



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

Jean M. Lorizio, Esq.
Chairman

DECISION

**ST. ABRAAM, INC. D/B/A NEW ENGLAND MINIMART & GAS
814 WEST BOYLSTON ST.
WORCESTER, MA 01605
LICENSE#: NEW
HEARD: 1/30/2020**

This is an appeal of the action of the City of Worcester Licensing Commission (the "Local Board" or "Worcester") for denying the M.G.L. c. 138, § 15 wines and malt beverages retail package store license application of St. Abraam, Inc. d/b/a New England Minimart & Gas ("the "Applicant" or "NE Minimart & Gas") to be exercised at 814 West Boylston Street, Worcester, Massachusetts. The Applicant timely appealed the Local Board's decision to the Alcoholic Beverages Control Commission (the "Commission" or "ABCC"), and a hearing was held on Thursday, January 30, 2020.

The following documents are in evidence as exhibits:

1. One and a half-mile Radius Area Map of Applicant's store;
2. Half – mile Radius Area Map of Applicant's store;
3. Floor Plan Drawing of Applicant's store;
4. Applicant's letter of support petition;
- A. Applicant's Section 15 Application packet;
- B. ABCC Notice of Hearing, dated November 22, 2019;
- C. Local Board's decision letter, dated November 14, 2019;
- D. City of Worcester Planning Board's Map of existing § 15 off-premises alcoholic beverages licenses;
- E. Written Transcript of Local Board hearing held on October 31, 2019.

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. St. Abraam, Inc. d/b/a New England Minimart & Gas operates a convenience store and gas station at 814 West Boylston Street, Worcester, Massachusetts. NE Minimart & Gas has been in business for over six (6) years. (Testimony)
2. The store is approximately 1500 square feet in size with two (2) employees and serves mostly local customers from the neighborhood. The store sells lottery, snacks, beverages, coffee, candy, groceries and cigarettes. (Testimony, Exhibit A)
3. The Applicant applied for a \$15 wines and malt beverages license at this location in an effort to provide one-stop shopping for customers. (Testimony)
4. There are seven (7) existing \$ 15 package stores within a 1.5-mile radius of NE Minimart & Gas' location: (Testimony, Exhibits 1, 2, C & D)
 - a. Market 32 by Price Chopper holds a \$ 15 all alcoholic beverages license less than one mile from NE Minimart & Gas. (Exhibits 1, 2, C & D)
 - b. KJ Barrons Fine Wine & Spirits holds a \$ 15 all alcoholic beverages license less than one mile from NE Minimart & Gas. (Exhibits 1, 2, C & D)
 - c. Burncoat Market Store holds a \$ 15 wine and malt beverages license less than one and a half miles from NE Minimart & Gas. (Exhibit D)
 - d. Holden Brattle Store holds a \$ 15 wine and malt beverages license less than one and a half miles from NE Minimart & Gas. (Exhibit D)
 - e. Greendale Liquor & Package Store holds a \$15 all alcohol beverages license less than one and a half miles from NE Minimart & Gas. (Exhibits 1 & D)
 - f. O'Hara's Liquor Store holds a \$15 all alcohol beverages license less than one and a half miles from NE Minimart & Gas. (Exhibits 1 & D)
 - g. Drake Petroleum holds a \$ 15 wine and malt beverages license less than one and a half miles from NE Minimart & Gas. (Exhibit D)
5. On October 31, 2019, the Local Board held a public hearing regarding the Applicant's application. Counsel for the applicant presented at the Local Board hearing and stated that the applicant was seeking the license for the convenience of store customers and to prevent traffic that would be caused by patrons leaving and traveling to an existing retail package store.
6. There were no public comments offered at the hearing. (Testimony, Exhibit E)
7. The Local Board denied the application based on the "lack of public need of a new package store license in that area", and concerns about the appropriateness of the physical space of the applicant's store. The Local Board considered that there were already seven (7) existing off premise liquor licenses within a 1.5-mile radius of the proposed new location. (Testimony, Exhibit C)

DISCUSSION

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). Accordingly, 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”).

However, while this discretion of the local licensing authority is broad, “it is not untrammelled.” Ballarin, supra at 511. In the case of Donovan v. City of Woburn, 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, supra at 379. “Instead, ‘[w]here the factual premises on which [the board] purports to exercise 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)).

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, supra at 511. In Ballarin, the Appeals Court held 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, supra 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.

Furthermore, the statutory language is clear that there is no right to a liquor license of the type specified in M.G.L. c. 138, § 15. 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.” (Emphasis added) M.G.L. c. 138, § 23.

Despite no right to a liquor license, a local 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 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., *supra* at 880.

Here, the Local Board found after a hearing and deliberations, and consistent with the holding in Ballarin, that this area of Worcester is adequately served by the existing package stores and thus, the public need is already being met. Ballarin, *supra* at 511. In fact, there are seven (7) existing package stores in the immediate 1.5-mile radius of the proposed premises, NE Minimart & Gas. (Exhibits 1, 2 & D). In addition, the Local Board visited the proposed location and cited concerns with the physical space. Accordingly, the Local Board's determination is supported by the evidence. See Donovan, *supra* at 379 (The local board may deny a license even if the facts show that a license could be lawfully granted.).

This case is analogous to the Town of Middleton v. Alcoholic Beverages Control Comm'n where the applicant also owned a gas station and convenience store and applied for a retail package store license. The Town/Local Board of Middleton denied the application based on the Local Board'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. The Appeals Court further held that once a local board determines that an area is adequately served by the number of existing dispensaries, it need go no further. See Town of Middleton v. Alcoholic Beverages Control Comm'n, 64 Mass. App. Ct. 1108 (2005) (memo and order pursuant to Rule 1:28).

Furthermore, 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., *supra* at 839-840; Town of Middleton, *supra*. Accordingly, here, the Local Board's decision, that the area is adequately served by the existing package store licenses within a 1.5-mile radius of the proposed location, thus meeting the public need, was based on sufficient evidence. The Local Board's reliance on the City of Worcester Planning Department's map as well as their knowledge as to existing § 15 licenses in the area was reasonable and appropriate pursuant to the holdings in several well settled cases. Ballarin, *supra*; Donovan, *supra*; and Town of Middleton, *supra*. There is nothing in the record suggesting that the Local Board acted arbitrarily or capriciously. Therefore, the Commission finds that the decision of the Local Board is supported by the record and was not based upon an error of law.

CONCLUSION AND DISPOSITION

Based on the evidence and testimony at the hearing, the Commission **APPROVES** the action of the City of Worcester Licensing Commission for denying the M.G.L. c. 138, § 15 wines and malt beverages retail package license application of St. Abraam, Inc. d/b/a New England Minimart & Gas.

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Crystal Matthews, Commissioner



I, the undersigned, hereby certify that I have reviewed the hearing record and concur with the above decision.

Jean M. Lorizio, Chairman



Dated: May 20, 2020

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: Gerald E. Shugrue, Esq.
Jared J. Madison, Esq.
Local Licensing Board
Frederick G. Mahony, Chief Investigator
Administration, File