

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

Jean M. Lorizio, Esq.
Chairman

DECISION

**FAJITA'S MEXICAN GRILL, INC.
D/B/A FAJITA'S MEXICAN GRILL
706 SALEM STREET
MALDEN MA 02301
LICENSE#: 05981-RS-0646
HEARD: 06/07/2023**

This is an appeal of the action of the City of Malden License Commission (the "Local Board" or "Malden") for denying the M.G.L. c. 138, § 12 Change of Category from Wines & Malt Beverages to All-Alcohol Application of Fajita's Mexican Grill Inc. d/b/a Fajita's Mexican Grill ("Licensee" or "Fajita's") located at 706 Salem Street, Malden, Massachusetts. The Licensee timely appealed the Local Board's action to the Alcoholic Beverages Control Commission (the "Commission" or "ABCC"), and a remote hearing via Microsoft Teams was held on Wednesday, June 7, 2023.

The following documents are in evidence:

1. Administrative Record of Liquor Licensing Board of City of Malden; and
2. Appeal of Fajita's Mexican Grill, Inc.

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

FINDINGS OF FACT

1. Fajita's Mexican Grill Inc. d/b/a Fajita's Mexican Grill ("Licensee" or "Fajita's") operates a restaurant located at 706 Salem Street, Malden, Massachusetts and currently holds a M.G.L. c. 138, § 12 wines and malt beverages restaurant license at that location. (Exhibit 1, Testimony)
2. On March 21, 2023, the Local Board held a public hearing on the Licensee's application for a change of category from wines and malt beverages to all-alcoholic beverages. Id.
3. At the March 21, 2023, hearing, the Local Board raised issues concerning a charter school which is located close to Fajita's, whether there had been a change within the applicant's ownership and if there were plans to add karaoke. Id.
4. Charter school representatives did not appear at the Local Board's hearing or file a written opposition with the Local Board. No other residents appeared or spoke in opposition to the application. Id.

5. Fajita's represented to the Local Board that it has held a beer and wine license for approximately two years with no issues, the ownership and manager remain the same as previously approved by the Local Board, and karaoke is not being added. Id.
6. The Local Board considered that when it granted Fajita's §12 beer and wine restaurant license two years prior, the Charter school was using its buildings for administration but is now currently using the buildings as classrooms for K-6 and special education. (Testimony)
7. The Charter school has purchased several buildings in the Maplewood area. (Exhibit 1)
8. Fajita's informed the Local Board that the Maplewood Square section of Malden, where Fajita's is located, historically has had two (2) all alcohol restaurant licenses; however, currently the area has one (1) all alcohol restaurant license. (Testimony, Exhibit 1)
9. The Local Board received a letter from Councilor Winslow in support of granting Fajita's application. Id.
10. The Local Board also discussed that there is no conventional bar on Fajita's location. (Exhibit 1)
11. A Motion was made "to deny this application- strong reservations on size and close proximity to school", which was seconded. Id.
12. The Local Board denied Fajita's application making two findings of fact: "[n]o public need- the area" and "proximity to school". Id.
13. On March 23, 2023, the Local Board issued a written decision citing "that location is in close proximity to a School" and "there was not a public need for a Change of classification at that location" as reasons for their denial. Id.
14. The Licensee timely appealed the Local Board's decision to the Commission. (Exhibit 2)

DISCUSSION

Licensees 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 o 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.

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)). 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)). General findings are insufficient, and if the licensing board does not make sufficient findings, “it remain[s] the Commission’s obligation to articulate the finding 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”).

Here, the Local Board based its denial on two reasons “that location is in close proximity to a School” and “there was not a public need for a Change of classification at that location”. (Exhibit 1)

The Local Board at its public hearing heard from Fajita’s representatives and considered a letter of support from the ward councilor. The Local Board also discussed that the Maplewood area historically has had two (2) establishments which held § 12 all alcoholic beverages licenses. One establishment closed and currently, there is one restaurant with a § 12 all alcoholic beverages license in the area. (Exhibit 1, Testimony) The Local Board considered the size of Fajita’s establishment and the fact that it does not have a conventional bar. (Exhibit 1) Furthermore, in its deliberations the Local Board considered the changing environment of the Maplewood area with the addition of the Charter school purchasing surrounding real estate, and the city as a whole. (Testimony) In light of those considerations, the Local Board determined there was no public need in the area. 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)

In addition, the Local Board discussed the proximity of the Charter school buildings to the Licensee and its current usage. (Exhibit 1, Testimony) Although the Local Board issued Fajita’s a beer and wine license within the last two to three years, the Local Board considered that the Charter school previously used its buildings for administrative offices but presently uses them as classrooms for K-6 and special needs education. (Testimony) As the Court pointed out in Ballerin, “...one might hesitate to authorize a license for a bar across the street from a school.” (quoting Connolly v. Alcoholic Bevs Control Comm’n, 334 Mass. 613, 617-618, 138 N.E. 2nd 131 (1956))

After examining the record of the proceedings before the Local Board, the Commission finds the Local Board fulfilled its responsibility regarding this application. It held a public hearing and considered statements made by the Licensee’s representative and a letter of support from the ward councilor. It deliberated and issued its decision based upon information provided in the application and at the hearing. The Local Board’s denial of the application based on its proposed location given the close proximity of the Charter school and the number of existing licenses within the surrounding area, as well as the lack of any demonstrated public need, is within its discretion. The Local Board properly considered, “the appropriateness of a liquor license at a particular location”, in denying this application. Ballerin, 49 Mass.App.Ct. at 511, 512.

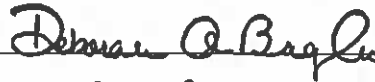
Local licensing authorities are recognized as having expertise regarding the problems affecting the regulation of alcoholic beverages. Great Atl. & Pac. Tea. Co. v. Board of License Comm’n of Springfield, 387 Mass. 833, 837 (1983). A local board may deny a license even if the facts show that a license could be lawfully granted. Donovan v. City of Woburn, 65 Mass. App. Ct. 375, (2006). Because the Local Board’s decision and its consideration of the appropriateness of the proposed location and number of restaurants in the area is supported by the evidence and was based on a “logical analysis,” its disapproval of the all-alcohol license for of Fajita’s Mexican Grill Inc 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

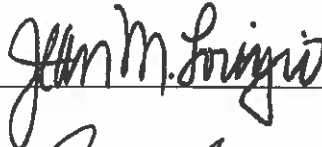
Based on the evidence and testimony presented at the hearing, the Commission **APPROVES** the action of the City of Malden in denying the M.G.L. c. 138, § 12 All-Alcohol Beverages Restaurant Application of Fajita's Mexican Grill Inc.

ALCOHOLIC BEVERAGES CONTROL COMMISSION

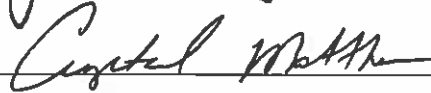
Deborah Baglio, Commissioner



Jean M. Lorizio, Chairman



Crystal Matthews, Commissioner



Dated: December 11, 2024

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: Patrick P. MacDonald, Esq.
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Administration, File