



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

Jean M. Lorizio, Esq.
Chairman

DECISION

MAIN STREET DELI LLC D/B/A ONSET BEACH PATIO & GRILLE
182 ONSET AVENUE
WAREHAM, MA 02558
LICENSE #: 07379-RS-1328
HEARD: 10/23/2024

This is an appeal of the action of the Town of Wareham Licensing Board (the "Local Board" or "Wareham") in suspending the M.G.L. c. 138, § 12 Wines & Malt Beverages Seasonal Alcohol License of Main Street Deli LLC d/b/a Onset Beach Patio & Grille ("Main Street Deli" or "Licensee") located at 182 Onset Avenue, Wareham, MA 02558 for 60 days. The Petitioner 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 Wednesday, October 23, 2024.

The following documents are in evidence as exhibits:

Agreed Upon Exhibits:

- A. LL-22-26 Transfer of Liquor License Approved, 10/24/2022;
- B. Letter to Licensee, Response to Recent Advertisement in Local Paper, 01/05/2023;
- C. Letter to Licensee to Cease and Desist Serving Alcohol, 01/24/2023;
- D. Notice of Public Hearing – Show Cause Hearing, 02/21/2023;
- E. Application submitted by Licensee for Seasonal Common Victualler Liquor License, 02/28/2024;
- F. Email from Building Commissioner re: Occupant Load, 03/22/2023;
- G. Email to Licensee re: Corrective Action – Live Entertainment over 100 People, 05/03/2023;
- H. Email Delivery Failed 05/03/2023 Email, 05/09/2023;
- I. Submitted Application for Entertainment Permit, Wanted Refund for Previous Year, 05/24/2023;
- J. Email to Licensee regarding Notice of Hearing scheduled for 8/8/2023, 07/18/2023;
- K. August 8, 2023, Agenda and Supporting Documents, 08/08/2023;

- L. Letter to Licensee re: Adjudicatory Hearing held on 8/8/2023. Written Warning Issued, 08/09/2023;
- M. Email from Licensee Inquiring about Annual License, May have to Advertise BYOB, 12/12/2023;
- N. Letter to Licensee re: Advertisement Announcing Give Away of Champagne Bottles, 01/10/2024;
- O. Common Victualler's License, 01/23/2024;
- P. Renewal Application Received for Seasonal Common Victualler's License, 02/28/2024;
- Q. 2024 ABCC Retail License Renewal, 03/01/2024;
- R. Seasonal Common Victualler Wine/Malt Liquor License, 04/01/2024;
- S. Town Entertainment License, 04/02/2024;
- T. Sunday Entertainment License Received in Office, 04/02/2024;
- U. Letter to Licensee re: Change of Hours Request, 08/07/2024;
- V. Notice of Disciplinary Hearing scheduled for 09/03/2024, 08/19/2024;
- W. Call Logs, 09/01/2024-09/17/2024;
- X. Internal Email Communication, 09/03/2024-09/04/2024;
- Y. Wareham Week Article re: Suspension, 09/04/2024;
- Z. Letter to Licensee re: Notice of Decision, 09/09/2024;
- AA. Email Notification to ABCC of Decision, 09/09/2024;
- BB. Wareham Week Article re: Appeal, 09/10/2024;
- CC. Letter to Licensee re: Stay the Suspension until Conclusion of Appeal, 09/18/2024;
- DD. Email Communications with ABCC regarding Upcoming Hearing, 09/18/2024;
- EE. Letter to Licensee re: Violation of Entertainment License – Permitted Hours, 09/24/2024;
- FF. Letter to Licensee re: Serving Alcohol Beyond Dates of License – Show Cause Hearing Scheduled, 01/25/2023;
- GG. Email from Licensee re: Cease and Desist Letter from 1/24/2023, 1/25/2023;
- HH. Town of Wareham Liquor License Regulations;

There is one (1) audio recording of this hearing, and two (2) witnesses testified.

FINDINGS OF FACT

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

1. Main Street Deli LLC d/b/a Onset Beach Patio & Grille holds a § 12 Seasonal Common Victualler Wines/Malt Liquors On-Premises License at 182 Onset Avenue, Wareham, MA 02558. (Testimony, Exhibit A)

2. The Licensee's closing hour is 8:00 p.m. Monday and Tuesday, and 10:00 p.m. Wednesday through Sunday. (Exhibit R)
3. The Licensee filed an application with the Local Board on either Wednesday, July 31, 2024, or Thursday, August 1, 2024, to extend its closing hour to 1:00 a.m. (Testimony)
4. Facebook postings attributed to "Onset Beach Patio & Grille" state the following:
 - a. "Looking for motivated servers to work nights 8pm – 1am, outdoor venue, weather permitting, drinks only so must be tips certified.", 7/31/2024;
 - b. "Hiring table bussers for nights, 8pm – 1am.", 7/31/2024;
 - c. Advertising dancing on the 10th from 8:00 – 1:00 am, 08/02/2024;
 - d. Advertising dancing from 8:00 – 1:00 am on the deck, 08/03/2024
 - e. 'Dancin' on the deck was a HUGE HIT!!!', 08/04/2024;
 - f. Advertising dancing on the deck on 08/08 from 8:00 – 1:00 am, 08/07/2024;
 - g. "Sorry everyone, but we can no longer have live music and dancing after our allowed times this season which are from 10:00 am – 10:00 pm. We will have to cancel the late night DJ and themed dancing nights till next year. We tried."

(Exhibit V)

5. The Licensee operated until 1:00 a.m. on August 3, 2024. (Testimony)
6. The Local Board informed the Licensee, by letter dated August 7, 2024, that his application to change his hours of operation had been received and that the earliest available hearing date was September 3, 2024. (Exhibit U)
7. The Licensee decided against going forward with the application to change the closing hour. (Testimony, Exhibit V)
8. On September 3, 2024, the Local Board held a disciplinary hearing regarding the allegation that Main Street Deli served alcohol outside of its permitted hours. (Testimony, Exhibits V, Z)
9. The Licensee was not present at the hearing. (Testimony)
10. The Local Board, within its Liquor License Regulations, has progressive discipline guidelines as follows:
 - a. First Offense: warning to a seven (7) day suspension;
 - b. Second Offense: warning to a thirty (30) day suspension;
 - c. Third Offense: warning to revocation.

The Local Board Rules state that “the sentencing guidelines are only a guide. The Licensing Authority may use its discretion in determining whether the facts surrounding a violation warrant a penalty which is more lenient or severe than that suggested by the guidelines.”

(Exhibit HH)

11. The Local Board found the Licensee in violation and voted to suspend the license for sixty (60) days. (Exhibit Z)
12. The Licensee has one prior violation for serving alcoholic beverages subsequent to the expiration of its seasonal license for which the Local Board issued a Warning. (Exhibit C, Testimony)
13. The Licensee appealed the Local Board’s decision 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 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; Beacon Hill Civic Assn. v. Ristorante Toscano, Inc., 422 Mass. 318, 321 (1996).

Both the Local Board and the Commission have the authority to grant, revoke, and suspend licenses. Their powers were authorized “to serve the public need and . . . to protect the common good.” M.G.L. c. 138, § 23, as amended through St. 1977, c. 929, § 7. “[T]he purpose of discipline is not retribution but the protection of the public.” Arthurs v. Bd. of Registration in Medicine, 383 Mass. 299, 317 (1981). The Commission is given “comprehensive powers of supervision over licensees,” Connolly v. Alcoholic Beverages Control Comm’n, 334 Mass. 613, 617 (1956), as well as broad authority to issue regulations. The Local Board has authority to enforce Commission regulations. New Palm Gardens, Inc. v. Alcoholic Beverages Control Comm’n, 11 Mass. App. Ct. 785, 788 (1981).

These “comprehensive powers” are balanced by the requirement that the Local Board and the Commission provide notice to the licensee of any violations, as well as an opportunity to be heard. M.G.L. c. 138, § 64.

Pursuant to M.G.L. c. 138, § 67, “[t]he ABCC is required to offer a de novo hearing, that is to hear evidence and find the facts afresh. As a general rule, the concept of a hearing de novo precludes giving evidentiary weight to the findings of the tribunal from whose decision an appeal was claimed.” Dolphino Corp. v. Alcoholic Beverages Control Comm’n, 29 Mass. App. Ct. 954, 955 (1990). The findings of a local licensing board are “viewed as hearsay evidence, [and] they are second-level, or totem pole hearsay, analogous to the non-eyewitness police reports in Merisme v. Board of Appeals on Motor Vehicle Liab. Policies and Bonds, 27 Mass. App. Ct. 470, 473 – 476 (1989).” Dolphino, 29 Mass. App. Ct. at 95.

The Local Board has the burden of producing satisfactory proof that the licensee violated or permitted a violation of any condition thereof, or any law of the Commonwealth. M.G.L. c. 138, §§ 23, 64.

For the Commission to make a finding, there must be substantial evidence that a violation has occurred. "Substantial evidence of a violation is more than a mere scintilla. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." Consol. Edison Co. of New York v. N.L.R.B., 305 U.S. 197, 229 (1938); *accord* Charlesbank Rest. Inc. v. Alcoholic Beverages Control Comm'n, 12 Mass. App. Ct. 879 (1981).

Here, the Local Board alleged the Licensee operated outside of its permitted hours and violated "204 CMR 2.05(2) permitting illegalities and/or disorders on the liquor licensed premises." (Exhibit Z)¹

The Local Board presented Facebook postings seeking employees to work from 8:00 p.m. to 1:00 a.m. and advertising dancing from 8:00 p.m. to 1:00 a.m. as evidence of the Licensee's intent to operate beyond its approved closing hour, as well as a subsequent posting which stated '[d]ancin' on the deck was a HUGE HIT!!!' as proof the licensee did, in fact, operate beyond its approved closing hour. (Exhibit V)

The Licensee admitted operating until 1:00 a.m. on one occasion and only argued before the Commission as to the appropriateness of a sixty (60) day suspension as penalty for said violation. (Testimony)

Based on the evidence presented, the Commission finds the licensee violated 204 CMR 2.05(2) Permitting illegalities and/or disorders on the liquor licensed premises by operating outside of its approved hours of alcohol service. However, the Commission finds a suspension of 60 days unreasonable.

CONCLUSION

The Alcoholic Beverages Control Commission ("Commission" or "ABCC") **APPROVES** the action of the City of Wareham Licensing Board in finding the Licensee in violation.

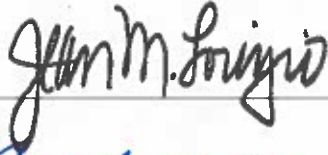
The Commission **DISAPPROVES** the action of the Local Board in suspending the license of Main Street Deli LLC d/b/a Onset Beach Patio & Grille for 60 days.

The Commission remands the matter with the recommendation that the Local Board issue a more reasonable sanction consistent with its rules and regulations regarding a second offense. The Commission recommends a penalty of no more than a two (2) day suspension.

¹ The Local Board also alleged violations of the Licensee's entertainment license. The Commission does not have jurisdiction over the entertainment license.

ALCOHOLIC BEVERAGES CONTROL COMMISSION

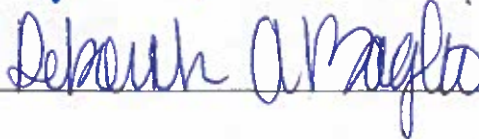
Jean M. Lorizio, Chairman



Crystal Matthews, Commissioner



Deborah Baglio, Commissioner



Dated: April 29, 2026

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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2024-000178-ad-enf

cc: Frank Evangelista, Licensee
Richard Bowen, Esq.
Local Licensing Board
Frederick G. Mahony, Chief Investigator
Administration, File