



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

Jean M. Lorizio, Esq.
Chairman

DECISION

**KENI CORP. D/B/A HONEY LAND FARMS
251 MAIN STREET
TOWNSEND, MA 01469
LICENSE#: NEW
HEARD: 8/01/2022**

This is an appeal of the action of the Town of Townsend Board of Selectmen (the “Local Board” or “Townsend”) denying the M.G.L. c. 138, § 15 wines and malt beverages retail package store license application of Keni Corp. d/b/a Honey Land Farms (“the “Applicant” or “Honey Land”) to be exercised at 251 Main Street, Townsend, Massachusetts. The Applicant timely appealed the Local Board’s decision to the Alcoholic Beverages Control Commission (the “Commission” or “ABCC”), and a remote hearing via Microsoft Teams was held on Monday, August 1, 2022.

The following documents are in evidence as exhibits:

Appellant: Keni Corp. d/b/a Honey Land Farms

1. Letter of Reimbursement for Cost to Publish Notification and Notifying Abutters by certified mail provided by Town, 4/5/2022;
2. Video of Board of Selectmen Meeting, 4/20/2022;
3. Video of Board of Selectmen Meeting, 4/27/2022;
4. Video of Board of Selectmen Meeting, 5/11/2022.

Appellee: Town Of Townsend

- A. Keni Corp. d/b/a Honey Land Farm’s Application for New Section 15 Wines and Malt Beverages License;
- B. Plan showing Honey Land Farms location and nearby landmarks;
- C. Photographs of Honey Land Farms premises and its surroundings;
- D. Information about North Middlesex Community Cares Townsend Drop-in Center, via its website;
- E. Minutes of Board of Selectmen’s April 20, 2022, Meeting (in draft form);
- F. Minutes of Board of Selectmen’s April 27, 2022, Meeting;
- G. Minutes of Board of Selectmen’s May 11, 2022, Meeting;
- H. Letter from Town to the Applicant entitled “Liquor License Application Denial”.

There is one (1) audio recording of this hearing and four (4) witnesses testified.

FINDINGS OF FACT

The Commission makes the following findings of fact:

1. Keni Corp. d/b/a Honey Land Farms (“Applicant” or “Honey Land”) convenience store is located at 251 Main Street, Townsend, Massachusetts. (Testimony, Exhibit A)
2. Ami Apporva Shah is the sole Officer and Director, and the proposed license manager.
3. Ms. Shah has operated Honey Land for over ten (10) years. (Testimony)
4. The Applicant applied for a § 15 wines and malt beverages retail package store license at this location to provide one-stop shopping for customers. The only other convenience store in Townsend which held a § 15 wines and malt beverages retail package store license closed during the Covid-19 pandemic. (Testimony)
5. NM Cares Townsend, a substance abuse recovery drop-in center, is located directly next door to Honey Land. (Testimony, Exhibits B, C)
6. The United Methodist Church is located within a 500-foot radius of the proposed location. (Exhibit A)
7. The Local Board held public hearings regarding the application on April 20, 2022, April 27, 2022, and May 11, 2022. (Testimony, Exhibits 2, 3, 4, E, F, G)
8. On April 20, 2022, the Local Board held the first public hearing on Honey Land’s application. One individual spoke in favor of the application and one individual spoke in opposition. The Board continued the hearing on the application to April 27, 2022. (Testimony, Exhibits 2, E)
9. On April 27, 2022, the Local Board continued its consideration of Keni Corp.’s application. After further public comment wherein one individual stated he was in favor so long as the applicant kept the area around the establishment tidy, and one individual spoke in opposition, there was discussion amongst the Board members regarding M.G.L. c. 138, § 16C and the Board’s discretion to grant a license in the vicinity of a church and/or school. The Board closed the hearing and began deliberations. The matter was continued to May 11, 2022. (Testimony, Exhibits 3, F)
10. The United Methodist Church did not voice any opposition, written or otherwise, regarding the application. (Exhibits 2, 3, 4, E, F, G)
11. On May 11, 2022, the Local Board continued its deliberation regarding Keni Corp.’s application. At the conclusion of the hearing, the Board voted to deny the application. (Exhibits 4, G)
12. In its written decision, the Board denied the application citing “two underlying reasons”:
 - a. Concerns outlined by the Local Licensing Agent, per M.G.L. Ch. 138 § 16C; and
 - b. Concerns regarding proximity of local Substance Abuse Center.(Testimony, Exhibit H)

13. The Licensee timely appealed the Local Board's action to the ABCC. (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 e.g. 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 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. 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 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. Id.

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, 65 Mass. App. Ct. at 379. "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 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)). 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. 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”).

Here, the Local Board based their denial on two reasons: (1) concerns outlined by the Local Licensing Agent per M.G.L. Ch 138 § 16C and (2) proximity to a local substance abuse center. (Exhibit H)

The Local Board at its public hearings discussed its discretion in issuing licenses within five hundred feet of a church. M.G.L. Ch 138 § 16C states that “premises...located within a radius of five hundred feet of a school or church shall not be licensed for the sale of alcoholic beverages unless the local licensing authority determines in writing and after a hearing that the premises are not detrimental to the educational and spiritual activities of said school or church... .” M.G.L. c. 138, § 16C

M.G.L. c. 138 §15A requires notice be provided to abutters as well as any hospital, school or church located within a five-hundred-foot radius. Section 15A further directs, “[t]he notice sent to such school, church or hospital shall indicate the necessity of a written objection to prevent the issuance or transfer of such license under the provisions of section sixteen C.” M.G.L. c. 138, § 15A.

The Board did not receive a written objection from the United Methodist Church. Rather, two residents objected to the issuance of the license based on the applicant’s proximity to the church and the child-care facility, referred to as a school¹, located inside the church. (Exhibits 2, 3, 4, E, F, G) Board members voiced their shared concerns about a retail package store being located near

¹ For purposes of M.G.L. Ch 138 § 16C, “...a school shall mean an elementary or secondary school, public or private, giving not less than the minimum instruction and training required by chapter seventy-one to children of compulsory school age.” As such, the operation located in the United Methodist Church does not qualify as a school.

the church. The Board considered the proximity of the church and “school” to the proposed licensee. The Board determined the above-referenced concerns supported its denying the application under M.G.L. Ch 138 § 16C. This is not the case. Given the mandate in § 15A, the church must have submitted a written objection to the Board to prevent the issuance of the license under § 16 C. M.G.L. c. 138, § 15A. As a result, Commission finds that “[c]oncerns outlined by the Local Licensing Agent, per M.G.L. Ch. 138 § 16C” is not a lawful basis for the Board to disapprove an application.

However, during three public hearings, the Local Board heard testimony and discussed Honey Land’s location, specifically its proximity to a substance abuse center and safety concerns. (Testimony, Exhibits 2, 3, 4, B, C, E, F, G) As the Court pointed out in Ballarin, “...one might hesitate to authorize a license for a bar across the street from a public school.” (quoting Connolly v. Alcoholic Bevs Control Comm’n, 334 Mass. 613, 617-618, 138 N.E. 2nd 131 (1956)). The Local Board properly considered, “the appropriateness of a liquor license at a particular location”, in denying this application. Ballarin, 49 Mass. App. Ct. at 511, 512.

After examining the record of the proceedings before the Local Board, the Commission finds the Local Board fulfilled its responsibility regarding this application. It held three public hearings and considered statements made by the applicant and residents of Townsend. It deliberated and issued particularized findings based upon the information provided in the application and at multiple hearings. The Local Board’s denial of the application based on its proposed location in conjunction with the nearby substance abuse center is within its discretion.

Local licensing authorities are recognized as having expertise regarding the problems affecting the regulation of alcoholic beverages. Great Atl. & Pac. Tea. Co. 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, (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 and its consideration of the appropriateness of the proposed location is supported by the evidence, and was based on a “logical analysis,” its disapproval of a license for Keni Corp. is not arbitrary and capricious and must be affirmed. Great Atl. & Pac. Tea. Co. v. Board of License Comm’n of Springfield, 387 Mass. 833, 839-840 (1983)

CONCLUSION

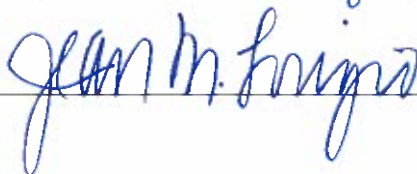
Based on the evidence and testimony at the hearing, the Commission **APPROVES** the action of the Town of Townsend Board of Selectmen in denying the M.G.L. c. 138, § 15 wines and malt beverages retail package license application of Keni Corp. d/b/a Honey Land Farms.

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Deborah Baglio, Commissioner



Jean M. Lorizio, Chairman



Crystal Matthews, Commissioner



Dated: December 11, 2023

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: Ami Shah
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Local Licensing Board
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Administration, File