/2018;
5. Legal Notice of Hearing published in Local Newspaper, 11/5/2018;
6. Minutes of Local Board's Informational Hearing, 10/22/2018;
7. Minutes of Local Board's Hearing, 11/26/2018;
8. Audio Recording of Local Board's Informational Hearing, 10/22/2018 and Local Board's Hearing, 11/26/18;
9. Letters in Support of RFS's Application;
10. Zoning Map of Leominster;
11. Minutes of Local Board's Meeting, 7/13/2015;
12. Map Showing Proposed Location of Applicant in relation to Existing § 15 licensees and supporting documents;
13. Local Board's Decisions, 11/27/2018, for Applicants New England Farms, Leominster Market, and Aksel Market; and
14. Rules and Regulations of Local Board.

At the close of the hearing, the Commission left the record open until March 26, 2019, for the Local Board to submit a copy of their Rules and Regulations. The Local Board submitted the document in a timely manner, and it has been marked as an exhibit. The Licensee did not submit any additional documents. The record is now closed.

There is one (1) audio recording of this hearing, and two (2) witnesses testified.

FINDINGS OF FACT

The Commission makes the following findings of fact:

1. RFS Store 108, Inc. d/b/a Richdale Food Shops ("Applicant" or "Richdale" or "RFS"), is a registered Massachusetts corporation with a business address of 158 Main Street, Leominster, Massachusetts. Its sole officer, director, and shareholder is Barznab Khan. (Testimony, Commission records, Exhibits 1)
2. Mr. Khan currently operates Richdale Food Shops as a convenience store and sought to add a wines and malt beverages retail package store license to the operation. (Testimony)
3. Mr. Khan holds an ownership interest in six (6) other Richdale Food Shops, each of which holds a § 15 wines and malt beverages retail package store license. The other locations include: Brockton, Canton, Randolph, Rockland and 2 stores in Boston. (Exhibit 1)
4. It is the Local Board's practice, as outlined in its Regulations, to publish notice in the newspaper of the City's intent to offer a license or licenses, and to seek applicants. As also required by its Regulations, the Local Board schedules an informational hearing upon receipt of a Letter of Intent from any applicant wishing to apply for a license. (Exhibit 14)
5. The Board held such an informational hearing regarding Richdale's interest in applying for a § 15 wines and malt beverages retail package store license on October 22, 2018. Mr. Khan attended this hearing. The informational hearing was held prior to Mr. Khan filing his application. (Exhibits 2, 6, 8, 14)
6. In between the informational hearing on October 22, 2018 and the hearing on November 26, 2018, the board members conducted a site visit wherein they drove together to the existing convenience store at 158 Main Street. (Testimony)
7. On or about November 19, 2018, RFS submitted its application for a § 15 wines and malt beverages retail package store license. (Exhibit 1)
8. The Local Board held a public hearing on RFS's application on November 26, 2018, which the Applicant attended. At the hearing, one person spoke in favor of RFS's application and no individuals spoke in opposition to the application. (Testimony, Exhibit 8)
9. At the conclusion of the hearing, the Local Board voted 3-0 to deny RFS's application. By decision dated November 27, 2018, the Local Board gave its grounds for the denial. The Board cited the: (1) the location of the proposed premises is within close proximity to multiple establishments which sell wines and malt beverages, and/or all alcoholic beverages; (2) a lack of available parking and the difficult ingress and egress to the location is a public safety concern; and (3) the lack of public need for this license. (Exhibits 8, 3)
10. The Applicant timely appealed the Local Board's decision to the ABCC. (Exhibit 1)
11. Three other applicants for retail package store licenses in Leominster had hearings on the same night as RFS. The Local Board visited those locations as well. Those three

applications were denied citing lack of public need given the number of existing package stores. (Testimony)

DISCUSSION

In reviewing the decision of a denial by a local licensing authority, the Commission gives “reasonable deference to the discretion of the local authorities” and determines whether “the reasons given by the local authorities are based on an error of law or are reflective of arbitrary or capricious action.” Great Atlantic & Pacific Tea Co., Inc. v. Board of License Comm’rs of Springfield, 387 Mass. 833, 837, 838 (1983); see Ballarin, Inc. v. Licensing Bd. of Boston, 49 Mass. App. Ct. 506, 512 (2000) (when reviewing the local licensing authority’s authority, court does not assess the evidence but rather “examine[s] the record for errors of law or abuse of discretion that add up to arbitrary and capricious decision-making”). However, while this discretion of the local licensing authority is broad, “it is not untrammelled.” Ballarin, 49 Mass. App. Ct. at 511.

Licenses to sell alcoholic beverages are a special privilege subject to public regulation and control for which states have especially wide latitude pursuant to the Twenty-First Amendment to the United States Constitution. Connolly v. Alcoholic Beverages Control Comm’n, 334 Mass. 613, 619 (1956); Opinion of the Justices, 368 Mass. 857, 861 (1975). The procedure for the issuance of licenses to sell alcoholic beverages is set out in M.G.L. c. 138. Licenses must be approved by both the local licensing authorities and the Commission. M.G.L. c. 138, §§ 12, 67; see Beacon Hill Civic Ass’n v. Ristorante Toscano, Inc., 422 Mass. 318, 321 (1996).

The statutory language is clear that there is no right to a liquor license. As M.G.L. Ch. 138, § 23 provides,

[t]he provisions for the issue of licenses and permits [under c. 138] imply no intention to create rights generally for persons to engage or continue in the transaction of the business authorized by the licenses or permits respectively, but are enacted with a view only to 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.

M.G.L. c. 138, § 23.

A local licensing authority has discretion to determine public convenience, public need, and public good, with respect to whether to grant a license to sell alcoholic beverages. See Donovan v. City of Woburn, 65 Mass. App. Ct. 375, 378-379 (2006); Ballarin, Inc. v. Licensing Bd. of Boston, 49 Mass. App. Ct. 506, 510-511 (2000). A local board exercises very broad judgment about public convenience and public good with respect to whether to issue a license to sell alcoholic beverages. Donovan, 65 Mass. App. Ct. at 379.

It is well-settled that the test for public need includes an assessment of public want and the appropriateness of a liquor license at a particular location. Ballarin, 49 Mass. App. Ct. at 511. The Appeals Court held that “Need in the literal sense of the requirement is not what the statute is

about. Rather the test includes an assessment of public want and the appropriateness of a liquor license at a particular location.” Ballarin, 49 Mass. App. Ct. at 511, 512.

The Court identified factors to be considered when determining public need:

Consideration of the number of existing licenses in the area and the views of the inhabitants in the area can be taken into account when making a determination, as well as taking into account a wide range of factors-such as traffic, noise, size, the sort of operation that carries the license and the reputation of the applicant.

Ballarin, 49 Mass. App. Ct. at 511.

The Appeals Court has held that a local board may deny a license even if the facts show that a license lawfully could be granted. See Donovan v. City of Woburn, 65 Mass. App. Ct. 375,379 (2006). “Neither the [local board’s] broad discretion nor the limitations on judicial review, however, mean that the [local board] can do whatever it pleases whenever it chooses to do so.” See id. “Instead, ‘[w]here the factual premises on which [the board] purports to exercise its discretion is not supported by the record, its action is arbitrary and capricious and based upon error of law, and cannot stand.’” Id. (quoting Ruci v. Client’s Sec. Bd., 53 Mass. App. Ct. 737,740 (2002)). A Board must state the reasons for its decision whether or not to issue the liquor license. M.G.L. c. 138, §23. “Adjudicatory findings must be ‘adequate to enable [a court] to determine (a) whether such subsidiary findings were supported by substantial evidence.’” Charlesbank Rest., Inc. v. Alcoholic Beverages Control Comm’n, 12 Mass. App. Ct. 879, 880 (1981) (quoting Westborough v. Dep’t of Pub. Util., 358 Mass. 716, 717-718 (1971)) General Findings are insufficient, and if the licensing board does not make sufficient findings, “it remain[s] the Commission’s obligation to articulate the findings of fact, which were the basis of the conclusions it drew,” and not merely adopt the findings of the board. Charlesbank Rest. Inc., 12 Mass. App. Ct. at 880.

RFS contends that the Local Board’s decision is arbitrary and capricious, an abuse of discretion and not based on substantial evidence.

RFS argues that the hearing process was deficient given the Local Board considered testimony garnered at the informational hearing. The Local Board’s Regulations in Section 1.21, entitled Applications and Fees, clearly state:

- a. Prior to the City issuing any application for a new alcohol beverage license, the License Authority shall publish in the newspaper, on one occasion, the City’s intent to offer and seek applicants for an available license. Anyone interested in applying for the license shall submit a Letter of Intent by the date posted in the newspaper notice. An Informational Hearing will be scheduled for all parties who submit a Letter of Intent by the prescribed date.
- b. At the Informational Hearing the Authority will determine a date for a Public Hearing and a deadline for the applications to be submitted. Only those parties who are scheduled for the Informational Hearing may submit a formal application.

While this procedure may be somewhat unorthodox,¹ the Local Board has promulgated Regulations which provide each applicant with an understanding of the process. The process was followed. The Commission is persuaded that the Local Board's decision was based on evidence properly obtained during the hearing process.

RFS further argues that the Local Board failed to conduct a specific analysis of RFS's business as required in the Donovan case. Donovan, 65 Mass. App. Ct. 375, 380 (2006). The facts in Donovan are distinguishable from those in this matter. The Appeals Court in Donovan held that the Local Board should have conducted a particularized analysis of the proposed business plan, rather than simply assessing the number of existing retail package stores in the area. The business plan in Donovan was for deliveries of gift baskets containing alcohol, not a traditional package store, which the Court found would have been the only business of its kind in Woburn. Donovan, 65 Mass. App. Ct. at 380. Here, unlike the Donovan case, the Local Board was not presented with any evidence that RFS's business plan was distinguishable from the other retail package stores in the area. See Donovan, 65 Mass. App. Ct. at 381. RFS argues that the Local Board did not consider the differences between their business model and the existing package stores in the area. The record reflects the opposite as the Chair of the Local Board testified before the Commission and specifically stated that the other businesses were visited and compared with RFS before the Board voted to deny RFS's application.

The Commission finds that the Local Board was neither arbitrary nor capricious in its decision, nor was the decision an abuse of discretion or based on an error of law. See Great Atlantic & Pacific Tea Co., Inc., 387 Mass. at 837. The Local Board held an informational hearing as required by its rules and regulation, along with a second hearing during which public comment was solicited. The Local Board considered testimony from both hearings and reviewed RFS Store 108, Inc.'s application and documentary evidence. The record indicates that in the approximate one-mile radius around the proposed location there are six (6) existing § 15 retail package store licenses. (Exhibit 8., Jt. Pre-hearing memorandum) The Massachusetts Appeals Court has held that once a local board determines that an area is adequately served by the number of existing dispensaries, it need go no further. Town of Middleton v. Alcoholic Beverages Control Comm'n, 64 Mass. App. Ct. 1108 (2005) (memo and order pursuant to Rule 1:28)

The Local Board presented evidence to the Commission of three other applicants for retail package store licenses whose applications were scheduled for hearing on the same night as RFS and whose applications were also denied citing lack of public need given the number of existing package stores. The Commission finds that the record supports the Local Board's decision that there exists an adequate number of §15 dispensaries in this area to satisfy the public need.

In issuing its decision, the Local Board made specific and particularized findings, which the Commission determined are supported by the record of these proceedings. As the Supreme Judicial Court has stated,

[t]here was evidence before the [Local Board] that the area had a large number of establishments selling beer and wine, and that the public did not need an additional establishment. The [Local Board] stated the reason for their decision. There is

¹ The site visit procedure may also raise open meeting law issues, but such issues are not within the purview of the ABCC.

nothing in the record to indicate that the decision was whimsical or not based on logical analysis. On the record, we can only conclude that the decision was founded on reasoned judgment and was not arbitrary or capricious.

Great Atlantic & Pacific Tea Co., Inc., 387 Mass. at 839-840.

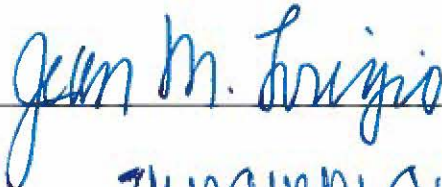
The Local Board considered and applied the factors outlined in the cases of Ballarin and Donovan. The Commission finds the Local Board's decision was based on sufficient evidence presented during the course of the public hearings, and the decision of the Local Board was not based upon an error of law, and thus, was not arbitrary and capricious.

CONCLUSION

Based on the evidence and testimony presented at the hearing, the Commission **APPROVES** the action of the City of Leominster in denying the M.G.L. c. 138, § 15 Wines and Malt Beverages Retail Package Store license application of RFS Store 108, Inc.

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Jean M. Lorizio, Chairman



Elizabeth A. Lashway, Commissioner



Dated: September 13, 2019

You have the right to appeal this decision to the Superior Courts under the provisions of Chapter 30A of the Massachusetts General Laws within thirty (30) days of receipt of this decision.

This document is important and should be translated immediately.
Este documento es importante y debe ser traducido inmediatamente.
Este documento é importante e deve ser traduzido imediatamente.
Ce document est important et devrait être traduit immédiatement.
Questo documento è importante e dovrebbe essere tradotto immediatamente.
Το έγγραφο αυτό είναι σημαντικό και θα πρέπει να μεταφραστούν αμέσως.
这份文件是重要的，应立即进行翻译。

cc: Jon Aieta, Esq.
Brian Riley, Esq.
Frederick G. Mahony, Chief Investigator
Administration, File





ARLINGTON



**CROSSWALK
FLAG PROGRAM**

A project of the Transportation Advisory Committee
and Police Department, with funding through
Arlington Public Schools.





NO

LEFT

TURN

4pm to 7pm

MON-FRI

FREEMAN



7am - 9am
MON thru FRI