



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

**Jean M. Lorizio, Esq.**  
*Chair*

**DECISION**

**ALAM & SARKER, LLC D/B/A STAR MARKET  
317-321 RIVET ST.  
NEW BEDFORD, MA 02744  
LICENSE#: NEW  
HEARD: 10/17/2019**

This is an appeal of the action of the City of New Bedford Licensing Board (the "Local Board" or "New Bedford") for denying the M.G.L. c. 138, § 15 wines and malt beverages retail package store license application of Alam & Sarker LLC d/b/a Star Market (the "Applicant" or "Star Market") to be exercised at 317-321 Rivet Street, New Bedford, Massachusetts. The Applicant timely appealed the Local Board's decision to the Alcoholic Beverages Control Commission (the "Commission" or "ABCC"), and a hearing was held on Thursday, October 17, 2019.

The following documents are in evidence as exhibits:

1. Minutes of the Local Board Meeting, February 25, 2019;
  2. Applicant's presentation submitted to the Local Board on February 25, 2019;
  3. New Bedford Planning Department's map and list showing other licensed locations in proposed area;
  4. Notice of Denial, February 27, 2019;
  5. Notice of Appeal, March 5, 2019;
  6. Notice of Appeal Hearing, March 25, 2019;
  7. List of 7 Ballarin Factors;
  8. Three (3) recent Local Board Notices of Denial;
  9. Three (3) recent new license approvals;
  10. Audio CD of Local Board meeting, February 25, 2019.
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- A. Applicant's presentation submitted to the Local Board on February 25, 2019;
  - B. Notice of Appeal, March 5, 2019;
  - C. Notice of Appeal Hearing, March 25, 2019;
  - D. Minutes of the Local Board Meeting, February 29, 2016;
  - E. Joe's Gas ABCC decision, May 19, 2015;
  - F. New Bedford Zoning map;
  - G. New Bedford Street and Road map showing locations of licenses;
  - H. Alphabetized list of New Bedford licenses and internet searches;
  - I. Color street map of proposed location in neighborhood.

There is one (1) audio recording of this hearing, and four (4) witnesses testified.

### FINDINGS OF FACT

The Commission makes the following findings of fact:

1. Alam and Sarker, LLC d/b/a Star Market operates a convenience store at 317-321 Rivet Street, New Bedford, Massachusetts. Star Market has been in business since 2008. (Testimony, Exhibit 1).
2. The store is approximately 1900 square feet in size with two (2) employees and serves mostly local customers from the neighborhood. The store sells lottery, snacks, beverages, coffee, candy, groceries and cigarettes. This area is zoned for mixed use business and permitted to sell alcoholic beverages. (Testimony, Exhibit F).
3. The Applicant applied for a §15 wines and malt beverages license at this location in an effort to provide one-stop shopping for the store's customers. Many of its customers reside in the neighborhood and frequently ask whether the store sells beer and wine, especially during the evening hours. Star Market's hours of operation are 7 AM to 11 PM. (Testimony).
4. There are six (6) existing § 15 package stores within a 1-mile radius of Star Market's location: (Testimony, Exhibit 3).
  - a. ELN, Inc. d/b/a Talho Portugues<sup>1</sup> at 123 Dartmouth Street holds a § 15 wines and malt beverages license less than one mile from Star Market. (Id.).
  - b. County Street Liquor Store at 111 ½ & 113 County Street holds a § 15 all alcohol beverages license less than one mile from Star Market. (Id.).
  - c. ICJ Corp. d/b/a Freitas Package Store at 1295 Cove Road holds a § 15 all alcohol beverages license less than one mile from Star Market. (Id.).
  - d. Ramdevpir Corp. d/b/a Jay's Wine & Spirits at 446 Dartmouth Street holds a §15 all alcohol beverages license less than one mile from Star Market. (Id.).
  - e. Jay Shakti, Inc. d/b/a Seaside Wine & Spirits at 37 Rockdale Avenue holds a §15 all alcohol beverages license less than one mile from Star Market. (Id.).
  - f. ALA, LLC d/b/a Alprime Gas at 30 Rockdale Avenue holds a § 15 wines and malt beverages license less than one mile from Star Market. This license location is owned and managed by the Applicant. This location already had a § 15 wines and malt license when the Applicant purchased the gas station in 2014. (Id.).
5. Between 2013 and 2016, the Local Board denied three (3) new § 15 package store license applications for a lack of public need based on six (6) already existing off-premise liquor licenses within close proximity to the proposed premises. The most recent denial, Expedito Duarte d/b/a Expo's II, was for a location less than a half mile from the Applicant's store. (Testimony, Exhibit 8).

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<sup>1</sup> According to the Applicant's Exhibit H, this retailer is also known as Talho Butcher Shop.

6. Between 2014 and 2017, the Local Board approved three (3) new § 15 package store license applications. Each of these new off-premise liquor licenses is located in other areas of the city of New Bedford. (Testimony, Exhibit 9).
7. On February 25, 2019, the Local Board held a public hearing regarding the Applicant's application. There were no public comments offered at the hearing. (Testimony, Exhibit 1).
8. The Local Board unanimously denied the application based on "lack of public need of a new package store license in that area". The Local Board reasoned that the decision was in consideration of the Ballarin Factors and that there were already six (6) existing off premise liquor licenses within a 1-mile radius of the proposed new location. (Testimony, Exhibits 1 & 4).

### DISCUSSION

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). Accordingly, 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, supra at 511. In the case of Donovan v. City of Woburn, the Appeals Court held, "[n]either 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 supra at 379. "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)).

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, supra at 511. In Ballarin, the Appeals Court held that "[n]eed 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, supra 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.

Furthermore, 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.” (Emphasis added) M.G.L. c. 138, § 23.

Despite no right to a liquor license, a local board must state the reasons for its decision whether or not to issue the 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 findings of fact, which were the basis of the conclusions it drew,” and not merely adopt the findings of the board. Charlesbank Rest. Inc., supra at 880.

Accordingly, the Commission reviewed the Local Board minutes and decision, along with the maps and materials illustrating the existing package store licenses in the city of New Bedford. The Commission finds that the record of these proceedings supports the Local Board’s denial of this application. The Local Board found after a hearing and deliberations, and pursuant to the holdings in Ballarin that this area of New Bedford is adequately served by the existing package stores and thus, the public need is already being met in this proposed location. Ballarin supra at 511. Although the Applicant presented testimony of the frequent customer inquiries regarding the sale of alcohol at the store, unfortunately, a community’s opinion concerning an application for a liquor license is not the sole factor in determining whether the application should be granted. Id. In fact, there are six (6) existing package stores in the immediate 1-mile radius of Star Market. (Exhibit 3). Moreover, between 2013 and 2016, the Local Board denied three (3) new §15 liquor license applications in close proximity to Star Market. (Exhibit 8). Accordingly, the Local Board’s determination is supported by the evidence. See Donovan, supra at 379 (The local board may deny a license even if the facts show that a license could be lawfully granted.)

The Commission does not find the Applicant’s argument persuasive that the Local Board did not consider all of the Ballarin factors. This case is analogous to the Town of Middleton v. Alcoholic Beverages Control Comm’n where the applicant also owned a gas station and convenience store and applied for a retail package store license. The Town/Local Board of Middleton denied the application based on the Local Board’s determination that its public need was being adequately served by the existing licensees. After a lengthy appeal process, the Appeals Court affirmed the Town’s decision and upheld its denial based on the lack of public need. The Appeals Court further held that once a local board determines that an area is adequately served by the number of existing dispensaries, it need go no further. See Town of Middleton v. Alcoholic Beverages Control Comm’n, 64 Mass. App. Ct. 1108 (2005) (memo and order pursuant to Rule 1:28).

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., *supra* at 839-840; Town of Middleton, *supra*. Accordingly, here, the Local Board's decision, that there is a saturation of existing package store licenses within a 1-mile radius of the proposed location, thus meeting the public need, was based on sufficient evidence presented during the course of the public hearing. The Local Board's reliance on the maps and information reviewed was reasonable and appropriate pursuant to the holdings in several well settled cases. Ballarin, *supra*; Donovan, *supra*; and Town of Middleton, *supra*. There is nothing in the record suggesting that the Local Board acted arbitrarily or capriciously.<sup>2</sup> Therefore, the Commission finds that the decision of the Local Board is supported by the record and was not based upon an error of law.

#### CONCLUSION AND DISPOSITION

Based on the evidence and testimony at the hearing, the Commission **APPROVES** the action of the City of New Bedford Licensing Board for denying the M.G.L. c. 138, § 15 wines and malt beverages retail package license application of Alam & Sarker LLC d/b/a Star Market.

#### **ALCOHOLIC BEVERAGES CONTROL COMMISSION**

Crystal Matthews, Commissioner



Jean M. Lorizio, Chairman



Dated: November 26, 2019

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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<sup>2</sup> The Applicant's assertion that the Local Board should consider a proposed residential condominium development, Kilburn Mill, is unfounded; as there is no evidence that a development is being built. Furthermore, the Applicant's argument that consideration should be given to Gifford Marina, a proposed residential development in the neighboring town of Dartmouth, is misplaced. New Bedford has no jurisdiction over the town of Dartmouth and thus, they are not required to consider any matters not within the city borders of New Bedford. See e.g. J.S. Company, LTD v. Town of Fitchburg (ABCC decision September 21, 1993) ("[T]he Commission understands that such consideration extends only to licenses issued in the city or town where the application is made. Local Boards are not obligated to consider the proximity of licenses in a neighboring city or town.").

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cc: Paul R. Los, Jr. Esq.  
Kreg R. Espinola, Esq.  
Local Licensing Board  
Frederick G. Mahony, Chief Investigator  
Administration, File