



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

Jean M. Lorizio, Esq.
Chairman

DECISION

**2030 OCEAN STREET LLC D/B/A WINE & MARKET
103 COMMERCE WAY
WOBURN, MA 01801
LICENSE#: NEW
HEARD: 6/08/2022**

This is an appeal pursuant to M.G.L. c. 138, § 67. 2030 Ocean Street LLC d/b/a Wine & Market (“Applicant” or “Wine & Market”) is appealing the action of the City of Woburn License Commission (the “Local Board” or “Woburn”) in denying its M.G.L. c. 138, § 15, All-Alcoholic Beverages Retail Package Store License application to be exercised at 103 Commerce Way, Woburn, Massachusetts. The Applicant timely appealed the Local Board’s action to the Alcoholic Beverages Control Commission (the “Commission” or “ABCC”), and a remote hearing via Microsoft Teams was held on Wednesday, June 8, 2022.

At the close of the June 8, 2022, hearing the Commission left the record open for the parties to submit post-hearing memorandum. The documents were submitted in a timely manner. The record is now closed.

The following documents are in evidence:

1. Wine & Market’s § 15 All-Alcoholic Beverages Retail Package Store application;
2. Legal Advertisement for Local Board’s March 17, 2022 Public Hearing;
3. Local Board’s Notice of March 17, 2022 Public Meeting;
4. Wine & Market’s Binder Presentation for Woburn Application;
5. Letters from 71 Residents of Woburn in Support of Wine & Market’s Application;
6. Letter from Metro North Retail Center of Woburn in Support of Wine & Market’s Application;
7. Plan of Land Showing Proposed Building Location and Parking;
8. Local Board’s Meeting Minutes, 11/18/2021;
9. Local Board’s Meeting Minutes, 1/27/2022;
10. Agenda for Local Board’s Meeting, 3/17/2022;
11. Local Board’s Meeting Minutes, 3/17/2022;
12. Agenda for Local Board’s Meeting 4/14/2022;
13. Local Board’s Meeting Minutes, 4/14/2022;

14. Agenda for Local Board's Meeting, 5/5/2022;
15. Local Board's Meeting Minutes, 5/5/2022;
16. Local Board's Notice of Decision and Statement of Reasons, 3/24/2022;
17. Video of Local Board's Hearing, 3/17/2022;
18. ABCC Decision in re: LLAWM-Malden LLC, 2/18/2022;

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:

1. 2030 Ocean Street LLC d/b/a Wine & Market ("Applicant" or "Wine & Market") is a Massachusetts limited liability corporation located in Marshfield, Massachusetts. Daniel Newcomb is the LLC manager. (Testimony, Exhibit 1)
2. On or about February 17, 2022, Wine & Market. applied for a § 15 all alcoholic beverages retail package store license to be exercised at 103 Commerce Way, Woburn, Massachusetts. (Exhibit 1)
3. On March 17, 2022, the Local Board held a public hearing on Wine & Market's application. Mr. Newcomb, Glenn Lawler, and Attorney Joseph Tarby attended the hearing on behalf of the Applicant. The Applicant submitted letters of support from residents and a business in Woburn with a plan showing the proposed building location and parking. The Applicant submitted Minutes of the Local Board's January 27, 2022, public meeting in which the Local Board had discussed Commerce Way as a proposed location for a § 15 license. (Exhibits 2, 3, 10, 11)
4. The Chairman of the Local Board stated, "my sole position is I think we have to hold a couple of meetings for the residents of the city to have some input on this [the public need for a 9th package store license in Woburn]." (Exhibit 17)
5. At the conclusion of the hearing, the Local Board voted 3-0 to deny Wine & Market's application. (Exhibits 11, 16)
6. The Local Board issued a written decision on March 24, 2022. The Local Board stated:

The basis for the denial was that the License Commission has not determined there is a public need or want for an additional off-premises location, notwithstanding notification from the ABCC that one additional off-premises all alcohol license could be issued based upon the results of the 2020 U.S. Census. The Commission indicated that it wished to set up meetings to solicit input on the issued.

(Exhibit 16)

7. The Applicant timely appealed the Local Board's decision to the Commission.
8. The Local Board held two more public hearings on April 14, 2022, and May 5, 2022, to solicit opinions of members of the public regarding the need for a ninth § 15 all-alcohol license. (Exhibits 13, 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; Beacon Hill Civic Assn. v. Ristorante Toscano, Inc., 422 Mass. 318, 321 (1996).

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. 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). As such, 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); accord Ballarin 49 Mass. App. Ct. at 512.

However, while this discretion of the local licensing authority is broad, "it is not untrammelled." Id. at 511. In Donovan, the Appeals Court held, "[n]either 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, 65 Mass. App. Ct. at 379.

A Local Board's inquiry into public need is not municipality-wide, but rather a "particularized analysis" of the application before it. Id. at 380. This includes a consideration of the business the applicant seeks to run and the location where it is seeking to run it. Id. In Ballarin, the Court identified several 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 512. Should a Local Board find a lack of public need for the Applicant’s business, it must then articulate its reasoning in a written decision. 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)).

Here, the Local Board did not conduct *any* analysis of public need for the Applicant’s business. Instead, it denied the application because “the License Commission has not determined there is a public need or want for an additional off-premises location, notwithstanding notification from the ABCC that one additional off-premises all alcohol license could be issued . . .” and that “it wished to set up meetings to solicit community input on the issue.” The lack of a public need analysis on the details of the application is necessarily arbitrary and capricious and based on an erroneous application of the law.

Furthermore, the sole basis for the denial of the application – that Woburn is unsure if it should issue its additional license to *any* applicant – is an improper overreach of the Local Board’s authority. The Local Board does not have the authority to ignore its quota. See Donovan, 65 Mass. App. Ct. at 379 (a local board cannot do “whatever it pleases whenever it chooses to do so”). For municipalities that have opted into the population-based quota system under M.G.L. c. 138, § 17, the number of available licenses is adjusted every ten years based on the certified results of the U.S. federal census.¹ Woburn participates in the quota system and must abide by its statutory terms, including recognizing the number of licenses it has based on its population.

Because the Local Board did not make a “particularized analysis of the business [the Applicant] was actually seeking to run and the location where [the Applicant] was seeking to run it,” Donovan, 65 Mass. App. Ct. at 380, the Commission remands this matter to the Local Board for consideration of public need on the Applicant’s application.

CONCLUSION

Based on the evidence and testimony presented at the hearing, the Commission **DISAPPROVES** the action of the City of Woburn in denying the M.G.L. c. 138, § 15 All-Alcoholic Beverages Retail Package Store license application of 2030 Ocean Street LLC and remands this matter to the Local Board for consideration of the Applicant’s application.

¹ This has been the case since 1992, when the legislature shifted from using the state census to the federal census. Acts of 1992, c. 403, § 28.

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Jean M. Lorizio, Chairman

Jean M. Lorizio

Crystal Matthews, Commissioner

Crystal Matthews

Deborah Baglio, Commissioner

Deborah A. Baglio

Dated: April 26, 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.

cc: