



The Commonwealth of Massachusetts
Department of the State Treasurer
Alcoholic Beverages Control Commission
Boston, Massachusetts 02114

Deborah B. Goldberg
Treasurer and Receiver General

Kim J. Gainsboro, Esq.
Chairman

DECISION

MPG CORPORATION D/B/A
RAPID REFILL
93 MAZZEO DRIVE
RANDOLPH, MASSACHUSETTS
LICENSE#: NEW
HEARD: 9/23/2015

This is an appeal of the action of the Town of Randolph, Office of the Town Council (the "Local Board") in denying the M.G.L. c. 138, § 15, wines and malt beverages package store license application of MPG Corporation d/b/a Rapid Refill (the "Applicant" or "MPG"). On June 8, 2015, the Local Board held a hearing that resulted in a denial of Rapid Refill's application. The Applicant timely appealed the Local Board's decision to the Alcoholic Beverages Control Commission (the "Commission"). The Commission held a hearing on Wednesday, September 23, 2015.

The following documents are in evidence as exhibits:

1. Decision of Local Board (5 pages);
2. Letter from Randolph Building Commissioner, Letter from Randolph Police Department, Letter from Randolph Fire Department, Letter from Randolph Board of Health (4 pages);
3. Proposed Floor Plan of Premise (1 page);
4. MPG application packet (4 pages);
5. Photographs of proposed MPG location (4 pages);
6. Map of Existing alcohol license locations in Randolph; (1 page);
7. List of existing section 15 retail package store licensees in Randolph (2 pages);
8. D.V.D. of Local Board hearing held on June 8, 2015 (one D.V.D.).

There is one (1) audio recording of this hearing, and one (1) witness testified.

FINDINGS OF FACT

The Commission makes the following findings based on the evidence presented at the hearing:

1. MPG Corporation d/b/a Rapid Refill (the "Applicant" or "MPG") is a Massachusetts corporation with a principal place of business at 1 Roberts Road, Plymouth, Massachusetts. (Testimony, Exhibit 4)
2. MPG applied to the Local Board for a § 15 wines and malt beverages retail package store license to be exercised at 105 Mazzeo Drive, Randolph, Massachusetts. (Testimony, Exhibits 1, 4, 5, 8)
3. MPG owns and operates twelve (12) gas stations with convenience/variety stores throughout Massachusetts. (Testimony)
4. MPG holds three (3) § 15 retail package store alcohol licenses at its gas stations in Bridgewater, Falmouth, and Westford. (Testimony, Exhibit 8)
5. MPG operates a Sunoco gas station, variety store, Dunkin Donuts drive through, and car wash at its Randolph location. (Testimony, Exhibit 5)
6. At the Local Board public hearing held on June 8, 2015, no one from the public spoke in favor and no one from the public spoke in opposition to the application. (Testimony, Exhibits 1, 8)
7. Four Departments in the Town of Randolph wrote letters regarding this application. (Exhibits 2, 8)
8. The Building Commissioner submitted a letter stating that after inspection of this property, no building or zoning code violations were found. (Exhibit 2)
9. The Randolph Police Department submitted a letter stating it does not oppose this application. (Exhibit 2)
10. The Fire Department submitted a letter that it has no opposition to this license being granted. (Exhibit 2)
11. The Board of Health submitted a letter that the Applicant holds valid retail food service, tobacco, and milk permits. (Exhibit 2)
12. Mazzeo Drive at the proposed location is a heavily commercialized area, without residences nearby. (Testimony, Exhibits 1, 8)
13. There are three (3) existing § 15 retail package store licenses near MPG's proposed location on Mazzeo Drive. (Exhibits 1, 6, 7, 8)

14. PKB, Inc. d/b/a Monti's Variety Store holds a § 15 all alcoholic beverages package retail store license at 2 Mazzeo Drive. (Testimony, Exhibits 6, 7, 8)
15. Ocean State Job Lot, located at 100 Mazzeo Drive, is a department store which holds a § 15 retail package store wines and malt beverages license. (Testimony, Exhibits 6, 7, 8)
16. Verc Enterprises at 93 Mazzeo Drive, holds a § 15 retail package store wines and malt beverages license.¹ (Testimony, Exhibits 6, 7, 8)
17. Verc Enterprises operates a Mobil gas station, convenience store, car wash, and Subway Foods at this location. (Testimony, Exhibits 6, 7, 8)
18. Verc Enterprises is located one quarter (1/4) of one mile away, on the same side of the highway/road, as MPG. (Testimony, Exhibits 6, 7, 8)
19. The Town of Randolph is allotted seven (7) § 15 Retail Package Store all alcoholic beverages licenses. Seven (7) licenses have been issued. (Exhibits 1, 6, 7, 8)
20. The Town of Randolph is allotted seven (7) § 15 Retail Package Store wine and malt beverage licenses. Four (4) licenses have been issued and three (3) are available. (Exhibits 1, 6, 7, 8)
21. The Local Board is comprised of nine (9) members. Eight (8) members participated in this hearing, and one member abstained. (Exhibits 1, 8)
22. The Local Board discussed a lack of public need, as there currently is a saturation of licenses due to the three (3) existing retail package stores in close proximity to MPG. (Exhibits 1, 6, 7, 8)
23. The Local Board discussed that Verc's § 15 retail package store license, the most recent license issued by the Town of Randolph, was originally denied by the Local Board. (Exhibit 8)
24. The Local Board discussed that the Town of Randolph has three (3) retail package store licenses remaining, and that these three licenses should not be issued in the proposed location as the Town needs to reserve these licenses to issue in other parts of Randolph which are not saturated. (Exhibits 1, 8)
25. After deliberations, the Local Board considered a motion to grant a package store license to MPG. Four (4) members voted to grant, four (4) members voted to oppose,

¹ Verc Enterprises' application for a § 15 package store license was originally denied by the Local Board. Upon appeal to the Commission, the Commission disapproved the Local Board decision and remanded Verc's application with the recommendation to issue the license. Verc Enterprises, Inc. (ABCC Decision August 11, 2014).

and one member abstained. The motion was not approved, and the Local Board denied MPG's license application. (Exhibits 1, 8)

26. The decision of the Local Board states that "[p]ursuant to this vote, the Applicant's request for a Package Store Beer and Wine license is denied because there is not a public need for an additional license at this location." (Exhibit 1)

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). Local licensing authorities are recognized as having expertise regarding the problems affecting the regulation of alcoholic beverages. Great Atl. & Pac. Tea Co., Inc. v. Bd. of License Comm'rs of Springfield, 387 Mass. 833, 837 (1983). The Local Board, in its wide discretion, denied the MPG's application for a § 15 wines and malt beverages package store license, the appeal of which is now before the Commission.

The procedure for the issuance of licenses to sell alcoholic beverages, M.G.L. c.138, § 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." (Italics supplied).

A local licensing authority exercises very broad discretion about public convenience and public need, with respect to whether to grant a license to sell alcoholic beverages. Donovan v. City of Woburn, 65 Mass. App. Ct. 375, 379 (2006); Ballarin, Inc. v. Licensing Bd. of Boston, 49 Mass. App. Ct. 506 (2000). In exercising its discretionary powers, a Board must state the reasons for its decision whether or not to issue the liquor license. M.G.L. c. 138, § 23; Exotic Restaurants Concept, Inc. v. Boston Licensing Bd., Suffolk Superior Court, C.A. No. 07-3287 (Borenstein, J.). 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 (1981) quoting Westborough. 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 remains 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 879.

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 Atl. & Pac. Tea Co., Inc., 387 Mass. at 837, 838; see Ballarin, Inc. v. Boston Licensing Bd., 49 Mass. App. Ct. 506 (2000).

The Board found that there was no public need for MPG to have a § 15 wines and malt beverages license. The Massachusetts Appeals Court has considered public need at length, and determined that it should not be interpreted literally. The Court explains 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, Inc., 49 Mass. App. Ct. at 511 - 512.

In Ballarin, the Court identified the factors which are considered to determine public need:

Consideration of the *number of existing dispensaries in a locality* is a proper concern... In making its discretionary determination, a licensing authority may take 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, Inc., 49 Mass. App. Ct. at 511. (Italics supplied.)

MPG contends that the Ballarin factors were not addressed by the Local Board in its denial. Id. The Commission has reviewed the video of the Local Board hearing and the evidence of existing licensees in this area of Mazzeo Drive. (Exhibits 6, 7, 8) The Commission finds that the record supports the decision by the Local Board to deny this application based on the saturation of licenses in the proposed location, which is a Ballarin factor. Id. (Exhibits 6, 7, 8)

A local board may deny a license even if the facts show that a license could be lawfully granted. Donovan, 65 Mass. App. Ct. at 379. Upon review of the record of the Local Board proceedings in this matter, the Commission finds that the Local Board fulfilled its responsibility regarding this application. The Local Board denied MPG’s application due to a saturation of licenses in the proposed location with three existing retail package stores in close proximity to MPG. (Exhibits 1, 6, 7, 8) The Local Board found that the public need for retail package stores is being adequately met in the proposed location of Mazzeo Drive and these findings are supported by the record.

This case is analogous to the Town of Middleton v. Alcoholic Beverages Control Comm’n, 64 Mass. App. Ct. 1108 (2005) (memo and order pursuant to Rule 1:28). In Middleton, the applicant owned a gas station and a convenience store and applied for a retail package store license. The Town of Middleton denied the application based on the Town’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. Town of Middleton, 64 Mass. App. Ct. 1108.

Despite the Local Board’s finding of no public need, MPG, relying on Donovan v. City of Woburn, argues that there is a “public want” for a retail package store at this location because MPG has a different type of business operation from the existing licensees in the area. Donovan v. City of Woburn, 65 Mass. App. Ct. 375 (2006) (“Proper assessment of ‘need’ for another

liquor store, however, requires a more particularized inquiry”). MPG bases its Donovan argument on the fact that two of the existing licensees are stores (variety and department) and the third licensee, Verc, is a gas station that sells Mobil gasoline which attracts Mobil gas credit card holders, while MPG sells Sunoco gasoline, which attracts Sunoco credit card holders. “At a very minimum, sound exercise of discretion required the commission to consider the need for the business [the applicant] sought to run, not the need for some hypothetical business or the need for a business typically run by others.” Donovan, 65 Mass. App. Ct. at 381. MPG argues customers develop brand loyalty based on their gas credit cards and preference for a particular gasoline brand. MPG is seeking a package store license for its customers’ convenience, and MPG argues that it is an inconvenience for MPG’s Sunoco gas customers to drive to the Verc Mobil gas station one quarter (1/4) mile away to purchase alcohol due to the state highway, lights, and the traffic flow in that area of Mazzeo Drive.

A local board’s determination to deny an application based on the lack of public need is not contrary to law where the local board considers the need for the particular business that the applicant sought to run and the local board applies its analysis to the applicant’s proposed business and to the location of the proposed business. Donovan, 65 Mass. App. Ct. at 380. The Commission is not persuaded by MPG’s argument that it operates a business that is sufficiently different from the type of business Verc operates. The record reflects that both businesses are gas stations which operate car washes, convenience stores, and fast food counters.

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. Bd. of License Comm’rs 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 was based on evidence presented during the course of the public hearing. The Local Board’s reliance on these factors was reasonable and appropriate pursuant to the holdings in Ballarin, supra, and Donovan. Therefore, the Commission finds that the decision of the Local Board is supported by the record, was not based upon an error of law, and thus, was not arbitrary and capricious.

CONCLUSION

Based on the evidence presented at the hearing, the Commission **APPROVES** the action of the Local Board of the Town of Randolph in denying the section 15 wines and malt beverages package store license application of MPG Corporation.

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Kathleen McNally, Commissioner

Kathleen McNally

Elizabeth Lashway, Commissioner

Elizabeth Lashway

Dated: November 12, 2015

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.

cc: Louis Cassis, Esq.
Christine Griffin, Esq.
Local Board
Frederick G. Mahony, Chief Investigator
Administration
File