



Commonwealth of Massachusetts
Alcoholic Beverages Control Commission
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Jean M. Lorizio, Esq.
Chairman

DECISION

BOSNA CLUB, LLC
36 FERRY STREET
EVERETT, MA 02149
LICENSE#: NEW
HEARD: 8/23/2018

This is an appeal of the action of the City of Everett Board of License Commission (the "Local Board" or "Everett") for denying the M.G.L. c. 138, § 12 retail wines and malt beverages club license application of Bosna Club, LLC (the "Applicant" or "Bosna") to be exercised at 36 Ferry Street, Everett, Massachusetts. The Applicant timely appealed the Local Board's decision to the Alcoholic Beverages Control Commission (the "Commission" or "ABCC"), and a hearing was held on Thursday, August 23, 2018.

The following documents are in evidence as exhibits:

1. List of Bosna Club's Members; and
2. Decision of the City of Everett Board of License Commission, dated 6/19/2018.

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. Bosna Club, LLC ("Applicant" or "Bosna") d/b/a Salute filed a § 12 retail wines and malt beverages club license application with a business address of 36 Ferry Street, Everett, Massachusetts. (Testimony, Commission records)
2. Ms. Ramiza Sisic ("Ms. Sisic") is the sole officer and director of the corporation. She has applied to become the proposed licensed manager of record. Ms. Sisic is certified in the safe sale and service of alcoholic beverages. (Testimony, Commission records)
3. Bosna is a private social club which opened on December 20, 2017 and is registered as a non-profit entity. It has approximately 80 seats. (Testimony)
4. Bosna serves a middle-aged and older clientele mostly from the Bosnian community. It has approximately 100 members who come to the club to watch televised Bosnian events, (sports and singing competitions) and to celebrate birthday parties. (Testimony)

5. Bosna serves Bosnian food and appetizers prepared at this location to the members and their guests. More than half of the members have requested that alcoholic beverages (beer or wine) be served with food. (Testimony)
6. Bosna claims that business is lacking, and membership is down. If Bosna is not granted an alcohol license, it will have to cease doing business. (Testimony)
7. The Local Board held a hearing June 18, 2018 regarding this application. By decision dated June 19, 2018, the Local Board voted 2-1 to deny the application. (Exhibit 2)
8. The Local Board's denial was "based upon the lack of experience in serving alcohol and No Public Need for a Beer and Malt Beverages License at a private club." (Exhibit 2)

DISCUSSION

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.

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).

The statutory language is clear that there is no right to a liquor license of the type specified in M.G.L. c. 138, § 12. 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.

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 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. “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)).

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 Bosna’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 Bosna’s application and documentary evidence. The Local Board determined that the public need for a liquor license at Bosna’s small club was not demonstrated. (Exhibit 2, Joint Pre-hearing Memorandum)

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. Bosna argues that the Local Board’s decision is arbitrary and capricious. Bosna is a private social club with a dissipating membership whose business will cease if an alcohol license is not granted. The Commission is not persuaded that the fact that this applicant will go out of business if it is not granted an alcohol license is a factor demonstrating or constituting public need as defined in Ballarin. Ballarin, 49 Mass. App. Ct. at 511.

The Commission determines that the record supports the decision by the Local Board to deny this application. Therefore, the Commission finds that the decision of the Local Board was not based upon an error of law, and thus, was not arbitrary and capricious. Pursuant to and consistent with the holdings of the Massachusetts Courts in the cases of Donovan, supra, Ballarin, supra, and Great Atlantic & Pacific Tea Co., supra, absent the existence of an error of law resulting in an arbitrary and capricious decision, the Commission defers to the discretion, judgment and expertise of the Local Board.

CONCLUSION AND DISPOSITION

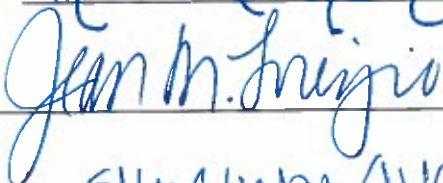
Based on the evidence and testimony presented at the hearing, the Commission **APPROVES** the action of the City of Everett Board of License Commission for denying the M.G.L. c. 138, § 12 retail wines and malt beverages club license application of Bosna Club, LLC.

ALCOHOLIC BEVERAGES CONTROL COMMISSION

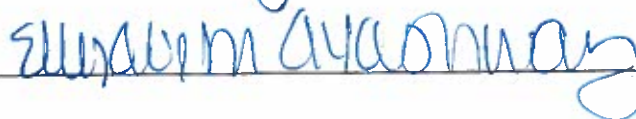
Kathleen McNally, Commissioner



Jean M. Lorizio, Chairman



Elizabeth A. Lashway, Commissioner



Dated: November 13, 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: John Mackey, Esq. via facsimile 617-381-1755
Keith Slattery, Esq.
Local Licensing Board
Frederick G. Mahony, Chief Investigator
Administration, File