

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

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

**DECISION**

**NORAIZ INC. D/B/A 7-ELEVEN #37482  
667-671 NORTH STREET  
RANDOLPH, MA 02368  
LICENSE#: NEW  
HEARD: 8/11/2021**

This is an appeal of the action of the Town of Randolph Licensing Board ("Local Board" or "Randolph") in denying the M.G.L. c. 138, § 15 annual wines and malt beverages retail package store license application of Noraiz Inc. d/b/a 7-Eleven #37482 ("Applicant" or "7-Eleven") to be exercised at 667-671 North Street, Randolph, 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 Wednesday, August 11, 2021.

The following documents are in evidence as exhibits:

1. 7-Eleven's Retail Package Store Application;
  2. Photos of Exterior and Floorplan of Proposed Licensed Premises;
  3. Local Board's Notice of Hearing to be held 5/26/2021 with Legal Notice;
  4. Local Board Meeting Minutes for 4/28/2021 and 5/26/2021;
  5. Video of Local Board's Hearing, 5/26/2021;
  6. Randolph Town Requirements for Beer & Wine License;
  7. Local Board Meeting/Hearing Master Checklist;
  8. Town of Randolph Department of Public Health Letter, 4/21/2021;
  9. Town of Randolph Building Commissioner Letter, 4/13/2021;
  10. Town of Randolph Fire Department Letter, 4/20/2021;
  11. Town of Randolph Police Department Letter, 4/15/2021;
  12. Town of Randolph Police Chief's Email and Letter to Chair Lum, 4/12/2021;
  13. Petition from 7-Eleven's Customers/Neighbors;
  14. Local Board's Letter to ABCC, 5/27/2021;
  15. 7-Eleven's Letter of Appeal to the ABCC;
  16. Local Board's Decision, 6/1/2021;
  17. List of Existing § 15 licenses in Randolph.
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- A. Application for Permit of Noraiz, Inc. for license to sell beer and wine;
  - B. Local Board's Decision Letter to ABCC, 6/1/2021;
  - C. Video of Local Board Meeting, 4/21/2021;
  - D. Video of Local Board Meeting, 4/28/2021;

- E. Video of Local Board Meeting, 5/26/2021;
- F. Minutes of Local Board Meeting, 4/21/2021;
- G. Minutes of Local Board Meeting, 4/28/2021;
- H. Minutes of Local Board Meeting, 5/26/2021;
- I. Town of Randolph Map showing locations of existing § 15 licenses;
- J. List of Existing § 15 licenses.

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. Noraiz Inc. d/b/a 7-Eleven #37482 ("Applicant" or "7-Eleven") operates a convenience store with a business address of 667-671 North Street, Randolph, Massachusetts. Mr. Shahid Ghuman is the sole officer and director. (Testimony, Exhibit 1)
2. Mr. Ghuman sought to add a wines and malt beverages retail package store license to the operation of his store. Mr. Ghuman is the proposed manager of record. (Testimony, Exhibit A)
3. Mr. Ghuman owns another 7-Eleven convenience store with a § 15 wines and malt beverages liquor license in Brockton, Massachusetts. Id.
4. The Local Board held a public hearing on April 28, 2021, on 7-Eleven's application for a § 15 wines and malt beverages retail package store license. Mr. Ghuman attended this hearing. At the hearing, it was agreed the matter would be rescheduled as abutters were not properly notified. (Exhibits D, G)
5. The Local Board held a second public hearing on 7-Eleven's application for a § 15 wines and malt beverages retail package store license on May 26, 2021. Mr. Ghuman attended this hearing. (Exhibits E, H)
6. One resident spoke in opposition to the application. The resident cited issues with upkeep of the area around the applicant's store as well as his belief that the available license should be held in case a better candidate seeks a license in the future. (Testimony, Exhibits E, H)
7. The Local Board received letters from the Town of Randolph's Fire Department, Public Health Department, and Building Commission indicating no opposition to 7-Eleven's application for a retail beer and wine license. Said letters were submitted after each department inspected the operation of 7-Eleven and found it to be in compliance with their respective requirements. The Randolph Police Department also submitted a letter indicating no opposition. (Exhibits 8, 9, 10, 11)
8. 7-Eleven submitted to the Local Board 144 signatures of customer support. (Exhibit 13)
9. At the conclusion of the Local Board hearing, the Board voted on the approval of the application which resulted in a 3-3 tie. Therefore, the Local Board denied Noraiz, Inc.'s application. (Testimony, Exhibits B, H)

10. As a result of the applicant's appeal, the Local Board submitted a letter to the ABCC, dated June 1, 2021, citing its reasons for denial. The members who were not in favor of the application "felt that the town already had enough beer and wine locations and felt that in order for other locations to thrive, there had to be a cut off on approvals." (Exhibit B)
11. There are fifteen (15) existing retail package store licenses in Randolph including seven (7) all-alcoholic beverages package stores and eight (8) wines and malt beverages package stores. (Exhibit J)
12. DMR Colonial Corp. d/b/a Colonial Shop & Save ("Colonial Shop & Save") at 907 Main Street, holds a section 15 retail package store all alcoholic beverages license. It is located approximately .5 miles away from 7-Eleven. (Testimony, Exhibit I)
13. There are an additional three (3) package store licenses within approximately 1.5 miles of the 7-Eleven location. Id.
14. The Applicant timely appealed the Local Board's decision. (Exhibit 15)

### 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. As M.G.L. Ch. 138, § 23 provides,

[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. However, while this discretion of the local licensing authority is broad, "it is not untrammelled." Ballarin, 49 Mass. App. Ct. at 511.

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.

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”).

The Appeals Court has held that a local board may deny a license even if the facts show that a license lawfully could be granted. See Donovan v. City of Woburn, 65 Mass. App. Ct. 375, 379 (2006). “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.” See id. “Instead, ‘[w]here the factual premises on which [the board] purports to exercise its 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 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.

Here, 7-Eleven acknowledged the existing retail package stores in the area and argued an additional license at its store would not impact the public need because customers want the convenience of beer and wine at 7-Eleven and do not want to drive to another location for a second stop.

The Local Board however determined the public need is already being met by existing retail package stores in the area.

In issuing its decision, the Local Board made specific and particularized findings, which the Commission has determined are supported by the record of the proceedings before the Local Board.

The Commission finds that the Local Board was neither arbitrary nor capricious in its decision, nor was the decision an abuse of discretion or based on an error of law. See Great Atlantic & Pacific Tea Co., Inc., 387 Mass. at 837. The Local Board held a public hearing and reviewed 7-Eleven's application. The record indicates that in the approximate mile and a half radius around the proposed location there are four (4) existing § 15 retail package store licenses, with one (1) located within just .5 of a mile from the proposed location. (Testimony, Exhibit I) 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)

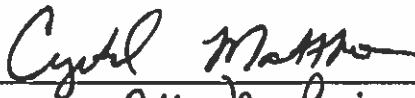
The Commission finds that the record supports the Local Board's decision that there exists an adequate number of §15 dispensaries in this area to satisfy the public need and the decision of the Local Board was not based upon an error of law, and thus, was not arbitrary and capricious.

#### CONCLUSION

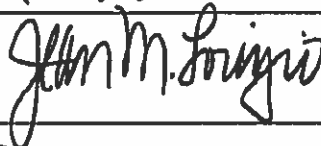
Based on the evidence and testimony presented at the hearing, the Commission **APPROVES** the action of the Town of Randolph in denying the M.G.L. c. 138, § 15 Wines and Malt Beverages Retail Package Store license application of Noraiz Inc. d/b/a 7-Eleven #37482.

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

Crystal Matthews, Commissioner



Jean M. Lorizio, Chairman



Deborah Baglio, Commissioner



Dated: September 29, 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: Albert A. DeNapoli, Esq.  
H. Glenn Alberich, Esq.  
Local Licensing Board  
Frederick G. Mahony, Chief Investigator  
Administration, File