

Re: King Phillip Restaurant & Motel, Inc.
D/B/A: King Phillip Restaurant & Motel
Premise: 35 State Road
City/Town: Phillipston, MA 01331

DECISION

King Phillip Restaurant & Motel, Inc. ("the licensee") holds an all alcoholic beverages license issued pursuant to Massachusetts General Laws Chapter 138, §12. The Alcoholic Beverages Control Commission ("the Commission") held a hearing on August 24, 2010 regarding an application to change the description of the licensed premises, commonly referred to as an application to alter the licensed premises or an application to extend the licensed premises.

The following documents are in evidence:

1. Map of Licensee's Original Proposal For Extension of Premises;
2. Licensee's Letter to Commission Specifying Alterations to Originally Proposed Plan;
3. Map of Licensee's Revised Plans For Extension Of Premises.

There is one (1) tape of this hearing.

Facts

1. On June 6, 2010, the Licensee submitted an application requesting approval to alter its premises. On July 6, 2010, the Local Board approved the application. Thereafter, the application was forwarded to the Commission for the statutorily required approval. Pursuant to its administrative practice, the Commission assigned investigator Brad Doyle to investigate the application and make a recommendation.
Testimony
2. The Licensee submitted a proposed plan outlining the requested extension of the premises. The extension included changing the description of the licensed premises to include a parking lot and other exterior areas of the building. Exs. 1, 3.
3. The proposed plan has no enclosures, fences or other barriers to separate the addition from the rest of the property. Ex. 1

4. The proposed plan is not detailed sufficiently. There is no information regarding occupancy figures, seating, or tables. Ex. 1.
5. Furthermore, there is no “doorway or entryway” of the proposed extension where the Licensee would be able to ascertain the age of individuals purchasing or possessing alcohol. Ex. 1.
6. Moreover the proposed plan contains no measures for assuring that individuals would not drive through the licensed premises, i.e. the parking lot, or bring alcoholic beverages in their cars. Ex. 1.

Discussion

The Commission has issued guidelines (“Guidelines”) that a licensee must comply with in order for the Commission to approve an application to extend a licensed premises to an outdoor area. The Commission established these guidelines to ensure that licensees maintain control of their premises. King Phillip’s proposed plan fails to meet these guidelines in several respects.

“[A]n application to extend the premises must describe the area in detail: for example, dimensions, number of tables and chairs, occupancy figures for inside area and outside area, bars, if any.” Guidelines No. 1. The Licensee’s application does not detail any of this information. Further, “[t]he premises must be enclosed by a fence, rope or other means to prevent patrons or members of the public from wandering in and out.” Guidelines No. 3. The Licensee’s proposal contains no such enclosures. As such, there is nothing to prevent members of the public from wandering in and out of the premises without any control by the Licensee.

Guideline No. 4 requires that “[t]he licensee have a view of the proposed extension from inside the premises.” The proposed plan demonstrates that the Licensee would not be able to view the proposed extension from inside the existing premises. The obstructions located in between the parking lots, including two motel units as well as a dairy bar, make it impossible to have a clear view of the proposed extension from inside the premises.

The proposed plan contains no safeguards for the Licensee to have any control over the entrance of the premises. Moreover, it creates difficulty monitoring the age of the patrons, the amount of alcohol they are consuming, as well as whether members of the public are bringing their own alcohol onto the premises contrary to state law. When all of the factors above are considered, it is clear that the Licensee’s proposed plan, if allowed would result in a situation where the Licensee will not have control over its premises.

Conclusion

Based on the evidence and testimony provided, the Commission finds that the proposed alterations would result in a lack of control over the premises. The licensee does not satisfy the Commission's Guidelines for altering its premises and the Commission concludes that this application is for a license that does not meet a public need and cannot be exercised in a manner so as to protect the common good. The Commission **DISAPPROVES** the application for the Alteration of Premises.

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Kim S. Gainsboro, Chairman _____

I, the undersigned, hereby certify that I have reviewed the hearing record and concur with the above decision.

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Robert H. Cronin, Commissioner _____

Susan Corcoran, Commissioner _____

Dated in Boston, Massachusetts this 13th day of October 2010.

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 days of receipt of this decision.