



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

Jean M. Lorizio, Esq.
Chairman

DECISION

MORMAX CORP. D/B/A BJ'S WHOLESALE CLUB
26 WHITTIER STREET
FRAMINGHAM, MA 01701
LICENSE#: NEW
HEARD: 12/13/2023

This is an appeal of the action of the City of Framingham Board of License Commissioners ("Local Board" or "Framingham") in denying the M.G.L. c. 138, § 15 all alcoholic beverages retail package store license transfer application of Mormax Corporation d/b/a BJ's Wholesale Club ("Applicant" or "BJ's") to be exercised at 26 Whittier Street, Framingham, 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 Wednesday, December 13, 2023.

The following documents are in evidence as exhibits:

Agreed upon Exhibits:

1. Video Recording of Local Board Hearing, 10/16/2023;
2. Transcript of Local Board Hearing on 10/16/2023;
3. Local Board Meeting Agenda, 10/16/2023;
4. Local Board Notice of Denial and Statement of Reasons, 11/7/2023;
5. Advertisement Prepared by Framingham Board for BJ's Application;
6. Report of Framingham Police Lt. McCarthy to Local Board re: BJ's Application stating "the police department has no objection to the transfer pending other departments approval", 10/6/2023;
7. Local Board Rules and Regulations Governing Alcoholic Beverages, 9/1/2022.

Local Board's Exhibits:

- A. BJ's All Alcohol Package Store Transfer Application submitted by the Local Board, 9/28/2023;
- B. Affidavit of Geoffrey W. Kovar, 12/7/2023 with Map depicting Retail Alcohol Licenses within a two-mile radius of 26 Whittier Street in Framingham, 11/7/2023.

BJ's Exhibits:

- AA. BJ's All Alcohol Package Store Transfer Application submitted by BJ's, 9/1/2023;
- BB. Page 1 of BJ's Application for a Transfer of License;
- CC. Atty. Tyler Henseler's Cover Letter, 9/1/2023;
- DD. Email Exchange Between Atty. Tyler Henseler and Rebecca Nau, 9/7/2023-9/8/2023;
- EE. Email Between Atty. Tyler Henseler and Rebecca Nau with Attachments, 10/16/2023.

On the day of the hearing, December 13, 2023, counsel for BJ's orally made a Motion for Required Finding in Favor of BJ's. That motion is Denied.

There is one (1) audio recording of this hearing, and four (4) witnesses testified.

FINDINGS OF FACT

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

1. Mormax Corporation d/b/a BJ's Wholesale Club ("Applicant" or "BJ's") is located at 26 Whittier Street, Framingham, Massachusetts. BJ's seeks to add a M.G.L. c. 138, § 15 all alcoholic beverages retail package store license to their existing operation. (Testimony, Exhibits 1, 2, A, AA)
2. In September 2023, BJ's applied for the transfer and change of location of a §15 all alcoholic beverages license from Harinom Corporation d/b/a Liquor World, located at 235 Old Connecticut Path, Framingham to BJ's at 26 Whittier Street, Framingham, Massachusetts. Liquor World is located within the same shopping plaza as BJ's. (Testimony, Exhibits 1, 2, A, AA, BB, CC)
3. On October 16, 2023, the Local Board held a public hearing on BJ's § 15 all alcoholic beverages retail package store transfer and change of location application. Four Board members were present. (Testimony, Exhibits 1, 2)
4. BJ's asserted a § 15 license at the proposed location would provide a one-stop shopping experience for its customers who would be able to purchase anything they needed for a party or tailgate such as groceries, alcoholic beverages, and consumer goods all at the same location. BJ's stated that a membership is not a prerequisite to purchase alcoholic beverages at BJ's and that, if BJ's receives a license, anyone from the general public over the age of twenty-one would be allowed to purchase alcoholic beverages. (Testimony, Exhibits 1, 2)
5. Alcoholic beverages would be exposed for sale in two aisles within the over 114,000 square foot location. BJ's informed the Local Board that it would not sell nips, single cans/bottles, or kegs at 26 Whittier Street in Framingham if licensed. (Testimony, Exhibits 1, 2)

6. After BJ's completed its initial presentation, the Local Board opened the meeting for public comment. Three employees of BJ's spoke in favor of BJ's application. No one spoke in opposition to BJ's application. (Testimony, Exhibits 1, 2)
7. The Local Board's discussion of the application centered primarily on the fact that BJ's would obtain the license as a result of the "sale of a license". Ancillary to that issue, the Local Board briefly mentioned BJ's lack of uniqueness and the perception that the general public would not be allowed to purchase alcoholic beverages without a BJ's membership. (Testimony, Exhibits 1, 2)
8. The Local Board did not discuss nor deliberate on the proximity of other § 15 retail package store licenses in the area of 26 Whittier Street in Framingham during its public hearing on BJ's application. (Exhibits 1, 2)
9. At the conclusion of the October 16, 2023 public hearing, the Board voted to deny BJ's transfer application. (Testimony, Exhibits 1, 2)
10. The City of Framingham Rules and Regulations Governing Alcoholic Beverages state in part VII, Considerations for Approval of New License or Transfer. The considerations include:
 - a. The applicant is a qualified Veterans' organization and seeks a club license;
 - b. Subject to applicable zoning requirements, the applicant proposes an establishment that offers a regular forum for music and musicians to play and obtain exposure for their work;
 - c. The applicant offers variety, or uniqueness, in its proposed establishment or shop, in contrast to what exists in the City of Framingham at the time of the application;
 - d. The applicant demonstrates the elements for public need for the License particular location;
 - e. The applicant proposes an establishment that offers a substantial economic benefit to the City of Framingham;
 - f. Where the application pertains to a License to be issued pursuant to Chapter 138, Section 12, the applicant offers, in addition to alcoholic beverages, a variety of non-alcoholic beverages (or beverages containing only trace amounts of alcohol), such as mocktails, craft sodas, teas, kombucha, and non-alcoholic beer and wine, which are distinct from traditional non- alcoholic beverages (water, soda, juice, etc.); and
 - g. Proposals for off-premises retail establishments to be located in shopping malls or high-density retail areas, either as new Licenses or transfers, are discouraged if the applicant's proposed License application duplicates or is similar to Licensed Premises presently located in the area. (Exhibit 7)
11. In a written decision dated November 7, 2023, the Local Board denied the application and stated nine reasons:

- a. Contrary to the Applicant's representations, the Applicant did not offer variety, or uniqueness, in its proposed establishment, in contrast to what existed in Framingham at the time of the application;
- b. The Applicant's proposed location is in or near a shopping mall or high-density retail area, and duplicates what is presently located in the area;
- c. Other retail establishments located in close proximity demonstrate the lack of uniqueness and lack of public need for the transfer of license as proposed;
- d. The Applicant would not provide any substantial economic benefit or employment for the City of Framingham. In fact, jobs would be lost and a retail location would be left vacant;
- e. The only members of the public that spoke in support of the Applicant were employed by the Applicant;
- f. The transfer application proposes a change of location from 235 Old Connecticut Path to 26 Whittier Street. The [Local Board] previously denied an application for this retail license to this applicant at 26 Whittier Street, which was subject to an appeal and ultimately upheld by the Alcoholic Beverages Control Commission;
- g. It is not in the public interest to put a liquor store in a private club, where the clear perception is that a membership would be needed to access the products that otherwise would be easily accessible for any members of the public;
- h. The application included the characterization that this license transfer would be part of the purchase of a business, but contrary to the description, the documents supplied reveals that the Applicant is purchasing the license from Harinom Corporation for the sum of \$1,400,000.00, with no other business assets being transferred or associated with the purchase; and
- i. The [Local Board's] concern about the "sale" of an alcohol license, which is granted by the City, as opposed to the sale of a business, is that when a license is sold exclusively it is a restriction on trade for those who cannot afford to acquire a license." (Exhibit 4)

12. On October 19, 2023, the Applicant timely appealed the Local Board's decision 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, §§ 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.

Pursuant to the pertinent provisions of M.G.L. c. 138, §23, paragraph 8 “[a]ny license issued under this chapter may, upon application pursuant to section fifteen A, be transferred from one location to another [...] with the approval of the licensing authorities.” The standard is the same as a new license application, i.e., whether the re-location of the license will meet a public need.

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, the 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, Framingham made determinations which the Commission finds are not supported by the record of the proceeding before the Local Board and are therefore arbitrary and capricious. The decision to deny also cites factors which the Local Board improperly considered.

The Local Board did not discuss or deliberate on the proximity of other § 15 retail package store licenses in the area of 26 Whittier Street in Framingham during its public hearing on October 16, 2023. In fact, at the public hearing, the Chair of the Local Board stated that if the transfer were approved, BJ’s will have “eliminated small business competition in the area.” (Exhibit 1) Competition is not an appropriate consideration. See Mormax Corporation (ABCC Decision, March 18, 2014). Therefore, denying the transfer application based on the proximity of other retail package stores near 26 Whittier Street in Framingham is not supported by the record and is arbitrary and capricious.

The video recording of the public hearing before the Local Board illustrates the primary reason the Local Board denied BJ’s application was the Local Board’s concern about the sale of an alcoholic beverages license. (Exhibit 1) A M.G.L. c. 138, § 15 package store license “has an acknowledged pecuniary value and is descendible and transferable.” Arrowhead Estates Inc. v. Licensing Bd. of Boston, 15 Mass. App. Ct. 629, 632 (1983). The City of Framingham Rules and Regulations Governing Alcoholic Beverages outlines in part VII, considerations for approval of a new license or a transfer. None of the seven factors listed prohibit the sale of an alcoholic beverages license. The Local Board’s denial of BJ’s transfer application based on concern about the sale of an alcohol beverages license is improper because it is neither a valid consideration of “public need” as defined by Ballarin, nor a consideration listed in the City of Framingham’s own Rules and Regulations. For those reasons, denying BJ’s application because the Local Board did not want to approve the sale of an alcoholic beverages license is arbitrary and capricious.

Ancillary to the concern about the sale of an alcoholic beverages license, the Local Board mentioned BJ’s uniqueness or lack thereof and the perception that the general public would not be allowed to purchase alcoholic beverages at BJ’s without a membership. The Commission finds both reasons are arbitrary and capricious and not supported by the record of the Local Board hearing.

BJ's presentation to the Local Board included that the proposed location would provide a one-stop shopping experience for its customers who would be able to purchase anything they needed for a party or tailgate, such as groceries, alcoholic beverages, and consumer goods all at the same location. (Exhibit 1) While a proper assessment of public need involves a particularized inquiry into the sort of business an applicant proposes to operate, here the Local Board's lack of discussion concerning BJ's business in comparison to other retail package store licenses in the area of 26 Whittier Street in Framingham fell short. See Donovan v. City of Woburn, 65 Mass. App. Ct. 375, 381 (2006). The Local Board found that BJ's business "did not offer variety, or uniqueness, in its proposed establishment, in contrast to what existed in Framingham at the time of the application." (Exhibit 4) The Local Board, however, did not significantly contrast BJ's uniqueness or lack thereof with the transferor, Liquor World, which is located in the same shopping plaza as BJ's. Therefore, the Commission finds the Local Board's reason for denial based on BJ's lack of uniqueness is an arbitrary and capricious reason for denying BJ's transfer application.

Denying BJ's transfer application due to the perception that the general public would not be allowed to purchase alcoholic beverages at BJ's without a BJ's membership is arbitrary and capricious and not supported by the record. BJ's stated at the Local Board's public hearing that a membership was not a prerequisite to purchase alcoholic beverages at BJ's and that anyone from the general public over the age of twenty-one years old would be allowed to purchase alcoholic beverages at BJ's if licensed. (Exhibit 1) No one from the general public spoke in opposition to BJ's application at the hearing never mind raised the issue that the public would not believe they would be allowed to purchase alcoholic beverages at BJ's. Framingham's Rules and Regulations Governing Alcoholic Beverages concerning Considerations for Approval of New License[s] or Transfer[s] also does not address the issue of membership perception but does impliedly indicate that it would favor qualified veteran's organizations seeking a private club license. (Exhibit 7) For those reasons, the Commission finds that denying BJ's transfer application because of an alleged public perception that a membership would be required to purchase alcoholic beverages at BJ's is arbitrary and capricious and not supported by the record.

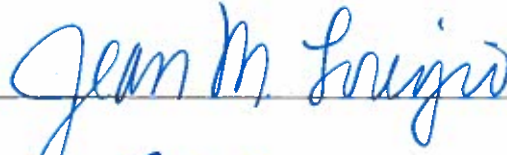
The remaining reasons, including lack of substantial economic benefit or employment to Framingham, loss of jobs in Framingham, a vacant retail location, etc., listed by the Local Board in denying BJ's application are not valid considerations of "public need" as defined by Ballarin and are arbitrary and capricious. 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 license transfer application of Mormax Corporation d/b/a BJ's Wholesale Club. 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

Jean M. Lorizio, Chairman



Crystal Matthews, Commissioner



Deborah Baglio, Commissioner



Dated: August 6, 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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