



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

Jean M. Lorizio, Esq.
Chairman

DECISION

MB SPIRITS LLC D/B/A MB SPIRITS
2 FACTORY OUTLET WAY, SUITE 2B
BOURNE, MA 02532
LICENSE#: NEW
HEARD: 12/5/2023 & 12/6/2023

This is an appeal of the action of the Bourne Board of Selectmen (the “Local Board” or “Bourne”) in denying the § 15 All-Alcoholic Beverages Retail Package Store License application of MB Spirits LLC d/b/a MB Spirits (“Applicant” or “MB Spirits”) to be exercised at 2 Factory Outlet Way, Suite 2B, Bourne, 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 Tuesday, December 5th, and Wednesday, December 6, 2023.

The following documents are in evidence:

1. MB Spirits’ § 15 All Alcoholic Beverages Retail Package Store Application, 10/27/2022;
2. MB Spirits’ Support Petition (1st Effort);
3. MB Spirits’ Support Petition (2nd Effort);
4. Subpoena to Judith MacLeod Froman, 10/19/2023, with Return of Service, 11/15/2023;
5. Subpoena to Jared P. MacDonald, 10/19/2023;
6. Subpoena to Mary Jane Mastrangelo, 10/19/2023;
7. Map of Bourne showing locations of § 15 Package Store Licenses;
8. Text Message Exchanges between Judith M. Froman and Stephanie White;
9. Judith M. Froman Disclosure of Appearance of Conflict of Interest, 1/3/2023;
10. Email with Screenshot of Mary Jane Mastrangelo’s Facebook Post, 3/15/2023;
11. Email with Screenshot of Mary Jane Mastrangelo’s Messenger Communications with Judith M. Froman, 3/15/2023;
12. Email with Screenshot of Mary Jane Mastrangelo’s Messenger Communications with Matt Smith, 3/15/2023;
13. Email with Screenshot of Mary Jane Mastrangelo’s Text Message Communications with Nancy Sundman, 3/15/2023;

14. Email Correspondence between Kristen Brisette and Bourne Chairman Peter Meier, 1/9/2023 through 1/10/2023;
 15. Video Recording of Bourne Board of Selectmen Meeting, 12/6/2022;
 16. Video Recording of Bourne Board of Selectmen Meeting, 1/3/2023;
 17. Video Recording of Bourne Board of Selectmen Meeting, 1/9/2023;
 18. Unofficial Transcript of Bourne Board of Selectmen Meeting, 12/6/2022;
 19. Unofficial Transcript of Bourne Board of Selectmen Meeting, 1/3/2023;
 20. Unofficial Transcript of Bourne Board of Selectmen Meeting, 1/9/2023;
 21. Minutes of Bourne Board of Selectmen Meeting, 12/6/2022;
 22. Minutes of Bourne Board of Selectmen Meeting, 1/3/2023;
 23. Minutes of Bourne Board of Selectmen Meeting, 1/9/2023;
 24. Local Board's Decision, 1/5/2023;
 25. Email from Russell Salamone addressed to Bourne Board of Selectmen, 1/6/2023;
 26. Letter from Dena Rymsha addressed to Bourne Board of Selectmen, 12/10/2022;
 27. Email from Tony Lacina addressed to Bourne Board of Selectmen , 1/8/2023;
 28. Email to Bourne Chairman Peter Meier from Paul Gately, 2/28/2023;
 29. Local Board's Decision, 9/6/1985;
 30. Google Map Aerial Photograph of 2 Factory Outlet Way;
 31. 2nd Aerial Photograph of 2 Factory Outlet Way;
- A. MB Spirits' Support Petition (3rd Effort).

There is one (1) audio recording of this hearing, and five (5) witnesses testified.

FINDINGS OF FACT

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

1. MB Spirits LLC d/b/a MB Spirits ("Applicant" or "MB Spirits"), is a Massachusetts limited liability company with a business address of 875 East Street, Tewksbury, Massachusetts. (Exhibit 1)
2. On or about October 27, 2022, MB Spirits filed a § 15 all alcoholic beverages retail package store application with the Local Board for a license to be exercised at 2 Factory Outlet Way, Suite 2B, Bourne, Massachusetts. (*Id.*)
3. The § 15 all alcoholic beverages retail package store license that MB Spirits applied for became available due to an increase in Bourne's population captured by the 2020 Federal Census and is calculated by using the formula within M.G.L. c. 138, § 17. (Testimony, Exhibits 15, 16, 18, 19, 21, 22)

4. On December 6, 2022, the Local Board held the first public hearing on MB Spirits' § 15 all alcoholic beverages retail package store application. Four of the five Board members were present. Board member Jared MacDonald was absent. (Testimony, Exhibits 15, 18, 21)
5. MB Spirits' presentation to the Local Board included how the proposed location would provide a one-stop shopping experience for customers who would be able to purchase groceries at the Market Basket supermarket and alcoholic beverages at MB Spirits without leaving the parking lot. MB Spirits also offered that it holds other alcohol licenses at stores in MA, NH, ME with unblemished records. MB Spirits presented a petition in support of the issuance of an all alcohol license which had a total of 5321 signatures, 1632 of which were Bourne residents.(Testimony, Exhibits 2, 15, 16, 18, 19, 21, 22)
6. After MB Spirits' presentation concluded, Board member Judith MacLeod Froman ("Froman") began the Local Board's discussion with MB Spirits' by stating, "That location is likely to be taken away with the new Sagamore Bridge construction..." Froman added, "One of the considerations that gets put into play with the bridges is the idea of eminent domain and I just want to know what information you have or conversations you've had with the state regarding that?" (Testimony, Exhibits 15, 18, 21)
7. The Local Board questioned MB Spirits' representatives and then opened the hearing up for public comment. The Local Board heard from eleven (11) members of the public concerning MB Spirits' § 15 all alcoholic beverages retail package store application and other issues. Eight of the individuals who spoke in opposition to MB Spirits' § 15 all alcoholic beverages retail package store application had a relationship with other existing package stores located in Bourne or in other municipalities. (Id.)
8. Stephanie White ("White"), whose husband owns one of the existing § 15 all alcoholic beverages retail package stores in Bourne doing business as The Liquor Barn, spoke in opposition. Although she is not related by blood, White refers to Board member Froman as her sister-in-law. (Testimony, Exhibits 8, 9)
9. The Local Board wanted more information about Bourne's alcohol licensing history regarding special legislation and quota licenses and continued the hearing with the agreement of MB Spirits to January 3, 2023. (Testimony, Exhibits 15, 18, 21)
10. Between December 8, 2022, and January 9, 2023, Board member Froman and White exchanged many text messages concerning the MB Spirits application and another applicant, Cataumet¹ Fish. After Froman requested information from White about how many employees each Bourne liquor store had and what the stores each pay Bourne in property tax, Froman sent a text message to White on December 9, 2022, which read, "They can be anonymous (i.e. Store 1, store 2, etc.). You are entirely right that I'm interested in numbers to quantify whether adding an additional license will be what is best for the town.

¹ On or about December 19, 2023, the Local Board received a § 15 all alcoholic beverages retail package store application from Sea State Foods LLC d/b/a Cataumet Fish to be exercised at 1360 Route 28A, Bourne, Massachusetts. (Testimony)

We can't say it is because it affects your business adversely so I'm working a different strategy." (Testimony, Exhibit 8).

11. On January 3, 2023, Board member Froman filed a Disclosure of Appearance of Conflict of Interest as required by G.L. c. 286A, § 23(b)(3) with the Town Clerk. (Testimony, Exhibit 9)
12. On January 3, 2023, the Local Board held the 2nd public hearing on MB Spirits' application. (Testimony, Exhibits 16, 19, 22)
13. During the January 3, 2023, hearing, the Local Board heard from members of the public concerning MB Spirits' § 15 all alcoholic beverages retail package store application. A majority of the individuals who commented against MB Spirits' application were either representatives or had a relationship with existing package stores located in Bourne or in other municipalities. Many individuals who commented in favor of MB Spirits' were employees. Id.
14. The Local Board's primary discussions regarding MB Spirits' application involved how MB Spirits would affect other package stores in Bourne and surrounding municipalities if licensed as well as that Bourne had nine § 15 all alcoholic beverages retail package stores licensed currently and that was enough. Ancillary to those issues, the Local Board discussed the area of 2 Factory Outlet Way, Suite 2B in Bourne, Massachusetts being adequately served by existing licensed § 15 all alcoholic beverages retail package stores. (Testimony, Exhibits 15, 16, 18, 19, 21, 22)
15. There is a § 15 all alcoholic beverages retail package store in the village of Sagamore issued to One Stop Convenience Store located over a mile away from 2 Factory Outlet Way, Suite 2B, Bourne, Massachusetts. (Testimony, Exhibits 7, 15, 16, 18, 19, 21, 22)
16. There is a § 15 all alcoholic beverages retail package store in the village of Sagamore Beach issued to Ye Olde Spirit Shoppe located over two miles away from 2 Factory Outlet Way, Suite 2B, Bourne, Massachusetts and north of the Sagamore Bridge. (Testimony, Exhibits 7, 15, 16, 18, 19, 21, 22)
17. At the conclusion of the January 3rd hearing, the Board voted 4-0 to deny MB Spirits' application. All five Board members were present; however, Vice Chairman MacDonald who was not present at the hearing on December 6, 2022, abstained from voting. (Testimony, Exhibits 16, 19, 22)
18. By decision dated January 5, 2023, the Local Board denied MB Spirits' application and stated six findings: "1) The Applicant has provided a complete Application to the Town for the proposed license; 2) The Applicant requests a § 15 license for use at the Premises, which is located in the village of South Sagamore Beach next to the mid-Cape Highway, at 2 Factory Way; 3) South Sagamore Beach is a small area of [Bourne] bounded to the north by the Cape Cod Canal to the east by the Town of Sandwich, and otherwise by federal land; 4) There are 2 other § 15 annual, all- alcohol retail package store licenses in close proximity to the Premises, doing business as "One Stop Convenience Store" and "Ye Olde Spirit Shoppe; 5) A substantial amount of the testimony received during the public hearing was community opposition to the Application and residents' opinions that there is no public

need for a new § 15 licensee at that particular location; and 6) Testimony and information received during the public hearing did not establish that there is a public need for another § 15 license in this particular location, where two existing § 15 licenses already exist in close proximity to the premises, and which already serve the needs of residents in and around South Sagamore Beach.” (Exhibit 24)

19. On January 9, 2023, the Applicant timely appealed the Local Board’s decision to the ABCC. (Commission Records)
20. On January 9, 2023, the Local Board held a public hearing on Sea State Foods LLC d/b/a Cataumet Fish’s § 15 all alcoholic beverages retail package store application. All five Board members were present and voted 5-0 to approve it. (Testimony, Exhibits 17, 20, 23)
21. On January 10, 2023, the ABCC issued a Procedural Notice which reads in part, “Commission records indicate that there is only one § 15 all alcoholic beverages package store license available under the quota in the town of Bourne. The Commission will take no action to approve or deny any § 15 all- alcohol beverages package store license in the Town of Bourne until all administrative and potential appellate proceedings are concluded as to MB Spirits.” (Commission Records)

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, §§ 15, 67; see e.g. 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 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.

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, 65 Mass. App. Ct. 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)).

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 issuing its decision, the Local Board made findings which the Commission finds are not supported by the record of the proceedings before the Local Board.

The Applicant presented the Local Board with information to distinguish their business from existing retail package stores in the area. Specifically, MB Spirits presented that the proposed location would provide a one-stop shopping experience for customers who would be able to purchase groceries at the Market Basket supermarket and alcoholic beverages at MB Spirits without leaving the parking lot. While a proper assessment of public need involves a particularized

inquiry into the sort of business an applicant intends to operate, here MB Spirits' business was not discussed by the Local Board. See Donovan v. City of Woburn, 65 Mass. App. Ct. 375, 381 (2006). The closest package store to the MB Spirits' proposed premises is One Stop Convenience which is a convenience store located over a mile away in the same village of Sagamore. MB Spirits' proposed business model is substantially different than that of a convenience store selling a smaller variety of alcoholic beverages along with limited food offerings. The Local Board did not discuss the differences between MB Spirits' proposed business and the business of One Stop Convenience on either December 6, 2022, or January 3, 2023. (Testimony, Exhibits 15, 16, 18, 19, 21, 22). Therefore, the Commission finds that the Local Board did not engage in a particularized inquiry into the sort of business the applicant sought to operate, which is, according to Donovan, supra, a required factor in a proper assessment of public need.

The video recordings of both hearings before the Local Board illustrate two primary reasons the Local Board denied MB Spirits' application. First, the Local Board considered that MB Spirits would negatively affect other package stores in Bourne and surrounding municipalities if licensed. Competition is not an appropriate consideration. See Mormax Corporation (ABCC Decision, March 18, 2014). Additionally, the Local Board considered that Bourne had nine § 15 all alcoholic beverages retail package stores licensed currently and that was enough. The Local Board does not have the authority to ignore its quota. See Donovan, 65 Mass. App. Ct. at 379 (a local board cannot do "whatever it pleases whenever it chooses to do so"). Ancillary to those reasons, the Local Board discussed and found that the area of 2 Factory Outlet Way, Suite 2B in Bourne, Massachusetts is adequately served by existing licensed § 15 all alcoholic beverages retail package stores. (Exhibit 24) After One Stop Convenience, Ye Olde Spirit Shoppe is the next closest package store in Bourne, located over 2 miles from the proposed premises in a different village and north of the Sagamore Bridge. (Testimony, Exhibits 7, 16, 19, 22). Given those facts, Ye Olde Spirit Shoppe is not located in close proximity to MB Spirits' proposed premises and denying the license based on the location of Ye Olde Spirit Shoppe is arbitrary and capricious.

Board member Froman should not have participated or voted on MB Spirits' application due to her relationship with White and The Liquor Barn. Froman's text messages to White demonstrate a clear bias held by Froman concerning MB Spirits' application. (Testimony, Exhibit 8). When the Commission finds that a local board member should not have participated nor voted on an application, it is "not bound to a strict application of the criteria of c. 268A which operates largely to punish officials or to undo completed transactions." Board of Selectmen of Barnstable v. Alcoholic Beverages Control Commission et al., 373 Mass. 708, 718 (1977). Here, Froman not only participated and voted on MB Spirits' application, but she was the first Local Board member to question the applicant. Froman, in fact, led the discussion on MB Spirits' application. The Commission finds that MB Spirits did not receive a fair hearing before the Local Board due to Froman's personal bias.

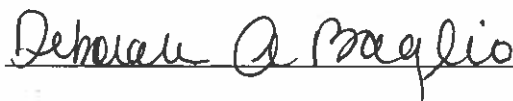
The Local Board's decision did not cite competition nor the belief that Bourne had enough existing § 15 all alcoholic beverages retail package store licenses despite the fact that the Local Board's discussion and deliberation consisted primarily of those considerations. Therefore, the Commission finds the denial by the Local Board is arbitrary and capricious and not supported by the record.

CONCLUSION

Based on the evidence, the Alcoholic Beverages Control Commission **DISAPPROVES** the action of the Local Board in denying the M.G.L. c. 138, § 15 all alcoholic beverages application of MB Spirits LLC d/b/a MB Spirits. The Commission remands this matter to the Local Board with the recommendation that the Local Board grant the application for a § 15 all alcoholic beverages license and submit it to this Commission for its consideration of approval in the usual administrative course.

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Deborah Baglio, Commissioner



Crystal Matthews, Commissioner



Dated: April 29, 2025

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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