



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

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

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**DECISION**

**LLAWM-MALDEN LLC D/B/A WINE AND MARKET  
888 EASTERN AVENUE  
MALDEN, MA 02148  
LICENSE#: NEW  
HEARD: 9/29/2021**

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 all alcoholic beverages retail package store license application of LLAWM-MALDEN LLC d/b/a Wine and Market ("Applicant" or "Wine and Market") to be exercised at 888 Eastern Avenue 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 29, 2021.

The following documents are in evidence as exhibits:

Appellant: LLAWM-MALDEN LLC

1. Video of Local Board's Hearing on 5/25/2021;
2. Video of Local Board's Hearing on 6/22/2021;
3. Chart re: Locations of Existing Section 15 licenses in Malden;
4. U.S. Census Bureau Webpage;
5. Joint Pre-Hearing Memorandum.

Appellee: CITY OF MALDEN

- A. Application of Petitioner for Section 15 Retail Package Store License;
- B. Local Board's Meeting Notice for 5/25/2021 Meeting;
- C. Local Board Meeting Minutes, 5/25/2021;
- D. Local Board's Meeting Notice for 6/22/2021 Meeting;
- E. Local Board's Meeting Minutes, 6/22/2021;
- F. Map of Retail Establishments in Malden;
- G. Additional Documentation Provided by Petitioner at Local Board's 6/22/2021 Meeting;
- H. Local Board's Notice of Decision and Statement of Reasons, 6/24/2021;
- I. Board's Meeting Minutes re: Sarvopari, Inc., d/b/a Essex Farms, 12/8/2020;
- J. Notice of Decision and Statement of Reasons re: Sarvopari, Inc., 12/9/2020;
- K. Board Meeting Minutes re: Avani Corp., 1/26/2021.

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

### FINDINGS OF FACT

1. LLAWM-MALDEN LLC d/b/a Wine and Market (“Applicant” or “Wine and Market”) is a Massachusetts limited liability company. Wine and Market applied to the Local Board for an available M.G.L. c. 138, § 15 All Alcoholic Beverages license to be exercised at 888 Eastern Avenue, Malden. (Testimony, Exhibit A)
2. Mr. Daniel Newcomb is the sole LLC Member and Manager, and the proposed license manager. Mr. Newcomb has long been involved in the industry and has a proven track record. Id.
3. The Local Board held public hearings regarding the application on May 25, 2021, and June 22, 2021. (Testimony, Exhibits B, D)
4. At both hearings Mr. Newcomb provided information as to his business plan and the outreach conducted with residents, businesses and people working in the City of Malden, as well as elected officials. (Testimony, Exhibits 1, 2, C, E)
5. Mr. Newcomb informed the Local Board that before deciding to apply for the license at 888 Eastern Avenue he looked around the city to determine if there was an appropriate place for a license. He reviewed the existing licenses in the area with an understanding that cities do not want stores one on top of another. In addition to researching the location of existing retail package stores, he also examined the type of operation at each store. The result of Mr. Newcomb’s investigation was his proposal for an upscale liquor store offering all alcoholic beverages. (Testimony, Exhibits 1, 2, 3, C, E)
6. Wine and Market’s plan is to cater to a local clientele and offer a broad range of diverse wines, including many from new female and minority owned wineries. Mr. Newcomb stated the plan has been specifically designed for this location, with customers seeking more service, better variety and a clean, bright store. Included in the business plan are wine tastings and educational events, as well as party planning consultation and gift baskets. (Testimony, Exhibits 1, 2, C, E, G)
7. Wine and Market will sell specialty coffee from artisanal roasters as well as gourmet water. (Testimony, Exhibit G)
8. Prior to submitting his application, Mr. Newcomb considered parking and traffic. He walked up and down the streets surrounding the proposed location and explained his business concept with any people he encountered. His intent was to reach anyone who would be impacted by his business and to listen to their feedback regarding the concept. (Testimony, Exhibits 1, 2, C, E)
9. Mr. Newcomb reached out to the Malden Police and discussed security cameras and crime prevention at the location. He spoke with City Councilor Winslow regarding trash removal, adding plantings to the bike rack in the rear of the location and a bike rack at the store. He had conversations with the Ward 6 Councilor Camell and garnered his support. Mr. Newcomb sent a letter to Robert Know, Director of Malden’s Department of Public Works, requesting an audible crosswalk. He reached out to the Mayor’s Office and the Malden Redevelopment Authority and received positive feedback. (Testimony, Exhibit 1, 2, C, E, G)

10. Mr. Newcomb pointed out in his presentation to the Local Board that it's the things they will not do that sets Wine and Market apart from existing retail package stores in the area. Wine and Market will not sell lottery products and will not sell candy. There will be no signs in the windows. The store plans to carry mainstream products but you will not see a pallet of 30 packs of beer when you enter. In response to concerns raised by a Local Board member, the applicant agreed he would not sell nips. Id.
11. Glenn Lawlor will serve as consultant to assist in building the wine program, along with liquor and whiskey. Mr. Lawlor has extensive experience in the industry and plans to share his knowledge with the clientele at Wine and Market, assisting with choosing every day or special occasion products. (Testimony, Exhibits 1, 2, C, E)
12. A resident of Bayrd Road in Malden attended the Local Board's hearing on August 17, 2021 and spoke in support of the application. The resident stated this business concept is different and added the neighborhood does not have a good wine store. He stated he utilizes the bike path several times a week and could bike to this store to shop and be greeted with good customer service. The resident feels Wine and Market would be a good business in this area and could possibly set the standard for quality businesses to follow. (Exhibit 2)
13. A letter of support from City Councilor David Camell was submitted to the Local Board. Councilor Camell stated, "The location at 888 Eastern Ave is a new commercial development within the corridor we generally are encouraging for commerce/industry, and it keeps the traffic out of tighter areas and along a major thoroughfare. This business would be a good tenant and contribute toward the overall success of the commercial mix in the area." He went on to state, "The proposed retail space is in accordance with what would be more beneficial to the neighborhood and moves away from other variations on alcohol suppliers that are less of an asset for the neighborhood. The selection will be of higher quality, and the available goods at the market will draw folks who are hesitant to visit alternatives." (Testimony, Exhibit G)
14. There were approximately 45 letters of support from residents of Malden submitted to the Local Board. Id.
15. There were approximately 15 letters of support from visitors to Malden submitted to the Local Board. Id.
16. The Local Board voted to deny the application. In its written decision of June 24, 2021, the Local Board cited a lack of public need given the existing retail package stores in close proximity to the proposed location. (Testimony, Exhibit H)
17. The Applicant timely appealed the Local Board's decision. (Commission Records)
18. There are 20 existing § 15 licenses in Malden. (Exhibit F)
19. Vernon Liquors at 673 Eastern Avenue, holds a section 15 all alcoholic beverages retail package store license. It is located .30 miles, or approximately 1600 feet, away from the proposed location of 888 Eastern Avenue. Id.

20. Locke Liquors at 48 Broadway, holds a section 15 all alcoholic beverages retail package store license and is located .34 miles, or approximately 1800 feet, away from the proposed location of 888 Eastern Avenue. Id.
21. Sunnyhurst Farms at 19 Lebanon Street, holds a section 15 wines and malt beverages retail package store license. It is located .55 miles, or approximately 2,900 feet, away from the proposed location of 888 Eastern Avenue. Id.
22. Salem St. Market at 375 Salem Street, holds a section 15 wines and malt beverages retail package store license and is located .71 miles, or approximately 3,735 feet, away from the proposed location of 888 Eastern Avenue. Id.
23. In December of 2020, the Local Board denied the application of Sarvopari, Inc. d/b/a Essex Farms for a section 15 wines and malt beverages retail package store license to be exercised at 655 Salem Street. Essex Farms is a convenience store and had operated for 10 years prior to applying for the retail package store license. The proposed manager of record and principal of the applicant entity had no experience in the alcohol industry. A retail package store licensed to sell wines and malt beverages was already in existence just 390 feet away from 655 Salem Street. (Testimony, Exhibit I)
24. The Local Board denied the application of Sarvopari, Inc. citing traffic concerns, existing retail package store licenses in the area, schools located nearby and the lack of experience of the applicants. In addition, the Local Board cited the ward city councilor's opposition, stating "he is in touch with the needs and wants of his constituents." (Testimony, Exhibit J)
25. On January 26, 2021, the Local Board held a hearing regarding Avani Corp.'s application for a section 15 retail package store all alcoholic beverages license to be exercised at 671 Salem Street. At the hearing Avani Corp. withdrew its application. The Local Board made no findings regarding Avani Corp.'s application. (Testimony, Exhibit K)

### 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 Local Board made findings which the Commission finds are not supported by the record of the proceedings before the Local Board.



The Applicant presented the Local Board with detailed information distinguishing its business from existing retail package stores in the area. Specifically, Wine and Market is to be located in a new mixed-use building and plans to operate as a high-end all alcoholic beverages store offering wine tastings and educational events, specialty coffees from artisanal roasters, gourmet water, gift baskets, and party planning consultation. While there are retail package stores which sell all alcoholic beverages approximately .3 miles from Wine and Market, they are traditional package stores selling a larger variety of more mainstream alcoholic beverages. (Testimony, Exhibit B)

While a proper assessment of public need involves a particularized inquiry into the sort of business an applicant intends to operate, here the type of business was only discussed in a limited fashion. See Donovan v. City of Woburn, 65 Mass. App. Ct. 375, 381 (2006). The minutes of both hearings before the Local Board illustrate discussions concerning questions as to how long the applicant would operate at the location if granted the license, and the close proximity of existing retail package stores. (Exhibits I, 2, C, E)

The Local Board asserted Wine and Market's concept was the same proposed by Sarvopari, Inc. and members questioned how they could grant LLAWN-Malden LLC's application when they had denied Sarvopari, Inc.'s application. The Commission does not find the two proposals to be comparable. Sarvopari, Inc. operated as an existing convenience store and sought to add wines and malt beverages to their offerings. The proposed manager and principal of Sarvopari, Inc. had no experience selling and/or serving alcohol, and an existing license was located less than 400 feet away. (Exhibits I, J)

The Local Board based their denial on the existence of retail package stores in the area of 888 Eastern Avenue. While existing businesses are certainly a factor for consideration, the evidence here demonstrates that the business model proposed by LLAWN-Malden LLC is markedly different from anything in the area. (Testimony, Exhibit K)

The Commission finds the Local Board did not engage in a particularized inquiry into the sort of business the applicant sought to operate, which is, according to Donovan, *supra*, a required factor in a proper assessment of public need.

The Commission finds the denial by the Local Board is arbitrary and capricious and not supported by the record.

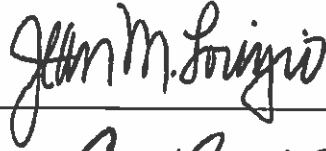
### CONCLUSION

Based on the evidence and testimony at the hearing, the Commission **DISAPPROVES** the action of the City of Malden Licensing Board for denying the M.G.L. c. 138, § 15 all alcoholic beverages retail package license application of LLAWM-MALDEN LLC.

Therefore, 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: February 17, 2021

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: William A. Kelley, Esq.  
Kathryn Fallon, Esq.  
Local Licensing Board  
Frederick G. Mahony, Chief Investigator  
Administration, File