



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

Jean M. Lorizio, Esq.
Chairman

DECISION

**THE CAJUN KITCHEN LLC
708 BELMONT STREET
BROCKTON, MA 02301
LICENSE#: NEW
HEARD: 1/23/2023**

This is an appeal of the action of the City of Brockton License Commission (the “Local Board” or “Brockton”) in denying the M.G.L. c. 138, § 12 Wines & Malt Beverages Restaurant Application of The Cajun Kitchen LLC (“Applicant” or “Cajun Kitchen”) to be exercised at 708 Belmont Street, Brockton, Massachusetts. The Applicant 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 Monday, January 23, 2023.

The following documents are in evidence:

- A. Local Board’s Meeting Minutes, 10/20/2022, and Decision, 11/18/2022;
- B. Certified Map;
- C. Local Licensing Authority Review Record, Asia Two Bistro, Inc. at 708 Belmont Street;
- D. 521 Code of Massachusetts Regulations.

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. The Cajun Kitchen LLC (“Applicant” or “Cajun Kitchen”) is a seafood boil restaurant located at 708 Belmont Street, Brockton, Massachusetts. (Testimony, Exhibit A)
2. Cajun Kitchen applied for a Chapter 138, § 12 Wines and Malt beverages restaurant license to be exercised at 708 Belmont Street. (*Id.*)
3. On October 20, 2022, the Local Board held a public hearing on the Applicant’s application. (*Id.*)
4. Tri Le and Eric Siderard appeared at the Local Board hearing on behalf of Cajun Kitchen to discuss and answer questions related to its application for a Section 12 Wines and Malt beverages restaurant license. (Exhibit A)

5. Cajun Kitchen is located at a site previously occupied by Friendly's and then Asia Two Bistro Inc. Asia Two Bistro Inc. was granted a § 12 Wines and Beer beverages license in 2017, but subsequently closed. (Testimony, Exhibits A, C)
6. The Applicant's premises is in close proximity to Brockton High School ("the School"). (Testimony, Exhibits A, B)
7. Brockton High School is one of the largest high schools in the country with over 4,000 students and staff members. Its student population includes students as young as fourteen (14) and as old as twenty-one (21). (Testimony, Exhibit A)
8. The Applicant proposed serving alcohol after school hours and when school was not in session. (Id.)
9. The Applicant applied for the § 12 Wines and Beer beverages restaurant license to compete with other establishments, particularly a new restaurant in the plaza across the street. (Exhibit A)
10. Lt. Paul Bonanca of the Brockton Police Department appeared at the Local Board hearing and stated that while the Police Department had no objections, he could not recommend approval of alcohol sales in proximity to the school. (Id.)
11. Two representatives from the School District appeared at the hearing and spoke in opposition to the granting of the license. (Id.)
12. Doctor James Cobb, Deputy Superintendent of Operations for the Brockton school system stated there are official school hours when classes are held, however, the school also hosts sporting events and activities during non-school hours, including weekends. (Id.)
13. Attorney James Mello, counsel for the school district, stated plans were underway to expand post-school offerings on campus. Attorney Mello addressed the lack of public need stating several licensed establishments were located within a two-mile radius of Cajun Kitchen. He also cited traffic concerns on the densely congested road and pointed out that the Applicant's property is situated at the entrance of the school. (Id.)
14. At the conclusion of the hearing, the Local Board voted to deny the application and issued a written decision on November 18, 2022. (Testimony, Exhibit A)
15. The Local Board denied Cajun Kitchen's application on the basis that "the location is within 500 feet of the high school and that having a liquor license so close to the high school would cause a detrimental impact to the school and students, together with lack of evidence of public need for such additional establishments in that area." (Testimony, Exhibit A)
16. The Applicant timely appealed the Local Board's decision to the Commission. (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; 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. 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. 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 could be lawfully granted. See Donovan, 65 Mass. App. Ct. at 379. “Neither the [local board’s] broad discretion nor the limitations on judicial review, however, mean that [the 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, 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.

Here, the Local Board based its denial on "the location is within 500 feet of the high school and that having a liquor license so close to the high school would cause a detrimental impact to the school and students, together with lack of evidence of public need for such additional establishments in that area." (Exhibit A)

During the public hearing, the Local Board heard testimony from the Applicant's representatives, the Brockton Police Department and two Brockton school district representatives. (Testimony, Exhibit A) The Commission finds the record demonstrates the Local Board considered two Ballerin factors: the number of existing establishments in the area of the proposed location and the appropriateness of a license at a particular location, in denying this application. The Local Board found this area is adequately served by existing licenses, including but not limited to McMenamy Seafood and a restaurant in a shopping plaza across the street. (Id.) As a result, the Local Board determined there is no public need for an additional restaurant license in that location. (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 Local Board also discussed Cajun Kitchen's location, specifically its close proximity to Brockton High School given its large number of students and staff members, the number of students over the age of twenty-one, and the regular use of the school during non-school hours. (Testimony, Exhibits A, B) Although there is a dispute as to how close the School is to the restaurant for purposes of M.G.L. Chapter 138 §16C, the Commission need not reach that issue. All parties acknowledge Brockton High School is in close proximity to the proposed licensed premises. As the Court pointed out in Ballarin, "...one might hesitate to authorize a license for a

bar across the street from a public school.” (quoting Connolly v. Alcoholic Bevs. Control Comm’n., 334 Mass.613, 617-618 (1956)). The Local Board properly considered “the appropriateness of a liquor license at a particular location”, in denying this application. Ballarin, 49 Mass. App. Ct. at 511, 512.

After examining the record of the proceedings before the Local Board, the Commission finds the Local Board fulfilled its responsibility regarding this application. It held a public hearing and considered statements made by the Applicant’s representatives, the Brockton Police Department representatives, and the school district representatives. It deliberated and issued findings based upon information provided in the application and at the hearing. The Local Board’s denial of the application based on its proposed location given the close proximity of Brockton High School and the number of existing licenses within the surrounding area, as well as the lack of any demonstrated public need, is 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. 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, (2006). Because the Local Board’s decision and its consideration of the appropriateness of the proposed location and number of restaurants in the area is supported by the evidence and was based on a “logical analysis,” its disapproval of the license for Cajun Kitchen LLC is not arbitrary and capricious and must be affirmed. Great Atl. & Pac. Tea. Co. v. Board of License Comm’n of Springfield, 387 Mass. 833, 839-840 (1983)

CONCLUSION

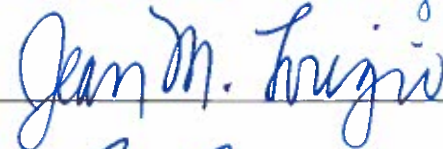
Based on the evidence and testimony presented at the hearing, the Commission **APPROVES** the action of the City of Brockton in denying the M.G.L. c. 138, § 12 Wines & Malt Beverages Restaurant Application of The Cajun Kitchen LLC.

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Deborah Baglio, Commissioner



Jean M. Lorizio, Chairman



Crystal Matthews, Commissioner



Dated: March 27, 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.

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cc: Philip C. Nessralla Jr., Esq.
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Local Licensing Board
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Administration, File