

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

Jean M. Lorizio, Esq.
Chairman

DECISION

**MJL ENTERPRISES INC. D/B/A COUNTY GENERAL CONVENIENCE
518 COUNTY STREET
NEW BEDFORD, MA 02740
LICENSE#: NEW
HEARD: 10/27/2021**

This is an appeal pursuant to M.G.L. c. 138, § 67. MJL Enterprises, Inc. d/b/a County General Convenience ("Applicant" or "County General" or "MJL"), is appealing the action of the City of New Bedford License Commission (the "Local Board" or "New Bedford") in denying its M.G.L. c. 138, § 15 Wines and Malt Beverages Retail Package Store License application to be exercised at 518 County Street, New Bedford, Massachusetts. The Applicant 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, October 27, 2021.

The following documents are in evidence:

1. Minutes and DVD of 2/22/2021 Hearing before the New Bedford Licensing Board;
2. Google Maps showing § 15 Retail Licenses relative to proposed premises;
3. Local Board's Decision, 2/24/2021;
4. Applicant's Notice of Appeal to ABCC, 2/25/2021;
5. ABCC Notice of Appeal Hearing on 5/19/2021 via Videoconference;
6. List of Seven Ballarin Factors;
7. Five Most Recently Approved § 15 license applications by the Local Board;
8. Four Most Recently Disapproved § 15 license applications by the Local Board.

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

FINDINGS OF FACT

The Commission makes the following findings of fact:

1. MJL Enterprises, Inc. d/b/a County General Convenience ("Applicant" or "County General" or "MJL"), operates County General as a convenience store with a business address of 518 County Street, New Bedford, Massachusetts. Mei Jie Li is the sole officer, director and shareholder of MJL Enterprises, Inc. (Testimony, Commission records, Exhibits 1)
2. Mr. Li sought to add a wines and malt beverages retail package store license to the operation of his store. Mr. Li is the proposed manager of record. (Testimony)
3. The Local Board held a public hearing on County General's application for a § 15 wines and malt beverages retail package store license on February 22, 2021. Mr. Li attended this hearing. (Exhibit 1)
4. At the conclusion of the hearing, the Local Board voted to deny County General's application. Id.
5. After the Board's vote, Mr. Li stated his business was not doing well and that he needed the license. Id.
6. By written decision dated February 24, 2021, the Local Board laid out its grounds for denial. The Board cited a lack of public need in the proposed area and pointed to two existing retail package stores within 3/10 of a mile from 518 County Street. (Exhibit 3)
7. The Applicant timely appealed the Local Board's decision to the ABCC. (Exhibit 5)
8. Mr. Li attended the Commission hearing and testified that customers frequently request that he sell beer and wine at his convenience store. He stated he is having a hard time running the business due to changes in the law having to do with tobacco and that he thinks having a liquor license would help improve business. (Testimony)
9. There are two (2) existing package store licenses within approximately 3/10 of a mile of 518 County Street. (Testimony, Exhibit 2)

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 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 M.G.L. Ch. 138, § 23 provides,

[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). 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. However, while this discretion of the local licensing authority is broad, “it is not untrammelled.” Ballarin, 49 Mass. App. Ct. 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.

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.

Ballarin, 49 Mass. App. Ct. at 511.

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”).

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 v. City of Woburn, 65 Mass. App. Ct. 375, 379 (2006). “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 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 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., 12 Mass. App. Ct. at 880.

Here, MJL Enterprises, Inc. acknowledged the existing retail package stores in the area and argued an additional license at its store would not impact the public good.

The Local Board however determined the public need is already being met by existing retail package stores in the area.

The Commission finds that the Local Board was neither arbitrary nor capricious in its decision, nor was the decision an abuse of discretion or based on an error of law. See Great Atlantic & Pacific Tea Co., Inc., 387 Mass. at 837. The Local Board held a public hearing and reviewed MJL Enterprises, Inc.’s application. The record indicates that in the approximate mile radius around the proposed location there are four (4) existing § 15 retail package store licenses, with two (2) located within just 3/10 of a mile from the proposed location. (Exhibit 3) 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)

The Commission finds that the record supports the Local Board’s decision that there exists an adequate number of §15 dispensaries in this area to satisfy the public need.

In issuing its decision, the Local Board made specific and particularized findings, which the Commission determined are supported by the record of these proceedings. As the Supreme Judicial Court has stated,

[t]here was evidence before the [Local Board] that the area had a large number of establishments selling beer and wine, and that the public did not need an additional establishment. The [Local Board] stated the reason for their decision. There is nothing in the record to indicate that the decision was whimsical or not based on logical analysis. On the record, we can only conclude that the decision was founded on reasoned judgment and was not arbitrary or capricious.

Great Atlantic & Pacific Tea Co., Inc., 387 Mass. at 839-840.

The Local Board considered and applied the factors outlined in the Ballarin case.

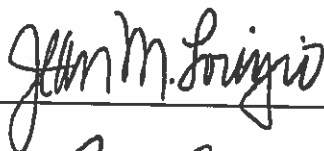
The Commission finds the Local Board’s decision was based on sufficient evidence presented, and the decision of the Local Board was not based upon an error of law, and thus, was not arbitrary and capricious.

CONCLUSION

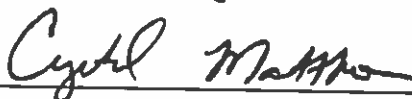
Based on the evidence and testimony presented at the hearing, the Commission **APPROVES** the action of the City of New Bedford in denying the M.G.L. c. 138, § 15 Wines and Malt Beverages Retail Package Store license application of MJL Enterprises, Inc. d/b/a County General Convenience.

ALCOHOLIC BEVERAGES CONTROL COMMISSION

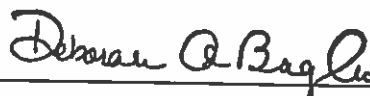
Jean M. Lorizio, Chairman



Crystal Matthews, Commissioner



Deborah Baglio, Commissioner



Dated: September 2, 2022

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: Mei Jie Li, owner.
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Local Licensing Board
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Administration, File