



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

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

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**DECISION**

**MZS GROUP INC. D/B/A MANOMET GENERAL STORE  
763 STATE ROAD  
PLYMOUTH, MA 02360  
LICENSE#: NEW  
HEARD: 1/7/2021**

This is an appeal of the action of the Town of Plymouth Board of Selectmen ("Local Board" or "Plymouth") in denying the M.G.L. c. 138, § 15 annual wines and malt beverages retail package store license application of MZS Group Inc. d/b/a Manomet General Store ("Applicant" or "Manomet" or "MZS Group") to be exercised at 763 State Road, Plymouth, 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 Thursday, January 7, 2021.

The following documents are in evidence as exhibits:

1. Manomet General Store's § 15 Retail Package Store Application;
2. Town of Plymouth Map showing locations of existing § 15 licenses;
3. Local Board's Decision, 8/25/2020;
4. Manomet General Store's Appeal to ABCC, 9/10/2020;
5. ABCC Order to Local Board re: Insufficient Decision, 9/16/2020;
6. Local Board's Amended Decision, 10/21/2020;
7. ABCC Appeal Decision [Westborough Beverage Corp. Inc.], 4/16/2015;
8. ABCC Appeal Decision [Yankee Spirits Inc.], 11/10/2016.

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 based on the evidence presented at the hearing:

1. MZS Group Inc. d/b/a Manomet General Store ("Applicant" or "Manomet" or "MZS Group") is a Massachusetts entity. Mr. Zohaib Shahid is its sole officer, director, and proposed license manager. Mr. Shahid owns and operates three existing convenience stores with retail package store licenses in Massachusetts. (Testimony, Exhibit 1)

2. MZS Group, Inc. applied to the Local Board for one of the four (4) available M.G.L. c. 138, § 15 Wines and Malt Beverages license to be exercised at 763 State Road, Plymouth. Id.
3. The Local Board held a public hearing on August 23, 2020, regarding the application. The Local Board voted 4-1 to deny the application. In its written decision of August 25, 2020, the Local Board stated, “the four Selectmen in opposition of the license found that a public need of the license does not exist in this section of Plymouth.” (Testimony, Exhibit 3)
4. The Applicant timely appealed the Local Board’s decision. After reviewing the Local Board’s decision, the Commission issued an Order to Plymouth to amend its decision to include findings of fact. (Exhibits 5, 6)
5. On October 20, 2020, the Local Board voted to issue an Amended Decision. (Exhibit 6)
6. On October 21, 2020, the Local Board issued its Amended Notice of Decision denying the application of MZS Group, Inc.’s application and listed 12 findings of fact to support their decision. Id.
7. In support of its decision to deny the application, the Local Board found the area surrounding the proposed location is adequately served by two (2) existing Section 15 retail package stores. (Testimony, Exhibit 6)
8. Luke’s Liquors holds an all-alcoholic beverages retail package store license and is located approximately 0.2 miles from 763 State Road. Id.
9. Mayflower Package Store holds an all-alcoholic beverages retail package store license and is located approximately 0.8 miles from 763 State Road. Id.
10. The Local Board found “[t]he applicant did not present any evidence to suggest that it will be selling products other than those that are available in the two other establishments operating within less than a mile from the proposed location.” Id.
11. The Local Board found “[t]he Board has consistently found that the northern section of Plymouth is adequately served by the number of existing Section 15 licenses. In fact, between 2006 and 2016, the Board denied five applications to transfer licenses to the northern section of Town.” Id.
12. In 2020 Plymouth issued a license to Plymouth Food Mart which is located in the northern section of the town. Plymouth Food Mart replaced a similar business which had been in operation at the same location. Plymouth Food Mart is located approximately 12 miles from the proposed location of MZS Group. The nearest existing package store to Plymouth Food Mart is approximately 2.8 miles away. Id.

### 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, § 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 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 “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 view 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 (Italics supplied).

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)).

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).

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 Donovan, 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)).

The Local Board held a public hearing, heard testimony and reviewed MZS Group’s application. The Commission finds the record demonstrates the Local Board considered a Ballarin factor in determining its decision to deny this application. Ballarin, 49 Mass. App. Ct. at 511. The Local Board considered the number of existing dispensaries in the area of the proposed location. Id. The Local Board found this area is adequately served by existing licenses, with one retail package stores located approximately 0.2 miles away, and another approximately 0.8 miles away. As a result, the Local Board determined there is no public need for an additional package store. (Testimony, Exhibit 6) 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 applicant argued the decision is arbitrary and capricious because the Local Board seems to be saving licenses for the southern part of Plymouth. The Local Board acknowledged in its decision that the largest concentration of existing licenses is in the northern area of the town and that the Board believes additional licenses should go to the southern part of Plymouth. (Exhibit 6) However, in considering an application for a new license, the Local Board, as laid out in Ballarin, 49 Mass. App. Ct. at 511, is charged with assessing the appropriateness of a particular location and here that location is 763 State Road. The Local Board’s decision cites the proximity of existing licenses to 763 State Road and its determination that the public need is being met by those existing licenses.

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 be lawfully 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 interest of its town. Because the Local Board’s decision is supported by the evidence before them at their August 25, 2020 hearing, and was based on a “logical

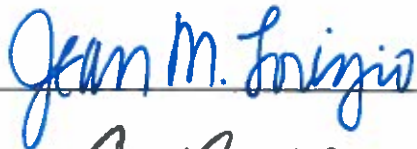
analysis,” its disapproval of a license for MZS Group is not arbitrary and capricious and must be affirmed. Great Atl. & Pac. Tea Co, Inc., v. Board of License Comm’n of Springfield, 387 Mass. 833, 839-840 (1983).

### CONCLUSION

Based on the evidence and testimony at the hearing, the Commission **APPROVES** the action of the Town of Plymouth Board of Selectmen in denying the M.G.L. c. 138, § 15 annual wines and malt beverages retail package license application of MZS Group Inc. d/b/a Manomet General Store.

### ALCOHOLIC BEVERAGES CONTROL COMMISSION

Jean M. Lorizio, Chairman



Crystal Matthews, Commissioner



Deborah Baglio, Commissioner



Dated: March 3, 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: Thomas H. Souza, Esq.  
Gregg J. Corbo, Esq.  
Local Licensing Board  
Frederick G. Mahony, Chief Investigator  
Administration, File