



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

Jean M. Lorizio, Esq.
Chairman

DECISION

**DISHALAV LLC D/B/A LINDEN CONVENIENCE
455 LYNN STREET
MALDEN, MA 02148
LICENSE#: NEW
HEARD: 9/14/2022**

This is an appeal of the action of the City of Malden Licensing Board (“Local Board” or “Malden”) denying the M.G.L. c. 138, § 15 wines and malt beverages retail package store license application of Dishalav LLC d/b/a Linden Convenience (“Applicant” or “Linden”) to be exercised at 455 Lynn Street, Malden, Massachusetts. The Applicant timely appealed the Local Board’s decision to the Alcoholic Beverages Control Commission (“Commission” or “ABCC”), and a remote hearing was held via Microsoft Teams on Wednesday, September 14, 2022.

The following documents are in evidence as exhibits:

Appellant: Dishalav LLC d/b/a Linden Convenience

1. Ward Map for the City of Malden;
2. Map of Liquor Licenses in the City of Malden, created by the City of Malden;
3. Photograph of Exterior of 455 Lynn Street;
4. Photograph of Exterior of 455 Lynn Street;
5. Letter from Malden City Councilor Sica, 4/26/2022;

Appellee: CITY OF MALDEN

- A. Malden LLA Administrative Record.

There is one (1) audio recording of this hearing, and two (2) witnesses testified.

FINDINGS OF FACT

1. Dishalav LLC d/b/a Linden Convenience (“Applicant” or “Linden Convenience”) is a Massachusetts limited liability company which operates a convenience store at 455 Lynn Street in Malden. (Testimony, Exhibit A)
2. Ms. Disha Patel is the LLC Manager, an LLC Member and the proposed license manager. Mr. Lav Patel is a member and resident agent of the LLC. Id.

3. In response to customers' requests for beer and wine, Linden applied to the Local Board for a M.G.L. c. 138, § 15 Wines and Malt Beverages license. Id.
4. The Local Board held a public hearing regarding the application on April 26, 2022. Id.
5. A letter of opposition from City Councilor Jadeane Sica was submitted to the Local Board. (Testimony, Exhibits 5, A)
6. Robinson's Convenience is located approximately 144 feet away from Linden and holds a § 15 retail package store license. There are additional existing retail package stores located in the vicinity of the proposed location. (Testimony, Exhibits 2, A)
7. The Local Board voted to deny the application. In its written decision of April 27, 2022, the Local Board cited a lack of public need given the existing retail package stores in the area of the proposed location. The Local Board found, "[o]ne licensed retail/beer and wine store is located 144 feet from your premises" and "[a]t least four other retail/all alcohol package and beer and wine stores are located within a one-mile radius of the premises." (Testimony, Exhibit A)
8. The Applicant timely appealed the Local Board's decision. (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, §§ 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 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). "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.” Id. At 511.

A board must state the reasons for its decision to deny the granting of a 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)).

If a local authority’s decision is supported by the evidence and based on “logical analysis,” it 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); Town of Middleton v. Alcoholic Beverages Control Comm’n, 64 Mass. App. Ct. 1108 (2005). 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 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. 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 v. City of Woburn, 65 Mass. App. Ct. 375, 379 (2006). “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)).

In issuing its decision, the City of Malden Licensing Board made findings which the Commission finds are supported by the record of the proceedings before the Local Board.

The Local Board held a public hearing, heard testimony and reviewed Dishalav LLC’s application. The Commission finds the record demonstrates the Local Board considered a Ballarin factor in its decision to deny this application. Ballarin, 49 Mass. App. Ct. at 511. The Local Board considered the number of existing dispensaries in the area of the proposed location. Id. The Local Board found this area is adequately served by existing licenses, with one retail package stores located approximately 144 feet away, and 4 others within an approximate one-miles radius. As a result, the Local Board determined there is no public need for an additional package store. 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)