



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

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

**DECISION**

**HARVEY'S 1UP ARCADE LLC D/B/A HOMETOWN ARCADE  
61 ENDICOTT STREET  
NORWOOD, MA 02062  
LICENSE#: NEW  
HEARD: 9/27/2023**

This is an appeal of the action of the Town of Norwood Board of Selectmen (the "Local Board" or "Norwood") in denying the M.G.L. c. 138, § 12 All Alcoholic Beverages application of Harvey's 1Up Arcade LLC d/b/a Hometown Arcade ("Applicant" or "Hometown") to be exercised at 61 Endicott Street, Norwood, 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, September 27, 2023.

The hearing record was left open until October 11, 2023, for the Local Board to submit video of the Board of Selectman hearing of July 18, 2023. The video was timely received and marked as Exhibit 14. The record is now closed.

The following documents are in evidence:

1. Local Board's Decision, 7/25/2023;
2. Floor Plan for Proposed Premises;
3. Town of Norwood Zoning Bylaws;
4. Hometown's Special Permit Application for Zoning Relief, 6/30/2023;
5. Hometown Lease Agreement;
6. Hometown Amended Lease Agreement;
7. Hometown Automatic Amusement Device License, 5/10/2023;
8. Town of Norwood, Building Department, email correspondence, 5/31/2023 & 6/28/2023;
9. Town of Norwood, Board of Health Department, Conditional approval, 9/15/2023;
10. Town of Norwood Board of Selectmen file concerning License Application, including Hometown § 12 Application;
11. Screenshots of Texts Re: Public's request to Applicant concerning alcohol service;
12. Town of Norwood Zoning Board file for Hometown Special Permit Application;
13. Zoning map and photographs of exterior of proposed licensed premises;
14. Town of Norwood, Board of Selectmen, Video of July 18, 2023, meeting.

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. Harvey's 1Up Arcade LLC d/b/a Hometown Arcade ("Applicant" "Hometown" or "Hometown Arcade") is a Massachusetts limited liability corporation. (Exhibit 10)
2. The Applicant filed an application for an on- premises §12 Club all alcoholic beverages license to be exercised at 61 Endicott Street, Norwood, Massachusetts. Id.
3. On July 18, 2023, the Local Board held a hearing on Hometown's application. Two additional applicants for a § 12 all alcoholic beverage license were heard by the Local Board that night. (Testimony, Exhibits 1, 10, 14)
4. Hometown's description of the premises to be licensed reads as follows: "Building is 1 story with 2 rooms. Square footage of the building is 3732 sq feet. There is an additional 1,500 square feet of outdoor space." (Testimony, Exhibit 10)
5. General floor plans for both the outdoor patio and interior were provided in Hometown's application packet. Id.
6. Hometown's lease submitted with its application described permitted uses as "retail sales and such lawfully permitted uses ancillary thereto". Additionally, the lease listed the operating hours as, "...notwithstanding the foregoing, Tenant's use of the Premises for the Permitted Purposes is limited to the following maximum days and times: Fridays 8:00AM-6:00PM; Saturdays 8:00AM-6:00PM; Sundays 12:00 PM – 7:00 PM". The lease did not authorize outdoor patio space. Id.
7. The Local Board heard from the Applicant regarding their business overview and the proposal for the service of alcohol at Hometown's arcade location. The Applicant indicated that there would be a bar area with seating and individual cupholders at the arcade machines. There were no comments from the public. (Testimony, Exhibit 14)
8. The Local Board discussed Hometown's lack of food service, deficiencies in the application including the description of the licensed premises and floor plans which did not sufficiently identify points of service and storage, and concerns related to the limitations of the permitted use, hours of operation, and lack of patio authorization in the lease. The Board also raised the issue of traffic and discussed the size, the public need and whether the granting of this license served the public good. Id.
9. The Applicant suggested that food trucks may be utilized for food service. With regard to the hours and days of operation, permitted use and outdoor space, the Applicant was not aware of the discrepancies between the lease and their application. Id.
10. At the conclusion of the public hearing, the Local Board voted to deny Hometown's application. The Local Board also denied the two other applications which were heard that night. Id.

11. The Local Board issued a written decision on July 25, 2023 which stated the Local Board voted to deny Hometown's application as "...the Board determined that the application had deficiencies and that there was a lack of sufficient public need or common good that would be served by the award of said all-alcohol license to the Hometown Arcade location noted above at this time." (Exhibit 1)
12. 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; 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 of the type specified in M.G.L. c. 138, § 12. 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 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. 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.

The Appeals Court held “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.” 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 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.

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.

Here, the Local Board based its denial on the Board determination “...that the application had deficiencies and that there was a lack of sufficient public need or common good that would be served ... .” (Exhibit 1)

The Local Board held a public hearing and heard from the Applicant regarding its arcade and proposed plan for alcohol service at the establishment. (Testimony, Exhibit 14) The Board voiced concerns about Hometown’s presentation given discrepancies between the information provided at the hearing and the information provided in the application and supporting documents. Id. The Board found inconsistencies in Hometown’s proposed premises description and a lack of detail in their floor plans. Id. The Lease, submitted by the Applicant, had limitations as to the permitted use and hours and did not include an exterior area. Id. The Board discussed its established precedent of not granting all-alcohol licenses in the absence of food service. Finally, the Board deliberated the size, the public need and whether the granting of this license served the public good. (Testimony, Exhibit 14)

Hometown argues the Board's decision was arbitrary and it was not given the opportunity to respond to the Board's concerns. (Testimony) However, Hometown discussed that its plan could incorporate food trucks and indicated it was unaware of discrepancies between their application and lease documentation. (Exhibit 14)

Hometown asserts that many of the deficiencies have been rectified with conditional permits and an amended lease. However, the Local Board could only base their decision on the information before it at the hearing.

After examining the proceeding before the Local Board, the Commission finds that the Local Board fulfilled its responsibility regarding this application. The Local Board held a public hearing and considered Hometown's application and documentary evidence. The Local Board's findings that there were deficiencies in Hometown's application and the lack of public need were based on the application and information presented during the public hearing.

Local licensing authorities are recognized as having expertise regarding the problems affecting the regulation of alcoholic beverages. Great Atl. & Pac. Tea Co., Inc. v. Board of License Comm'n of Springfield, 387 Mass. 833, 837 (1983). A local board may deny a license even if the facts show that a license could lawfully be granted. Donovan v. City of Woburn, 65 Mass. App. Ct. 375, 379 (2006). It is not for the Commission to substitute its own views with what the Local Board believes is in the best interests of its town.

The Local Board considered and applied the factors outlined in the cases of Ballarin, 49 Mass. App. Ct. 506, and Donovan, 65 Mass. App. Ct. 375. The Commission finds the Local Board's decision was based on sufficient evidence and 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 Town of Norwood in denying the M.G.L. c. 138, § 12 All-Alcohol license application of Harvey's 1Up Arcade LLC d/b/a Hometown Arcade.

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

Deborah Baglio, Commissioner Deborah Baglio

Crystal Matthews, Commissioner Crystal Matthews

Dated: April 29, 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.

This document is important and should be translated immediately.  
Este documento es importante y debe ser traducido inmediatamente.  
Este documento é importante e deve ser traduzido imediatamente.  
Ce document est important et devrait être traduit immédiatement.  
Questo documento è importante e dovrebbe essere tradotto immediatamente.  
Το έγγραφο αυτό είναι σημαντικό και θα πρέπει να μεταφραστούν αμέσως.  
这份文件是重要的，应立即进行翻译。  
यह दस्तावेज़ महत्वपूर्ण है और इसका तुरंत अनुवाद किया जाना चाहिए  
Dokiman sa a enpòtan epi li ta dwe tradwi touswit  
'Đây là tài liệu quan trọng và cần được dịch ngay'  
ឯកសារនេះសំខាន់ណាស់ ហើយត្រូវបកប្រែជាបន្ទាន់។

2023-000214-ad-enf

cc: Dennis A. Quilty, Esq.  
David A. Deluca, Esq.  
Local Licensing Board  
Frederick G. Mahony, Chief Investigator  
Administration, File