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Chairman

**Commonwealth of Massachusetts
Department of the State Treasurer
Alcoholic Beverages Control Commission
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DECISION

**MARY NGUYEN D/B/A ALL AMERICAN WATER
3 NEPONSET AVENUE
BOSTON, MA 02126
LICENSE#: NEW
HEARD: 10/05/2017**

This is an appeal under M.G.L. c. 138, § 67 of the action of the City of Boston Licensing Board (the "Local Board" or "Boston") for denying the M.G.L. c. 138, § 15 All Alcoholic Beverages License application of Mary Nguyen (sole proprietor) d/b/a All American Water ("Applicant" or "Mary Nguyen") to be exercised at 3 Neponset Avenue, Boston, 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 Thursday, October 5, 2017.

The following documents are in evidence:

1. Local Board's Statement of Reasons dated June 22, 2017;
2. General Rules of the Licensing Board for the City of Boston;
3. List of § 15 Retail Package Store Liquor Licenses in the Dorchester neighborhood of Boston;
4. Map of the Location of Field Station Liquors, 506 Geneva Avenue, Dorchester;
5. Clam Point Civic Association Letter dated July 20, 2017;
6. Affidavit of Dwight Veitch; and
7. Affidavit of Curtis Do.

There is one (1) audio recording of this hearing, and one (1) witness testified.

FINDINGS OF FACT

The Commission makes the following findings of fact:

1. Mary Nguyen, sole proprietor, d/b/a All American Water operates a convenience store business at 3 Neponset Avenue, Dorchester, Massachusetts. At the time of the Commission hearing, Mary Nguyen had operated her convenience store for approximately two and one-half years. (Testimony)
2. A public hearing regarding Mary Nguyen's application for a retail package store all alcoholic beverage license was held before the Local Board on June 21, 2017. (Testimony, Exhibit 1)

3. A representative of Frank Baker, the Boston City Councilor representing District 3 in Dorchester, voiced the Councilor's opposition to Mary Nguyen's application for a retail package store license. (Exhibit 1)
4. The Mayor's Office of Neighborhood Services liaison, David Cotter, also spoke in opposition to this application. His opposition was based on the views expressed by several neighborhood groups in the Dorchester community which are opposed to an additional package store license in the neighborhood. Mr. Cotter further stated that no public need exists for a package store license at this proposed location. (Exhibit 1)
5. The Clam Point Civic Association is averse to this application as there are currently five¹ existing package store licenses within walking distance of Ms. Nguyen's location. The existing package stores are:
 - a. Lynne Liquor Store², 1445 Dorchester Ave, Dorchester, MA;
 - b. Morrissey Boulevard Liquor, 711 Morrissey Boulevard, Dorchester, MA;
 - c. Welles Liquor, 1772 Dorchester Avenue, Dorchester, MA;
 - d. Ashmont Liquor, 630 Adams Street, Dorchester, MA;
 - e. Field Station Liquors³, 506 Geneva Avenue, Dorchester, MA. (Exhibits 1, 3, 5)
6. The Field's Corner Civic Association opposed this application due to the sufficient number of existing package store licenses within walking distance of the Mary Nguyen's location. (Exhibits 1, 5)
7. The Pope's Hill Civic Association also opposed Mary Nguyen's application due to the number of existing package store licenses within walking distance of the proposed location. (Exhibits 1, 5)
8. As a sole proprietor, Mary Nguyen would be the license manager. Mary Nguyen does not have any experience managing a retail package store, nor any experience selling or serving alcoholic beverages. (Testimony, Exhibit 1)
9. Four individuals spoke in favor of Mary Nguyen's application at the Local Board hearing. (Exhibits 1, 6)

¹ The Clam Point Civic Association letter (Exhibit 5) states that there are six existing package store licenses in the proposed location. The Commission finds this to be an incorrect number given that the letter lists Lynne's Liquor Store twice. The Commission finds that there are five existing package store licenses (not six), in the proposed location. (Exhibits 3, 5)

² Commission records indicate that Lynne Liquor Store is located at 1445 Dorchester Avenue, not 1451 Dorchester Avenue, as stated in Exhibit 5. (Commission records, Exhibit 5)

³ Commission records identify this license as Field Station Liquors Inc., 506 Geneva Ave. Boston, MA. The Clam Point Civic Association identifies this license as Supreme Liquors, 506 Geneva Ave. @ Shopping Plaza. (Commission Records, Exhibit 5)

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10. Mr. Dwight Veitch⁴ submitted an affidavit regarding Mary Nguyen's application. Mr. Dwight Veitch, a resident of the neighborhood and patron of Mary Nguyen's store, spoke at the Local Board hearing in support of Mary Nguyen's application. (Testimony, Exhibits 1, 6)
11. There are thirty-five (35) § 15 retail package store licenses currently issued in the Dorchester neighborhood of Boston. Twenty-nine (29) of these §15 licenses are all-alcoholic beverages licenses, and six (6) are wines and malt beverages licenses. (Commission records, Exhibit 3)
12. Fields Station Liquors, Inc. d/b/a Field Station Liquors⁵ located at 506 Geneva Avenue, Dorchester, holds a § 15 all-alcoholic beverages license. It is approximately 0.4 miles from applicant Mary Nguyen's All American Water location. (Commission records, Exhibits 3, 4, 5)
13. The Local Board has not issued any new or additional § 15 retail package store licenses in Dorchester since Mary Nguyen applied for a license. All of the 35 existing § 15 retail package store licenses in Dorchester were granted and issued prior to Mary Nguyen's application. (Commission records, Exhibit 3)
14. On June 22, 2017, the Local Board voted to reject Mary Nguyen's application with prejudice. (Exhibit 1, Testimony)
15. The Local Board's written decision stated that this application was rejected due to the "significant amount of opposition to the license at the premises as well as the applicant's lack of experience in the sale and service of alcohol. The Board determined that the area around the premises is adequately served by the numerous existing retail package stores in the area including a retail package store located only 0.4 miles from the premises." (Exhibit 1)

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).

⁴ Mr. Dwight Veitch did not attend the Commission hearing. (Commission records)

⁵ The list of licenses in Dorchester as provided by the Local Licensing Board identifies this licensee as Field Station Liquors, Inc., 500 – 520 Geneva Avenue. (Exhibit 3) The Google Map (Exhibit 4) and Clam Point Civic Association Letter (Exhibit 5) identify the licensee at this location as Supreme Liquors, Fields Corner at the Shopping Plaza. (Exhibits 3, 4, 5) Commission records identify this license as Field Station Liquors Inc., 506 Geneva Ave. Boston, MA. (Commission records)

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 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. (Italics supplied.)

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 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., 12 Mass. App. Ct. at 880.

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)).

Upon review of the record of proceedings before the Local Board and the evidence presented to the Commission, the Commission is persuaded that the Local Board fulfilled its responsibility regarding Mary Nguyen’s application. The Commission finds that the Local Board’s decision was not based on an error of law or reflective of arbitrary or capricious action. See Great Atlantic & Pacific Tea Co., Inc., 387 Mass. at 837. The Local Board held a hearing during which it heard testimony and reviewed Mary Nguyen’s application and documentary evidence. The Commission finds that the record clearly demonstrates the Local Board considered three Ballarin factors in determining its decision of denial regarding this application. Ballarin, 49 Mass. App. Ct. at 511. The Local Board considered the reputation of the applicant, Mary Nguyen, and that she had no previous experience in the sale and service of alcoholic beverages. (Testimony, Exhibit 1) The Local Board evaluated the opposing views of the inhabitants in this area. (Exhibits 1, 5) Id. The Local Board further considered the number of existing dispensaries in this neighborhood of Dorchester. (Exhibits 1, 3, 4, 5) Id. 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 Commission does not find persuasive Mary Nguyen’s argument that her application was treated differently due to her ethnicity. Ms. Nguyen alleged disparate treatment in her Pre-Hearing Memorandum. The Commission was presented with an affidavit in which the affiant alleges discrimination towards Ms. Nguyen during the community process, specifically in meetings before the neighborhood association, and by the Local Board seemingly by virtue of the fact that her application was denied. (Exhibit 6) The Commission was not presented with any additional evidence corroborating or supporting said claims of discrimination.

The Appeals Court has held that a local board may deny a license even if the facts show that a license could be lawfully granted. Donovan, 65 Mass. App. Ct. at 379. The Local Board found after deliberations that there is no public need for a package store license at this location. The Commission finds that the record clearly supports the decision by the Local Board to deny this application based on the Local Board’s consideration and application of the relevant Ballarin factors. Ballarin, 49 Mass. App. Ct. at 511.

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 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's decision was based on sufficient evidence presented during the course of the public hearing. The Local Board's reliance on these factors was reasonable and appropriate pursuant to the holdings in Ballarin, supra, and Donovan, supra. Therefore, the Commission finds that the decision of the Local Board is supported by the record, was not based upon an error of law, and thus, was not arbitrary and capricious.

CONCLUSION

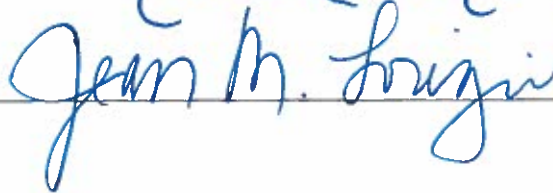
Based on the evidence and testimony presented at the hearing, the Commission **APPROVES** the action of the Licensing Board for the City of Boston in denying the M.G.L. c. 138, § 15 all alcoholic beverages license application of Mary Nguyen, Sole Proprietor, d/b/a All American Water.

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Kathleen McNally, Commissioner



Jean Lorizio, Chairman



Dated: May 3, 2018

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.

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cc: Quoc Tron, Esq.
Lesley D. Hawkins, Esq.
Frederick G. Mahony, Chief Investigator
Administration, File