



*Commonwealth of Massachusetts*  
*Alcoholic Beverages Control Commission*  
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*Boston, Massachusetts 02114*  
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**Jean M. Lorizio, Esq.**  
Chairman

**DECISION**

**EZ MART FOODS CORP. OF MA, INC.**  
**232 ASHLAND STREET**  
**NORTH ADAMS, MA 01516**  
**LICENSE#: NEW**  
**HEARD: 11/06/2018**

This is an appeal of the action of the City of North Adams License Commission (the "Local Board" or "North Adams") for denying the M.G.L. c. 138, § 15 wines and malt beverages retail package store license application of EZ Mart Foods Corp. of MA, Inc. (the "Applicant" or "EZ Mart") to be exercised at 232 Ashland Street, North Adams, 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 Tuesday, November 6, 2018.

The following documents are in evidence as exhibits:

1. Minutes of the Local Board Meeting, November 29, 2017 and application of RMR Enterprises, Inc. d/b/a Dave's Package Store, November 13, 2017;
2. Map Showing Dave's Package Store and Cumberland Farms.
  - A. Local Board's Decision, July 23, 2018;
  - B. Minutes of the Local Board Meeting, July 17, 2018;
  - C. Map Showing § 15 Package Store Licenses in North Adams.

There is one (1) audio recording of this hearing, and two (2) witnesses testified.

**FINDINGS OF FACT**

The Commission makes the following findings of fact:

1. EZ Mart operates a gas station with a convenience store at 232 Ashland Street, North Adams Massachusetts. EZ Mart applied for a §15 wines and malt beverages license at this location to increase revenue.<sup>1</sup> (Testimony, Exhibit B)

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<sup>1</sup> Due to an incomplete application being submitted, the Local Board held two hearings on this matter. The Local Board held the second hearing on July 17, 2018, regarding this application. (Testimony)

2. EZ Mart holds liquor licenses in the states of New Hampshire, Maine, Pennsylvania, and New Jersey. (Testimony)
3. Ms. Kathy Lyons, an abutter, spoke at the Local Board hearing in opposition to this application. Ms. Lyons had concerns about the possibility of sales to minors and also about an abundance of alcoholic beverages retail licensees in the area. (Testimony, Exhibit B)
4. There are two existing package stores within walking distance of EZ Mart and another package store approximately ½ mile away. These three package stores are within one mile of EZ Mart. (Testimony, Exhibits B, C)
5. RMR Enterprises, Inc. d/b/a Dave's Package Store holds a § 15 wines and malt beverages license with a drive-up window located less than one mile from EZ Mart. A package store has existed at this location for decades. (Testimony, Exhibits 1, B, C)
6. V & V Liquors holds a § 15 all alcoholic beverages license and is located approximately ½ mile from EZ Mart. V & V Liquors is a huge liquor store located at the site of a former Staples Office Supply Store. (Testimony, Exhibit C)
7. Whitney's Beverage holds a §15 all alcoholic package store license and is located 1/10 of a mile closer to EZ Mart than V & V Liquors. (Testimony Exhibit C)
8. The Local Board unanimously "denied the application based on "lack of need" for another alcohol establishment in the area. At this time there are two<sup>2</sup> package stores within one mile of this location."<sup>3</sup> (Testimony, Exhibit A)

### DISCUSSION

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 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

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<sup>2</sup> The Local Board decision stated that there are two package stores within one mile of EZ Mart. The evidence demonstrates that there are three existing package store licenses within one mile of EZ Mart. (Testimony, Exhibits 1, 2, A, B, C)

<sup>3</sup> The number of existing package store licenses in this area is an issue that the Local Board has considered in the past. Approximately six years prior to EZ Mart's application, there was a convenience store that had applied for a package store license. That application was denied because the Local Board determined that there was no need for three package stores within ½ mile of each other. This decision to deny EZ Mart's application is consistent with prior Local Board decisions. (Testimony)

[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)).

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.

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. 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, 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.

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

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 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., 12 Mass. App. Ct. at 880.

The Commission reviewed the Local Board minutes and decision, along with the maps of the existing package store licenses. (Exhibits 2, A, B, C) The Commission finds that the record of these proceedings supports the Local Board's denial of this application. The Appeals Court has held that a local board may deny a license even if the facts show that a license could be lawfully granted. Donovan v. City of Woburn, 65 Mass. App. Ct. 375, 379. The Local Board found after a hearing and deliberations, and pursuant to the holdings in Ballarin and the Town of Middleton v. Alcoholic Beverages Control Comm'n,<sup>4</sup> that this area of North Adams was being adequately served by the existing package stores and the public need was being met in this proposed location. Ballarin at 511; 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 does not find EZ Mart's argument persuasive that the Local Board denied its application because the applicant is not a resident of North Adams. Furthermore, there is no evidence in the record of these proceedings to support EZ Mart's argument.

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).

The Local Board's decision, that there is a saturation of existing package store licenses in this area meeting the public need, was based on sufficient evidence presented during the course of the public hearings. The Local Board's reliance on these factors was reasonable and appropriate pursuant to the holdings in Ballarin, *supra*, Donovan, *supra*, and Town of Middleton, *supra*. There is nothing in the record suggesting that the Board acted arbitrarily or capriciously. 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.

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<sup>4</sup> 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 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. See Town of Middleton v. Alcoholic Beverages Control Comm'n, 64 Mass. App. Ct. 1108 (2005) (memo and order pursuant to Rule 1:28).

### CONCLUSION AND DISPOSITION

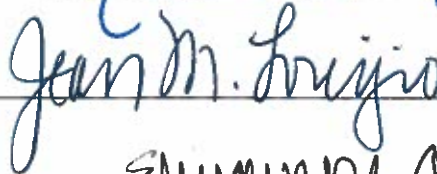
Based on the evidence and testimony at the hearing, the Commission **APPROVES** the action of the City of North Adams License Commission for denying the M.G.L. c. 138, § 15 wines and malt beverages retail package license application of EZ Mart Foods Corporation of MA, Inc.

### **ALCOHOLIC BEVERAGES CONTROL COMMISSION**

Kathleen McNally, Commissioner



Jean M. Lorizio, Chairman



Elizabeth A. Lashway, Commissioner



Dated: March 7, 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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cc: Jennifer Breen, Esq.  
Brian Riley, Esq.  
Local Licensing Board  
Frederick G. Mahony, Chief Investigator  
Administration, File