



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

Jean M. Lorizio, Esq.
Chairman

DECISION

**HARSIDHI LLC d/b/a NEW QUICK PICK
115 DURFEE STREET
NEW BEDFORD, MA 02740
LICENSE#: NEW
HEARD: 06/26/2024**

This is an appeal of the action of the City of New Bedford Licensing Board ("Local Board" or "New Bedford") denying the M.G.L. c. 138, § 15 wines and malt beverages retail package store license application of Harsidhi LLC d/b/a New Quick Pick ("Applicant" or "Harsidhi" or "New Quick Pick") to be exercised at 115 Durfee Street, New Bedford, Massachusetts. The Applicant timely appealed the Local Board's decision to the Alcoholic Beverages Control Commission ("Commission" or "ABCC") and a remote hearing via Microsoft Teams was held on Wednesday, June 26, 2024.

The following documents are in evidence as exhibits:

1. Harsidhi's Application for New §15 Package Store License;
2. Local Board's Draft Meeting Minutes, 3/25/2024;
3. List of Licensed Retail Package Stores within 1.5 Mile Radius of Proposed Location;
4. Revised List of Licensed Retail Package Stores within 1.5 Mile Radius of Proposed Location;
5. Map of Licenses within 1.5 Mile Radius of 117 Durfee Street;
6. Map of Intersection of Durfee Street and Shawmut Avenue;
7. Map of Licenses within 1.5 Mile Radius of 117 Durfee Street with Mark-Ups;
8. Local Board's Notice of Denial, 4/08/2024;
9. Email from C. Amaral, Director of Local Board re: Request for Audio Recording of 3/25/2024, 5/22/2024;
10. Local Board's Rules & Regulations for those Licensed to Sell Alcoholic Beverages Both On and Off the Premises;
11. ABCC List of New Bedford Licenses;
12. Audio Transcript from ABCC, 4/22/2015;
13. Transcript from ABCC, 4/22/2015;
14. Decision of Ballarin, Inc. v. Licensing Board of Boston, 49 Mass. App. Ct. 506;
15. United States Census Data for City of New Bedford;
16. A, B and C subpoena issued to Christine Amaral, Director of Local Board;
17. List of New Bedford Package Stores.

- A. Local Board's Meeting Minutes, 3/25/2024;
- B. List of Establishments in Zone;
- C. Local Board's Notice of Denial;
- D. Harsidhi's Notice of Appeal to ABCC;
- E. ABCC Notice of Appeal Hearing;
- F. List of Seven Ballarin Factors;
- G. Copies of Approvals;
- H. Copies of Denials;
- I. Local Board's Notices of § 15 License Denial with Copy of ABCC Appeal Decision for Several New Bedford application appeals.

There is one (1) audio recording of this hearing, and six (6) witnesses testified.

FINDINGS OF FACT

The Commission makes the following findings of fact:

1. Harsidhi LLC d/b/a New Quick Pick ("the Applicant," "Harsidhi" or "New Quick Pick") is an existing convenience store and gas station at 115 Durfee Street, New Bedford, Massachusetts. (Testimony, Exhibits A, 1)
2. On March 25, 2024, the New Bedford Licensing Board ("Board" or "Local Board") held a public hearing regarding Harsidhi's application for a § 15 wines and malt beverages retail package store license. (Exhibit A)
3. At the hearing, one (1) resident spoke in favor of the application. Id.
4. The New Bedford Licensing Board examines a radius of 1 to 1.5 miles around a proposed location to assess the number of existing licenses and to determine whether public need is met by those existing licenses. (Testimony)
5. An unwritten reference point for public need was 3 to 4 licenses within a mile radius or 5 to 6 licenses within a 1.5-mile radius. (Testimony, Exhibits G, H)
6. On or about October 21, 2019, the New Bedford Licensing Board approved New England Farms, Inc.'s application for a new retail package store wines and malt beverages license. The Board examined a 1-mile radius around the proposed location and determined there were 3 existing retail package stores within that 1 mile. (Exhibit G)
7. In August of 2014, the Local Board denied the application of R.V. Gas, Inc. for a Wine & Malt Only Retail Package Store License to be located at 277 Nash Road. The Board examined a 1-mile radius around the proposed location and found the 6 existing retail package stores within said mile satisfied the public need. (Exhibit H)
8. In March of 2016, the Local Board denied the application of Expedito Duarte for a Wine & Malt Only Retail Package Store license to be located at 309 Dartmouth Street. The Board examined a 1-mile radius around the proposed location and found the 6 existing retail package stores within said mile satisfied the public need. Id.

9. In February of 2019, the Local Board denied the application of Alam & Sarker, LLC for a Wine & Malt Only Retail Package Store License to be located at 317-321 Dartmouth Street. The Board examined a 1-mile radius around the proposed location and found the 6 existing retail package stores within said mile satisfied the public need. Id.
10. In February of 2021, the Local Board denied the application of MJL Enterprises, Inc. for a Wine & Malt Only Retail Package Store license to be located at 518 County Street. The Board determined the 2 retail package stores which existed within 3/10 of a mile of the proposed location satisfied the public need. Id.
11. In their deliberations, Board members referenced ten (10) existing § 15 package store licenses within 1.5 miles of New Quick Pick:

Marks Beverage, 642 County Street	1 mile;
Chucks Liquors, 60 Nauset Street	1.2 miles;
Silvia Discount Liquors, 452 Mt. Pleasant Street	1.2 miles;
R & B Liquors, 189 Belleville Avenue	1.4 miles;
Barrys Liquors, 573 Mill Street	1.4 miles;
Mutual Mart, 1800 Purchase Street	0.7 mile;
Costas Gas, 397 Sawyer Street	1.1 miles;
P & D Mini Mart, 114 Tallman Street	1.2 miles;
Coastal Provisions, 142 Arnold Street	1.4 miles;
Xavier Market, 290 North Front Street	1.4 miles.
(Exhibits A, 3, 5) ¹	

12. The Board voted to deny Harsidhi's application for a Wine and Malt Beverages Retail Package Store License based on the lack of public need. (Exhibits A, C)
13. Harsidhi timely appealed the action of the Local Board to the ABCC. (Exhibit D)

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. 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

¹ The Local Board initially considered a list of existing licenses which included eleven (11) § 15 retail package stores. (Exhibit 3) However, the meeting minutes show board members specifically referenced ten (10) existing licenses as their basis for finding no public need. (Exhibit A)

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, at 379. However, while this discretion is broad, “it is not untrammelled.” Ballarin, at 511.

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 lawfully could be 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 [local 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)).

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 their denial on the lack of public need, given ten (10) existing retail package stores within one and a half miles of the proposed location. (Exhibit C) The Licensee argued this decision is not consistent with prior Board decisions wherein a one-mile radius was examined for purposes of determining the number of existing licenses. The Commission agrees. Evidence was presented illustrating the Board has historically based its analysis on a radius of one mile. (Exhibits G, H) If that distance had been analyzed regarding New Quick Pick's application, the Board's search would have resulted in 1 package store .07 miles away and another 1 mile away. (Exhibit 3)

The evidence shows applications were denied where approximately 6 existing licenses were found within a one-mile radius. *Id.* An application was allowed with three existing licenses within a one-mile radius. (Exhibit G) Here, the Board's records indicate 2 existing package stores were found to be within a one-mile radius.

The Commission is persuaded that the Local Board's decision in this matter is arbitrary and capricious. The denial by the Local Board, which it claims was based on a determination of a lack of public need, is unreasonable and not supported by the record.

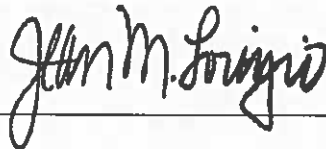
CONCLUSION

Based on the evidence and testimony at the hearing, the Commission **DISAPPROVES** the action of the City of New Bedford Licensing Board in denying the M.G.L. c. 138, § 15 wines and malt beverages retail package license application of Harsidhi LLC d/b/a New Quick Pick.

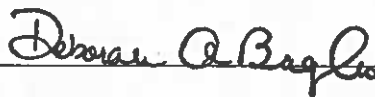
The matter is remanded to the Local Board with the recommendation that the application be granted and submitted to this Commission for consideration of approval in the usual administrative course.

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Jean M. Lorizio, Chairman



Deborah Baglio, Commissioner



Dated: September 18, 2025

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: Joseph P. Fingliss, Jr., Esq.
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Administration, File