



*The Commonwealth of Massachusetts*  
*Department of the State Treasurer*  
*Alcoholic Beverages Control Commission*  
*Boston, Massachusetts 02114*

*Steven Grossman*  
*Treasurer and Receiver General*

*Kim S. Gainsboro, Esq.*  
*Chairman*

**DECISION**

**AH & MJ TRIANGLE CORPORATION d/b/a TRIANGLE PACKAGE STORE**  
**148 GROTON ROAD.**  
**CHELMSFORD, MA 01824**  
**LICENSE#: NEW**  
**HEARD: 07/24/2013**

This is an appeal of the action of the Chelmsford Board of Selectmen (the "Local Board") in denying the M.G.L. c. 138, §15 wines and malt beverages package store license application of AH & MJ Triangle Corporation d/b/a Triangle Package Store (the "Applicant" or "Triangle"). On December 3, 2012 and December 17, 2012 the Local Board held hearings that resulted in a denial of Triangle's application. The Applicant timely appealed the Local Board's decision to the Alcoholic Beverages Control Commission (the "Commission") and a hearing was held on Wednesday, July 24, 2013.

The following documents are in evidence as exhibits:

1. License Application dated 10/25/2012 (52 pages);
2. Petition of Residents In Support for Applicant's License (5 pages);
3. Local Board's Decision, dated 12/18/2012, Denying Application (2 pages);
4. Applicant's Notice of Appeal, dated 12/21/2012 to ABCC (2 pages);
5. Minutes of Meeting of Board of Selectmen dated December 17, 2012 (8 pages);
6. Applicant's Public Record Request Letter dated 12/28/2012 to Local Board (3 pages);
7. Board of Selectmen Package Store Approval Policy (2 pages);
8. Board of Selectmen Liquor License Regulations (9 pages); and
9. Google Map of Area Liquor Stores (1 page).

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

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## FACTS

1. AH & MJ Triangle Corporation d/b/a Triangle Package Store (the “Applicant” or “Triangle”) is a Massachusetts corporation duly organized by law and has a principal place of business at 148 Groton Road, Chelmsford, Massachusetts. (Exhibit 1)
2. Triangle applied to the Local Board for an available wines & malt beverages package store license. Public hearings on the application were held on December 3, 2012 and December 17, 2012. (Exhibits 1, 5, Testimony)
3. Triangle was operating as a convenience store business at 148 Groton Road, Chelmsford at the time it submitted its application for a section 15 wines and malt beverages package store license. (Exhibit 1, Testimony)
4. At the time of Triangle’s application, the Town of Chelmsford had been allocated a quota of seven (7) wines & malt beverages retail package store licenses, and seven (7) all-alcoholic beverages retail package store licenses. (Testimony)
5. Seven (7) of the wines & malt beverages retail package store licenses were all available at the time Triangle’s application was received by the Local Board. (Testimony)
6. At the Local Board hearing, Mr. George Merrill, a resident of Chelmsford, stated that he was opposed to the license as there are enough alcohol establishments in North Chelmsford. (Exhibit 5)
7. Chairman Kurland of the Local Board read two letters into the record. The first letter was from Everett Olson who felt this was a nice store, and the change would negatively impact the neighborhood. (Exhibit 5)
8. The second letter was from the Town of Chelmsford’s Chief of Police Murphy, who is opposed to additional alcohol licenses as it increases the likelihood of alcohol falling into the wrong hands and would make enforcement and monitoring by his department more difficult. (Exhibits 3 and 5)
9. The applicant submitted a petition signed by 70 (seventy) area residents in support of granting this license application. (Exhibit 2)
10. Mr. Patel currently operates a convenience store at this location. (Exhibit 1, Testimony)
11. The Town of Chelmsford has a Mixed Use Package Store License Policy whereby the Local Board does not issue liquor licenses to establishments which are defined by laws as “food stores.” This policy includes convenience stores, which are not allowed to hold a package store license. (Exhibit 7, Testimony)
12. The applicant, Mr. Patel, would cease operating a convenience store at this location, and operate a package store, if a liquor license were granted. (Testimony)

13. The Chelmsford Board of Selectmen has in existence a Package Store License Approval Policy. With respect to its consideration of any application filed with the Board for the issuance or transfer of any license for the retail sale of alcohol (package store), the Board shall be required to consider, and make specific findings of fact with respect to, the following factors: (Exhibit 7)
  - a. Experience of the prospective licensee and manager in the responsible distribution of alcohol beverages to the public;
  - b. Safeguards that the prospective licensee commits to install in its premises as a condition of licensure to guard against the sale of alcoholic beverages to minors or to persons already under the influence of alcohol;
  - c. Whether the specific area of Town in which the prospective licensee seeks to locate its licensed premises is already served by other licensed premises.
14. The applicant, Mr. Patel, has no prior experience operating an alcohol license. (Exhibits 3, 5, Testimony)
15. Counsel for the applicant explained that the applicant and all employees would be TIPS trained and certified. The applicant would utilize a machine (scanner) that verifies the authenticity of the identifications at the time of purchase. (Exhibit 5, Testimony)
16. At the public meeting on December 17, 2012, the Local Board voted to deny Triangle's application by a vote of 4-1. (Exhibits 3, 5, Testimony)
17. The decision of the Local Board to deny this application was based on several factors: (Exhibits 3, 5, 7, Testimony)
  - a. there are already three liquor stores in close proximity to the Applicant's location, and there is no need for another package store at that location;
  - b. Opposition from the Chief of Police of Chelmsford that there are sufficient package stores in the proposed area, and that an increase in the number of liquor licenses makes monitoring and enforcement more difficult;
  - c. The lack of prior experience by the applicant in holding a liquor license and operating a package store, which is a requirement for anyone seeking such a license from this Board;
  - d. It has been the longstanding policy of the Board of Selectmen to thoroughly and critically scrutinize these types of applications since an abundance of caution and due care must be exercised when the sale of alcohol is concerned and the applicant has not met this burden as set out above.
18. At the hearing before the Commission, Mr. Ashish Patel testified. He has applied to become the license manager of this proposed package store. (Exhibit 1, Testimony)
19. Mr. Patel testified that he currently operates a convenience store at this location which he has been operating for four years. He has no prior experience holding a liquor

license, or operating a package store. He testified that he would get training for the sale and service of alcoholic beverages and he intends to purchase an Identification checking machine. (Testimony)

20. Ms. Patricia Wojtas, a member of the Board of Selectmen of Chelmsford, testified before the Commission in support of this application. She voted at the Local Board hearing to grant this application. (Exhibits 3, 5, Testimony)
21. She testified that there are three criteria that the Local Board looks at to determine if a liquor license should be granted. The criteria are geographical diversity; that minors or people are not served who should not be; and the applicant's experience with serving alcohol. (Testimony)
22. Selectwoman Wojtas voted to grant this license as she felt that it met the criteria for granting the license. (Exhibit 5, Testimony)
23. Mr. Matthew Hanson testified before the Commission. He is the current Chairman of the Local Board. At the hearing before the Local Board, Mr. Hanson was the Vice Chairman. (Exhibit 5, Testimony)
24. Mr. Hanson testified that the Local Board held two hearings on this application to give residents the opportunity to be heard, and a chance to attend and testify at the second hearing if they could not attend the first hearing. (Testimony)
25. Mr. Hanson testified that there were a number of people who spoke in opposition to this application, and the Local Board received emails in opposition as well. (Testimony)
26. Mr. Hanson testified that the Local Board denied this application because it felt that this location was adequately served with liquor licenses. In addition, the Local Board considered the testimony and emails from residents who were in opposition, along with concerns regarding Mr. Patel and his fitness to hold a liquor license due to his lack of experience regarding the sale and service of alcoholic beverages. (Testimony)
27. Mr. Hanson testified that he gives more weight to residents who personally appear before the Local Board at the hearings, who submit emails, and who make telephone calls than he does to someone who signs a petition. He gives more weight to people who take the time and effort to actually appear before the Board and testify rather than someone who signs a petition. (Testimony)
28. A Google map was submitted showing ten (10) section 15 package stores located near Groton Road, Chelmsford, MA, the proposed location of this application. Five of these retail package store licenses are located in Chelmsford.<sup>1</sup> (Exhibit 9)
29. Chelmsford has a quota of seven (7) wines and malt beverages section 15 retail package store licenses. Chelmsford has not issued any section 15 retail package store wines and malt beverages licenses. (Testimony)

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<sup>1</sup> Five of these retail package stores are not located in Chelmsford, MA.

## 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 Commn. 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 G.L. c. 138. Licenses must be approved by both the local licensing authorities and the ABCC. G.L. c. 138, §§12, 67. See Beacon Hill Civic Assn. v. Ristorante Toscano, Inc., 422 Mass. 318, 321 (1996). Section 23 of c. 138 provides, in pertinent part: “Any license under this chapter held by an individual, partnership, or corporation may be transferred to any individual, partnership or corporation qualified to receive such a license in the first instance, if, in the opinion of the licensing authorities, such transfer is in the public interest.” Section 2 of c. 138 provides, in pertinent part: “No person shall ... sell ... alcoholic beverages or alcohol, except as authorized by this chapter [.]”

In reviewing the authority of the Commission, the Supreme Judicial Court has held that “[t]he powers of the States in dealing with the regulation of the sale of intoxicating liquors are very broad. What they may wholly prohibit, they may permit only on terms and conditions prescribed by the Legislature.” Supreme Malt Products Co., Inc., v. Alcoholic Beverages Control Commission, 334 Mass. ---; Ziffrin, Inc. v. Reeves, 308 U.S. 132, 138-139; Carter v. Virginia, 321 U.S. 131, 137-143. In dealing with a trade, which, because of its great potential evils, can be wholly prohibited, a wide power is given to the Legislature with respect to the delegation of discretionary powers. Connolly v. Alcoholic Beverages Control Commission, 334 Mass. 613, 619, (1956).

The SJC further held that “[t]he legislative history of [the Commission’s enabling act], and of G.L. (Ter.Ed.) Ch. 138, as amended, clearly shows that the powers of the commission were not intended to be perfunctory or limited. In the very respect here in issue, the approval or disapproval of the action of local licensing authorities, that history [footnote omitted] indicates that the commission was charged with important responsibilities and that it was not to be narrowly restricted in performing them.” Connolly v. Alcoholic Beverages Control Commission, 334 Mass. 613, 617 (1956).

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. A local licensing authority has very broad 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 (2004); Ballarin Inc. v. Licensing Board of Boston, 49 Mass.App.Ct. 506 (2000). “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, Inc. v. Licensing Board of Boston, 49 Mass.App.Ct. 506, 511 – 512. (2000).

“[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.” Donovan v. City of Woburn, 65 Mass.App.Ct. 375, 378 – 379 (2004).

“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, Inc. v. Licensing Board of Boston, 49 Mass. App. Ct. 506, 511 - 512 (2000). “The

opposition of the neighborhood, albeit an important factor for a licensing board to consider, does not convert the exercise of a licensing board's adjudicatory function into a plebiscite." *Id.* Neither the 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 Donovan v. City of Woburn, 65 Mass.App.Ct. 375, 379 (2006). However, "a board may not deny a permit simply by conjuring up a parade of horrors, particularly when it has the power to prevent them. Donovan v. City of Woburn, 65 Mass.App.Ct. 375 (2002) citing Britton v. Zoning Bd. of Appeals of Gloucester, 59 Mass.App.Ct. 68, 75, 794 N.E. 2d 1198 (2003).

The Local Board "may exercise judgment about public convenience and public good that is very broad, but it is not untrammelled." Ballarin, supra at 511. Instead, "[w]here the factual premise 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." 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; Exotic Restaurants Concept, Inc. v. Boston Licensing Board, Suffolk Superior Court, C.A. No. 07-3287 (Borenstein, J.) 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, (1981) quoting Westborough. 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 remains 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 879. Recitals of testimony do not constitute findings. Johnson's Case, 355 Mass. 782 (1968)." Exotic Restaurants Concept, Inc. v. Boston Licensing Board, Suffolk Superior Court, C.A. No. 07-3287 (Borenstein, J.)

This appeal involves the denial of an application for a G.L. c. 138, section 15, retail package store wines and malt beverages license. The Applicant, Triangle, argues that at the public hearing, they submitted a petition signed by more than 70 area residents demonstrating a public need for this license at this location. The applicant further argues that there is no evidence that Mr. Patel is not qualified to hold a liquor license, as he would obtain the required training for the sale and service of alcoholic beverages. Mr. Patel currently operates a convenience store where he sells tobacco products and has not had any past violations regarding the sale of tobacco to minors. The applicant also argues that there should be no concerns with regards to public safety by issuing this license.

Triangle also argues that it has demonstrated the lack of saturation of licenses in the immediate area as the Local Board has not issued any retail package store win and malt beverages licenses, and all seven (7) licenses are still available pursuant to the quota for the Town of Chelmsford. Triangle's position is that the Local Board has a policy in place to deny the issuance of all seven (7) of its available wines and malt beverages section 15 retail package store licenses and this policy is unlawful, and arbitrary and capricious. Triangle argues that there is a public need for this license at Triangle's location, and the Local Board's policy of not issuing any of the available seven licenses was not appropriate.

The Local Board argues that it properly denied Triangle's request for a license based on the Board of Selectmen's determination that the location for the prospective license is already served by other licensed premises. The Chief of Police recommended against the issuance of a license as an increase in licensed establishments would make enforcement and monitoring more difficult. The Local Board argues that the applicant does not have the requisite experience in the sale and distribution of alcoholic beverages, specifically the applicant has no experience in the sale or service of alcoholic beverages.

Upon review of the record of the Local Board proceedings in this matter, the Commission finds that the Local Board fulfilled its responsibility regarding this application. The Local Board made particularized and specific findings which are supported by the record in this matter. 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 v. City of Woburn, 65 Mass. App. Ct. 375, 379. In this matter, the Local Board found that the public need for retail package stores is being met in the proposed location. Triangle's argument that because the seven (7) section 15 retail package store wines and malt beverages licenses afforded the Town of Chelmsford pursuant to the quota are available and have not been issued, demonstrates a policy that is arbitrary and capricious, and therefore unlawful, is not persuasive to the Commission.

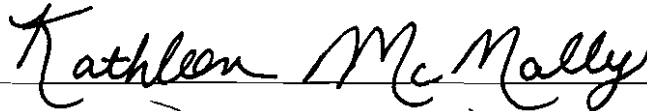
The Commission finds that the Policies of the Local Board regarding the granting of liquor licenses and package store licenses are in writing. The Commission finds that the Local Board adhered to its own written guidelines in its decision. The Local Board expressed their view about concerns with Mr. Patel's lack of experience in operating a business which engages in the sale and service of alcoholic beverages. The Local Board was also concerned about public safety issues surrounding the granting of this license, as voiced by the Town of Chelmsford's Chief of Police. The Commission finds that although no section 15 wines and malt beverages licenses have been issued thus far, the Local Board's decision in this matter is supported by the record. The Commission finds that the decision of the Local Board was not arbitrary and capricious<sup>2</sup>.

CONCLUSION

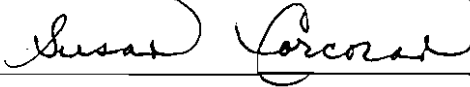
Based on the evidence and testimony at the hearing, the Commission **APPROVES** the action of the Local Board of the Town of Chelmsford in denying the license application of AH & MJ Triangle Corporation d/b/a Triangle Package Store.

**ALCOHOLIC BEVERAGES CONTROL COMMISSION**

Kathleen McNally, Commissioner



Susan Corcoran, Commissioner



Dated: September 6, 2013

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.

cc: Peter Nicosia, Esq. via facsimile 978-649-9306  
Jeffrey Blake, Esq. via facsimile 617-654-1735  
Local Licensing Board  
Frederick G. Mahony, Chief Investigator  
Administration  
File

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<sup>2</sup> Although a different Local Board may have reached a different conclusion on the same set of facts.