



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

Jean M. Lorizio, Esq.
Chairman

DECISION

**SDR FOOD MART INC. D/B/A YARMOUTH MINI MART
845 ROUTE 28
SOUTH YARMOUTH, MA 02664
HEARD: 11/20/2024 & 4/9/2025**

This is an appeal from the action of the Town of Yarmouth Select Board (the “Local Board” or “Yarmouth”) in denying the § 15 wine and malt beverages retail package store application of SDR Food Mart Inc. d/b/a Yarmouth Mini Mart (“Applicant” or “Mini Mart”) located at 845 Route 28, South Yarmouth. The Licensee timely appealed the Local Board’s decision to the Alcoholic Beverages Control Commission (the “Commission” or “ABCC”), and hearings were held on Wednesday, November 20, 2024, and Wednesday, April 9, 2025.

The following documents are in evidence:

1. Local Board Decision dated 9/17/2024;
2. Video of the Local Board’s Hearing on 9/10/2024;
3. Transcript of the Local Board’s Hearing on 9/10/2024;
4. Photographs (5) of Comunidade Evangélica do Cape Cod and C.E. Kids Church;
5. Email Chain, 7/31/2024- 8/5/2024;
6. Local Board Abutter’s Notice with List of Abutters dated 8/2/2024;
7. Local Board Amended Decision with Certificate of Vote dated 1/21/2025;
8. Local Board Meeting Minutes dated 9/10/2024;
9. Email Chains, 7/24/2024- 2/20/2025 with List of Abutters.

There are audio recordings of the hearings and five (5) witnesses testified.

FINDINGS OF FACT

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

1. SDR Food Mart Inc. d/b/a Yarmouth Mini Mart applied for an M.G.L. c. 138, § 15, annual wine and malt beverages retail license to the Town of Yarmouth Select Board. (Testimony)
2. The Local Board held a hearing concerning Mini Mart’s § 15 application on September 10, 2024. (Testimony, Exhibits 2, 3, 8)

3. The Applicant was unaware there was a church in the same shopping plaza as Mini Mart. The church was not provided notice as required by M.G.L. c. 138, § 15A. (Testimony, Exhibits 2, 3, 4, 6, 7, 8, 9)
4. The Local Board's primary discussions regarding Mini Mart's application involved its proposed location and close proximity to a low-income housing development as well as the fact that Yarmouth Mini Mart was a convenience store. (Testimony, Exhibits 2, 3, 7, 8)
5. The Local Board briefly discussed that there were several other retail alcoholic beverages establishments on Route 28. Id.
6. The Local Board voted two (2) in favor and two (2) opposed to Mini Mart's application at their hearing on September 10, 2024. (Testimony, Exhibits 1, 2, 3)
7. By a written decision dated September 17, 2024, the Local Board memorialized its vote denying Mini Mart's M.G.L. c. 138, § 15, annual wine and malt beverages retail license application. (Exhibit 1)
8. Mini Mart timely appealed the Local Board's decision to the ABCC. (Commission Records)
9. On January 8, 2025, the Commission remanded Mini Mart's appeal to the Local Board to issue subsidiary findings and statement of reasons upon which it made its decision denying Mini Mart's application for a M.G.L. c. 138, § 15, annual wine malt beverages retail license. (Commission Records)
10. In an amended decision dated January 21, 2025, the Local Board listed ten (10) findings of fact upon which it relied in denying Mini Mart's application:
 - a. The Mini Mart is located at 845 Route 28 in South Yarmouth, Massachusetts, in a small shopping plaza, and has existed for many years without the sale of alcohol;
 - b. The Mini Mart has submitted an application for a new wine and malt beverage license under G.L. c. 138, § 15;
 - c. The Mini Mart does not have any known history of violations;
 - d. Historically, with one known exception, licenses for retail sales of alcohol have not been issued to mini marts in the Town of Yarmouth;
 - e. The applicant did not demonstrate a public need for the license in that location, but rather, relied on the argument that other establishments have been granted licenses so he should receive a license as well;
 - f. In the surrounding area on Route 28 in Yarmouth there are already several other licensed premises for the retail sale of alcohol, including two within a mile of the Mini Mart, with one of those within less than half of a mile;

- g. There is located directly adjacent to the Mini Mart one of the Town's largest low-income housing developments from which large numbers of people frequent the plaza to smoke cigarettes, which is not permitted on the housing development property;
- h. There is a church located within the shopping plaza in close proximity to the Mini Mart and with a separate Children's Ministry in even closer proximity, neither of which were acknowledged in the application;
- i. There is a food pantry located within the shopping plaza in close proximity to the Mini Mart; and
- j. The potential negative impacts of the sale of alcoholic beverages on the housing development, church or the food pantry were not given consideration by the applicant at the hearing. (Exhibit 7)

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 could be lawfully 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 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. Ct. 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”). However, while this discretion of the local licensing authority is broad, “it is not untrammelled.” Ballarin, 49 Mass. App. Ct. at 511.

M.G.L. c. 138 §15A requires notice to be provided to abutters as well as any hospital, school or church located within a five-hundred-foot radius of a proposed licensed premises. 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.

Here, the Applicant did not know there was a church in the same shopping plaza and as a result, the church was not noticed prior to the Local Board hearing on Mini Mart’s application. (Testimony, Exhibits 2, 3, 4, 6, 7, 8, 9). The Commission concludes, by reasonable inference, the church is within a radius of five- hundred (500) feet of the proposed premises. (Testimony, Exhibit

4) Failing to provide the statutorily required notice to the church before the Local Board hearing is fatal to Mini Mart's application.

Two Local Board members voted to approve Mini Mart's § 15 application and two voted to deny it. (Testimony, Exhibits 1, 2, 3, 7, 8) A majority vote in the affirmative is required to grant an alcoholic beverage license. A tie vote results in a denial. See Price Chopper Operating Co. of Massachusetts Inc., (ABCC Decision, September 12, 2023).

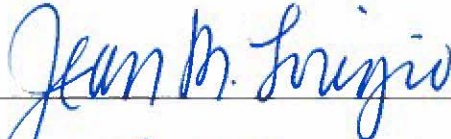
Given the Commission's finding that the applicant did not provide notice pursuant to M.G.L. c. 138 §15A to the church located in the same shopping plaza as its business, the Commission need not determine the merits of the Local Board's additional reasons for denying Mini Mart's application. The Commission must affirm the Local Board's disapproval of Mini Mart's § 15 application for that reason alone.

CONCLUSION

Based on the evidence and testimony presented at the hearings, the Commission **APPROVES** the action of the Town of Yarmouth in denying the M.G.L. c. 138, § 15 Wine and Malt Beverages Package Store Application of SDR Food Mart Inc. d/b/a Yarmouth Mini Mart.

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Jean M. Lorizio, Chairman



Crystal Matthews, Commissioner



Deborah Baglio, Commissioner



Dated: June 24, 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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cc: Louis A. Cassis, Esq.
Per C. Vaage, Esq.
Local Licensing Board
Frederick G. Mahony, Chief Investigator
Administration, File