

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

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

**DECISION**

**PURIBA INC. D/B/A CAPEWAY CONVENIENCE STORE**  
**578 WAREHAM STREET**  
**MIDDLEBOROUGH, MA 02346**  
**LICENSE#: 00045-PK-0700**  
**HEARD: 4/12/2023**

This is an appeal of the action of the Town of Middleborough Licensing Board (the "Local Board" or "Middleborough") for denying the M.G.L. c. 138, § 15 Retail Package Store Change of Category from Wines & Malt Beverages to All-Alcohol application of Puriba Inc. d/b/a Capeway Convenience Store ("Licensee" or "Puriba") located at 578 Wareham Street, Middleborough, 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, April 12, 2023.

The following documents are in evidence:

1. Local Board's Decision, 2/23/2023;
2. Chapter 25 of the Acts of 2003;
3. Middleborough's United States Census Data from 2000, 2010, and 2020;
4. Local Board's Meeting Minutes, 1/30/2012;

There is one (1) audio recording of this hearing.

**FINDINGS OF FACT**

The Commission makes the following findings of fact:

1. Puriba Inc. d/b/a Capeway Convenience Store ("Licensee" or "Puriba") operates at 578 Wareham Street, Middleborough, Massachusetts. The Licensee has held a Ch. 138, § 15 wines and malt beverages retail package store license since February 2014. (Commission Records)
2. On February 6, 2023, the Local Board held a public hearing regarding the Licensee's application for a change of category and subsequently voted to deny Puriba's application. (Exhibit 1)
3. The Local Board issued a written decision dated February 23, 2023, stating "[a]s grounds for its decision the Board relied on the fact that the Town of Middleborough does not have

an all-alcohol package store license available for issuance at this time because all such licenses have been issued to other parties.” Id.

4. Pursuant to Chapter 25 of the Acts of 2003, An Act Authorizing the Town of Middleborough to Issue an Additional License for the Sale of All Alcoholic Beverages Not to Be Drunk on the Premises, “Notwithstanding section 17 of chapter 138 of the General Laws, the licensing authority of the town of Middleborough may issue a license for the sale of all alcoholic beverages not to be drunk on the premises under section 15 of chapter 138 to Cirelli Foods, Inc. The special legislation mandated “[t]he license shall be subject to said chapter 138 except section 17; provided, however, that the licensing authority shall not approve the transfer of the license to any other person, organization, corporation or location. The granting of this license shall reduce by 1 any increase in licenses granted due to census reapportionment under said section 17.” (Exhibit 2)
5. Chapter 25 of the Acts of 2003 does not contain a sunset clause. Id.
6. Cerelli Foods, Inc. was granted a license but ceased operations in 2011 and no longer holds a license. (Joint Pre-Hearing Memorandum)
7. According to the 2000 United States Census data, Middleborough’s population was 19,941.(Exhibit 3)
8. According to the 2010 United States Census data, Middleborough’s population was 23,116. Id.
9. According to the 2020 United States Census data, Middleborough’s population was 24,245. Id.
10. The Applicant timely appealed the Local Board’s decision to the Commission. (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; Beacon Hill Civic Assn. v. Ristorante Toscano, Inc., 422 Mass. 318, 321 (1996).

Pursuant to M.G.L. c. 138, § 17, “Except as otherwise provided in this chapter, the number of licenses issued in any city or town under sections twelve and fifteen and in force and effect at any one time during any license year shall be limited as hereinafter provided:

The local licensing authorities of any city or town, except the city of Boston, may grant one license under the provisions of section twelve for each population unit of one thousand or additional fraction thereof, and, in addition, one such license for each population until of ten thousand or fraction thereof, over the first twenty-five thousand, but may, regardless of population, grant at

least fourteen licenses under said section twelve; *and the local licensing authorities may also grant one license under the provisions of section fifteen for each population until of five thousand or additional fraction thereof...*” M.G.L. c. 138, § 17

This appeal is brought by Puriba under M.G.L. c. 138, § 67 as a result of the Local Board’s denial of Puriba’s application for a change of category from a § 15 wines and malt beverages license to a § 15 all alcoholic beverages license.

The Local Board found in its decision that it is unable to approve said application as there are no licenses available. The Licensee, on the other hand, argues the Local Board is mistaken in its assessment given that Cirelli Foods, Inc. is no longer operating.

The issue before the Commission is whether the Local Board committed an error of law or abused its discretion in denying the license. Great Atlantic & Pacific Tea Co., Inc. v. Board of License Comm’rs of Springfield, 387 Mass. 833, 837, 838 (1983) (noting that 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.”); 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”).

In 2000, the population of Middleborough, as determined by the United States Census, was 19,941. (Exhibit 3) As such, according to M.G.L. c. 138, § 17, the Local Board was authorized to grant four s. 15 all alcoholic beverages retail package store licenses.

Chapter 25 of the Acts of 2003 provided the Local Board “...may issue a license for the sale of all alcoholic beverages not to be drunk on the premises under section 15 of chapter 138 to Cirelli Foods, Inc.” Chapter 25 of the Acts of 2003 also mandated, “[t]he granting of this license shall reduce by 1 any increase in licenses granted due to census reapportionment under said section 17.” Chapter 25 of the Acts of 2003

A license was, in fact, granted and issued to Cirelli Foods, Inc.

In 2010, the population of Middleborough, as determined by the United States Census, was 23,116. (Exhibit 3) As such, according to M.G.L. c. 138, § 17, the Local Board was authorized to grant five s. 15 all alcoholic beverages retail package store licenses. However, given the language of Chapter 25 of the Acts of 2003, that number was reduced by 1 and the Local Board was only authorized to grant four of said licenses. Chapter 25 of the Acts of 2003

In 2020, the population of Middleborough, as determined by the most recent United States Census, was 24,245. (Exhibit 3) According to M.G.L. c. 138, § 17, the slight increase in population did not affect Middleborough’s quota.

Though Cirelli Foods, Inc. has ceased operations, nevertheless the license was granted. Chapter 25 of the Acts of 2003 specifically states, “[t]he *granting* of this license shall reduce by 1 any increase in licenses granted due to census reapportionment...” Chapter 25 of the Acts of 2003

The Local Board's reading of Chapter 25 of the Acts of 2003 and interpretation of the plain meaning of the words therein does not constitute an error of law. Middleborough's actions were not arbitrary and capricious, and it did not abuse its discretion in denying Puriba, Inc.'s application.

### CONCLUSION AND DISPOSITION

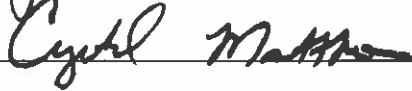
Based on the evidence, the Commission **APPROVES** the action of the Town of Middleborough in denying the M.G.L. c. 138, § 15 all alcoholic beverages retail package store license application.

### **ALCOHOLIC BEVERAGES CONTROL COMMISSION**

Jean M. Lorizio, Chairman



Crystal Matthews, Commissioner



Deborah Baglio, Commissioner



Dated: April 16, 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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2023-000010-ad-enf

cc: Louis A. Cassis, Esq.  
Gregg Corbo, Esq.  
Local Licensing Board  
Frederick G. Mahony, Chief Investigator  
Administration, File