

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

Jean M. Lorizio, Esq.
Chairman

DECISION

KENT VENTURES LLC D/B/A LIQUOR REPUBLIC
9 WEST MAIN STREET
GROTON, MA 01450
LICENSE#: NEW
HEARD: 5/05/2021

This is an appeal of the action of the Town of Groton Licensing Board ("Local Board" or "Groton") in denying the M.G.L. c. 138, § 15 all alcoholic beverages retail package store license application of Kent Ventures LLC d/b/a Liquor Republic ("Applicant" or "Liquor Republic") to be exercised at 9 West Main Street, Groton, 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, May 5, 2021.

The following documents are in evidence as exhibits:

1. Applicant's Notice of Appeal with attachment, 2/16/2021.
 - A. Liquor Republic's Application for a New License;
 - B. Local Board's Decision with attachments, 2/12/2021;
 - C. Local Board's Meeting Minutes for 2/1/2021;
 - D. Local Board's Meeting Minutes for 2/8/2021;
 - E. 18 Photographs of 9 West Main Street and Surrounding Areas;
 - F. Local Board's Decision for Groton Express LLC application for a Wine and Malt Off-Premises Liquor License;
 - G. Town of Groton Zoning Map;
 - H. Google Map showing nearby existing liquor stores;
 - I. Google Satellite Map of Proposed Location and Surrounding Area;
 - J. Google Satellite Map of Proposed Location (enlarged);
 - K. Google Map of 9 West Main Street, Groton, Massachusetts;
 - L. Town of Groton Map of 9 West Main Street;
 - M. Video Recording of Local Board Meeting, 2/1/2021;
 - N. Video Recording of Local Board Meeting, 2/8/2021;
 - O. Video Recording of Local Board Meeting, 10/26/2020;
 - P. Town of Groton Zoning By-laws, 6/13/2020;
 - Q. Affidavit of John Giger;
 - R. Affidavit of Takashi Tada.

There is one (1) audio recording of this hearing, and three (3) witnesses testified.

FINDINGS OF FACT

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

1. Kent Ventures LLC d/b/a Liquor Republic ("Applicant" or "Liquor Republic") is a Massachusetts entity with a principal place of business at 555 Cambridge Street, Cambridge, Massachusetts. Mr. Kent Leung is the LLC manager and sole owner. (Exhibit A)
2. On or about January 12, 2021, Mr. Leung submitted an all-alcoholic beverages retail package store application to the Town of Groton. The proposed location is 9 West Main Street. Id.
3. There are retail package stores already in existence in the area of the proposed location. (Exhibits B, H)
4. In November of 2020, the Local Board denied the application of Groton Express, LLC for a Wine and Malt Beverages Retail Package Store License to be exercised at 6 Boston Road. Said denial was based on traffic issues, lack of parking, zoning issues, the location being situated in the middle of a residential neighborhood, the fact that there already existed a sufficient number of duly-licensed retail alcohol outlets in the area, the opposition of abutters and residents of Groton and the fact that no one submitted a letter of support and no one attended the hearing to speak in support. (Exhibit F)
5. Mr. Leung purchased the property at 9 West Main Street in 2018. (Exhibit A)
6. The proposed location is situated in the middle of a 4-way intersection, in a residential community. (Exhibits B, J)
7. The proposed licensed premises is 4,504 square feet in size. The first-floor retail space has an open floor plan measuring 2,576 square feet. The second floor consists of a break room and office space measuring 1,054 square feet. The basement measures 874 square feet. (Exhibit A)
8. Two previous businesses at the proposed location held wine and malt beverages retail package store licenses in conjunction with operating a variety store and subsequently a yarn store. (Testimony, Exhibits B, C)
9. The town of Groton has developed land around 9 West Main Street including creating a new park and a rail trail. These developments eliminated some of the parking that previously existed. (Testimony)
10. The Groton Building Commissioner/Zoning Enforcement Officer determined the proposed premises at 9 West Main Street would need special permits for any alterations to the structure, which may include any alterations done to provide two compliant means of accessible egress. (Exhibit B)

11. The Chief of the Groton Police Department recommended 'no parking' zones be established on Pepperell Road along the entire lot length of premises and also on the side of the store on Townsend Road. Id.
12. The Local Board received eleven (11) letters in opposition to the application from Groton residents. Id.
13. On February 1, 2021, the Local Board held a public hearing via video conference regarding Liquor Republic's application. Mr. Leung was present at the hearing. Several members of the public expressed their opposition to an all-alcoholic beverages package store at that location. The Select Board members discussed traffic and parking issues as well as possible zoning issues. The hearing was continued to February 8, 2021. (Exhibit C)
14. On February 8, 2021, the Local Board held the second virtual public hearing regarding Liquor Republic's application. Mr. Leung was present at the hearing and addressed questions and concerns raised by Select Board members and members of the public. Mr. Leung explained that he was approached by passers-by about opening a full package store after other business ideas did not work out. Several residents voiced their opposition to a liquor store at the proposed location. (Exhibit D)
15. The Local Board voted to deny the application. In its written decision dated February 12, 2021, the Local Board cited traffic issues, lack of parking, the existence of a sufficient number of duly licensed retail alcohol outlets within a few miles, the unanimous opposition of the abutters from the West Groton community, the opposition of other Groton residents and the fact that no one appeared at either of the public hearings to voice support for the application. (Exhibit B)
16. The Applicant timely appealed the Local Board's decision. (Exhibit 1)

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). Accordingly, 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, supra at 511. In the case of Donovan v. City of Woburn, the Appeals Court held, "[n]either 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, supra 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)).

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*, *supra* at 511. In *Ballarin*, the Appeals Court held that “[n]eed 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*, *supra* 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.*

Furthermore, 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.” (Emphasis added) M.G.L. c. 138, § 23.

Despite no right to a liquor license, a local 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.*, *supra* at 880.

Upon examination of the record of the Local Board proceedings, the Commission finds the Local Board fulfilled its responsibility regarding this application. It held two public hearings and considered statements made by the Applicant as well as from the Groton community in opposition to the new license application. It deliberated and made particularized and specific findings based upon the information provided. The factors the Local Board considered and used to support its decision were those cited in *Ballarin*. As such, the Local Board’s decision was not arbitrary and capricious.

The Local Board found after two hearings and deliberations, and consistent with the holding in *Ballarin*, that a retail package store at this location would add to existing traffic and parking issues.

In addition, the Local Board found the area is adequately served by existing package stores and thus, the public need is already being met. Finally, the Board considered the views of the inhabitants who were overwhelmingly opposed to the granting of the license. Ballarin, supra at 511.

Liquor Republic argued the Local Board's decision was arbitrary and capricious because former businesses at the proposed location held retail wine and malt beverages licenses and therefore, traffic and parking concerns cited by the Local Board are unsupported. However, the area around 9 West Main Street has changed with formerly undeveloped land, which had been utilized for parking in the past, converted into a park and a rail trail under construction as well. In addition, the businesses that previously operated at this location with retail wine and malt beverages licenses were not traditional retail package stores. (Testimony)

Furthermore, the Local Board did not act arbitrarily and capriciously as it decided the outcome of this application consistently with its prior decision where it denied Groton Express LLC's retail package store application on similar grounds, including significant parking and traffic concerns. (Exhibit F). Accordingly, the Local Board's determination is supported by the evidence. See Donovan, supra at 379 (The local board may deny a license even if the facts show that a license could be lawfully granted.)

Liquor Republic also contends that the legislature granted the Town of Groton two additional off-premises alcohol licenses which shall be issued only in the West Groton and Four Corners areas of town and as such, the proposed location, within the West Groton area, should be granted a license. However, simply because the special legislation¹ authorizes the Town to grant two additional licenses, it does not require the Local Board to grant a license at the proposed location.

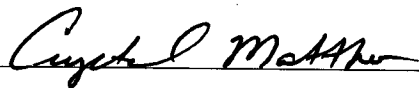
Local licensing authorities are recognized as having expertise regarding the problems affecting the regulation of alcoholic beverages. Great Atl. & Pac. Tea Co., Inc., supra at 837. Because the Local Board's decision is supported by evidence introduced at the February 1, 2021, and February 8, 2021, hearings, and its decision was based on a "logical analysis," its disapproval of a license for Liquor Republic is not arbitrary and capricious and must be affirmed. Great Atl. & Pac. Tea Co., Inc., v. Board of License Comm'n of Springfield, 387 Mass. 833, 839-840 (1983).

CONCLUSION

Based on the evidence and testimony at the hearing, the Commission **APPROVES** the action of the Town of Groton Licensing Board for denying the M.G.L. c. 138, § 15 all alcoholic beverages retail package license application of Kent Ventures LLC d/b/a Liquor Republic.

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Crystal Matthews, Commissioner



¹ Governor Baker signed House Bill 4809 into law December 29, 2021. (Exhibit 1)

Deborah Baglio, Commissioner

Deborah A Baglio

Jean M. Lorizio, Chairman

Jean M. Lorizio

Dated: June 27, 2022

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: Mr. Kent Leung
Noemi Kawamoto, Esq.
Local Licensing Board
Frederick G. Mahony, Chief Investigator
Administration, File