



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

**Jean M. Lorizio, Esq.**  
*Chairman*

**DECISION**

**LYNN MARKET  
38 MARKET STREET  
LYNN, MA 01901  
LICENSE#: NEW  
HEARD: 10/2/2024**

This is an appeal of the action of the City of Lynn License Commission (the “Local Board” or “Lynn”) in denying the M.G.L. c. 138, § 15 wines and malt beverages retail package store license application of Lynn Market (“the “Applicant”) to be exercised at 38 Market Street, Lynn, Massachusetts. The Applicant timely appealed the Local Board’s decision to the Alcoholic Beverages Control Commission (the “Commission” or “ABCC”), and a remote hearing via Microsoft Teams was held on Wednesday, October 2, 2024.

The following documents are in evidence as exhibits:

1. Local Board’s Meeting Agenda for 2/20/2024;
  2. Video of Local Board’s Meeting on 2/20/2024;
  3. Local Board’s Meeting Agenda for 12/14/2024;
  4. Documents re: Recent Developments (3) in the Area in the Past 5 Years;
  5. Lynn South Harbor Implementation Plan;
  6. Bing Maps/Directions to 13 Stores in Relation to Petitioner, 9/3/2024.
- A. Local Board’s Notice of Decision;  
B. Maps Showing Proximity to Other Licensed Establishments, Schools and Public Library.

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

**FINDINGS OF FACT**

The Commission makes the following findings of fact:

1. Lynn Market (“the “Applicant”) is a convenience store located at 38 Market Street, Lynn, Massachusetts. (Testimony)
2. On February 20, 2024, the Local Board held a public hearing regarding Lynn Market’s application for a M.G.L. c. 138, § 15 wines and malt beverages retail package store license. (Testimony, Exhibits 1, 2)

3. At the Local Board hearing, the Chair invited public comments regarding Lynn Market's application but no one spoke. (Exhibits 1, 2)
4. The Local Board discussed the existing licenses in Lynn and their proximity to the applicant's location. Subsequently, the Local Board voted to deny the application finding "...insufficient evidence of a public need for a Section 15 Wine and Malt License at the proposed location."<sup>1</sup> (Exhibits 1, 2, A)
5. Approximately nineteen (19) retail package stores were in existence within an approximate 2.3 mile radius of Lynn Market.<sup>2</sup> (Exhibits 6, A, B)
6. The Licensee timely appealed the Local Board's action 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. Licensees 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

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<sup>1</sup> The Local Board's decision contains a typographical error wherein it states the Local Board voted to deny Lynn Market's application on June 20, 2023. Testimony and Exhibits confirm the Local Board voted to deny the application at its hearing on February 20, 2024.

<sup>2</sup> The Local Board's decision cites twenty (20) existing retail package stores within 2.3 miles of Lynn Market. However, the decision contains a typographical error wherein it states Hines Liquors is 7.6 miles from 38 Market Street. While Exhibit 6 illustrates Hines Liquors is .6 miles from Lynn Market, the Commission did not consider this existing package store when making its decision.

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. However, while the discretion of the local licensing authority is broad, “it is not untrammelled.” Ballarin, 49 Mass. App. Ct. at 511.

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)).

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 board’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”).

Here, the Local Board in its denial cited approximately nineteen (19) existing retail package stores within a 2.3-mile radius of Lynn Market, as well as nearby educational and religious institutions. (Exhibit A)

The Local Board at its public hearing discussed the number of existing retail package stores in Lynn and their locations relative to Lynn Market. The Local Board determined there was no public need for another license. 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)

After examining the proceeding before the Local Board, the Commission finds the Local Board fulfilled its responsibility regarding this application. It held a public hearing, invited public

comment and considered existing licenses in the area of the proposed location. It deliberated and issued its decision based upon the discussion at the hearing. The Local Board's denial of the application based on its proposed location given the number of existing licenses within the surrounding area is within its discretion.

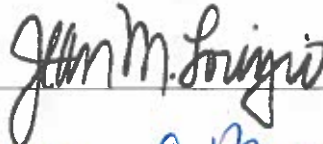
Local licensing authorities are recognized as having expertise regarding the problems affecting the regulation of alcoholic beverages. Great Atl. & Pac. Tea. Co. v. Board of License Comm'n of Springfield, 387 Mass. 833, 837 (1983). Because the Local Board's decision and its consideration of the number of package stores in the area is supported by the evidence and was based on a "logical analysis," its disapproval of the wines and malt beverages package store license for Shamrock Market 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 at the hearing, the Commission **APPROVES** the action of the City of Lynn License Commission in denying the M.G.L. c. 138, § 15 wines and malt beverages retail package license application of Lynn Market.

### **ALCOHOLIC BEVERAGES CONTROL COMMISSION**

Jean M. Lorizio, Chairman



Deborah Baglio, Commissioner



Dated: November 17, 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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2023-000232-ad-enf

cc: Michael Satterwhite, Esq.  
James P. Lamanna, Esq.  
Local Licensing Board  
Frederick G. Mahony, Chief Investigator  
Administration, File