



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

Jean M. Lorizio, Esq.
Chairman

DECISION

**C.M. PETTI MARKET INC. D/B/A PETTI'S MARKET
216 BELMONT STREET
BROCKTON, MA 02301
LICENSE #: 00177-PK-0144
HEARD: 1/18/2023**

This is an appeal of the action of the City of Brockton License Commission (the "Local Board" or "Brockton") for denying the M.G.L. c. 138, § 15 Retail Package Store Change of Category application from Wines & Malt Beverages to All-Alcoholic Beverages of C. M. Petti Market Inc. d/b/a Petti's Market ("Licensee" or "Petti's Market") located at 216 Belmont Street, Brockton, Massachusetts. The Licensee timely appealed the Local Board's action to the Alcoholic Beverages Control Commission (the "Commission" or "ABCC"), and a remote hearing via Microsoft Teams was held on Wednesday, January 18, 2023.

The following documents are in evidence:

1. City of Brockton Zoning Board of Appeal's Decision, 7/13/2022;
 2. Local Board's Meeting Agenda, 8/22/2022;
 3. Customers' Petitions for Support;
 4. Montello Package LLC's § 15 All-Alcoholic Beverages Retail Package Store Application;
-
- A. Minutes of Special Local Board's Meeting, 8/22/2022;
 - B. Minutes of Local Board Meeting, 9/15/2022;
 - C. Local Board's Decision and Findings, 9/6/2022.

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. C. M. Petti Market Inc. d/b/a Petti's Market ("Licensee" or "Petti's Market") operates a convenience store and deli located at 216 Belmont Street, Brockton, Massachusetts. The Licensee has been in business for over 100 years in Brockton. (Testimony, Exhibit A)
2. Petti's Market has held a M.G.L. c. 138, § 15 wines and malt beverages retail package store license for many years. Id.

3. On August 22, 2022, the Local Board held a special public hearing on the Licensee's application for a change of category from wines and malt beverages to all alcoholic beverages. (Testimony, Exhibits 2, A)
4. In its discussions at the hearing on August 22, 2022, the Local Board raised issues concerning the amount of space the Licensee would dedicate to displaying alcoholic beverages and the amount of parking available at the licensed premises. (Testimony, Exhibit A)
5. At the August 22, 2022, hearing, the Licensee informed the Board that alcoholic beverages would only be displayed on the wall behind the register. (Exhibit A)
6. The Local Board denied Petti's Market's application. (Exhibit C)
7. The Local Board issued a written decision on September 6, 2022, citing the lack of adequate space and area for the sale of all-alcoholic beverages, lack of adequate parking to accommodate an increase in customer traffic, and lack of evidence of public need for an additional all alcoholic beverages package store in that location. (Exhibit C)
8. The Licensee timely appealed the Local Board's action to the ABCC. (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, §§12, 67; Beacon Hill Civic Assn. v. Ristorante Toscano, Inc., 422 Mass. 318, 321 (1996).

The statutory language is clear that there is no right to a liquor license. 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. 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. 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.

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. Donovan, 65 Mass. App. Ct. at 379. “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 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)). 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. 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, 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.

Here, the Local Board based their denial of the Licensee’s application on three reasons: (1) the lack of adequate space and area for the sale of all-alcoholic beverages on the premises, (2) lack of adequate parking to accommodate the increase in customer traffic due to the premises offering all-alcoholic beverages, and (3) lack of evidence of public need for an additional all alcoholic beverages package store in that location. (Exhibit C)

After examining the meeting minutes of the Local Board, the Commission finds the Local Board fulfilled its responsibility regarding Petti's Market's application. The Local Board held a public hearing on August 22, 2022 at which it discussed the application and its concerns regarding the placement and display of alcoholic beverages. Ms. Petti informed the Board that she would like to display alcoholic beverages along the wall behind the register.

Ms. Petti was asked by the Board if the products would be limited to that one wall behind the register and she answered in the affirmative. (Exhibit A)

The Local Board's consideration of the size of the licensed premises and the amount of space that would be used to sell all alcoholic beverages, and its denial of Petti's Market change of category application for that reason was within its discretion. Local licensing authorities are recognized as having expertise regarding the problems affecting the regulation of alcoholic beverages. Great Atl. & Pac. Tea. Co., 387 Mass. 833, 837 (1983). It is not for the Commission to substitute its own views with what the Local Board believes is in the best interest of its [city]. As the Court pointed out in Ballarin, "in making its discretionary determination, a licensing authority may take into account a wide range of factors- such as traffic, noise, [and] size..." Ballarin, 49 Mass. App. Ct. at 511-512.

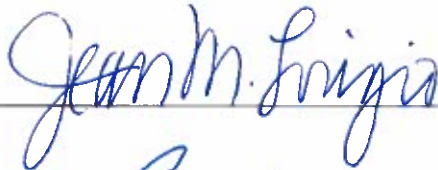
The Commission finds the Local Board's decision to deny Petti's Market's change of category application was supported by the evidence. The determination that there was not adequate space on the licensed premises for the sale of all alcoholic beverages was based on a "logical analysis," and the Local Board's disapproval of a change of category for Petti's Market is not arbitrary and capricious and must be affirmed for that reason alone.

CONCLUSION


Based on the evidence and testimony presented at the hearing, the Commission APPROVES the action of the City of Brockton License Commission in denying the M.G.L. c. 138, § 15 All-Alcoholic Beverages Retail Package Store Change of Category license application of C. M. Petti's Market Inc. d/b/a Petti's Market.

ALCOHOLIC BEVERAGES CONTROL COMMISSION

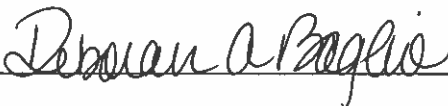
Jean M. Lorizio, Chairman



Crystal Matthews, Commissioner



Deborah Baglio, Commissioner



Dated: March 5, 2024

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。
यह दस्तावेज़ महत्वपूर्ण है और इसका तुरंत अनुवाद किया जाना चाहिए
Dokiman sa a enpòtan epi li ta dwe tradwi touswit
'Đây là tài liệu quan trọng và cần được dịch ngay'
ឯកសារនេះសំខាន់ណាស់ ហើយត្រូវបកប្រែជាបន្ទាន់។

2022-000160-ad-enf

cc: Frank Spillane, Esq.
Erica Pereira, Esq.
Local Licensing Board
Frederick G. Mahony, Chief Investigator
Administration, File