STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF BUSINESS REGULATION
JOHN O. PASTORE COMPLEX
1511 PONTIAC AVENUE
CRANSTON, RI 02920

PLW-MA, Inc. d/b/a Blackstone Wine and and Spirits,	:	
Appellant,	:	
v.	:	**DBR No.: 08-L-0148**
City of Pawtucket Board of License Commissioners,	:	
Appellee,	:	
and	:	
Nawee Liquors, Inc. d/b/a Darlington Liquors and CJ Liquors, Inc. d/b/a Countryside Liquors,	:	
Intervenors.	:	

DECISION

Hearing Officer: Catherine R. Warren, Esquire

Hearing Held: October 28 and November 13, 2008

Appearances:

For:	PLW-MA, Inc. d/b/a Blackstone Wine and Spirits:	Michael F. Horan, Esquire
For:	City of Pawtucket Board of License Commissioners:	Frank J. Milos, Jr., Esquire
For:	Nawee Liquors, Inc. d/b/a Darlington Liquors and CJ Liquors, Inc. d/b/a Countryside Liquors:	Michael E. Sendley, Esquire

I. INTRODUCTION

On or about July 23, 2008, the City of Pawtucket Board of License Commissioners ("Board") denied a request by PLW-MA, Inc. d/b/a Blackstone Wine and Spirits ("Appellant") to transfer its Class A liquor license ("License") from its current location to a proposed new location ("Proposed Location"). Pursuant to R.I. Gen. Laws § 3-7-21, the Appellant appealed the Board's decision to the Director of the Department of Business Regulation ("Department"). By order dated September 5, 2008, Nawee Liquors, Inc. d/b/a Darlington Liquors ("Darlington") and CJ Liquors, Inc. d/b/a Countryside Liquors ("Countryside") (collectively "Intervenors") were allowed to intervene. A *de novo* hearing was held on October 28 and November 13, 2008 before the undersigned sitting as a designee of the Director. The parties timely filed briefs by December 22, 2008. In light of a Superior Court decision issued on January 2, 2009 (and discussed below), the undersigned opened the record and the parties submitted supplemental memoranda by January 30, 2009.

II. JURISDICTION

The Department has jurisdiction over this matter pursuant to R.I. Gen. Laws § 3-5-1 *et seq.*, R.I. Gen. Laws § 3-7-21, and R.I. Gen. Laws § 42-35-1 *et seq.*

III. ISSUES

Whether to uphold or overturn the Board's decision to deny the request to transfer the License from its current location to the Proposed Location.

IV. MATERIAL FACTS AND TESTIMONY

The Appellant is currently located at 1179 Central Avenue, Pawtucket, RI and the Proposed Location is located at 295 Armistice Boulevard, Pawtucket, RI. See Joint Exhibit One (1).

Henry S. Kinch, Jr. ("Kinch"), Pawtucket City Councilor, testified on behalf of the Board. He testified that he is a member of the City Council and is familiar with area. He testified that he is aware that there are several liquor stores in that area. He testified that while the measurement between Darlington and the Proposed Location is in dispute, the Proposed Location is effectively across the street from another liquor store. He testified that another reason for his no vote was that the Proposed Location has a large parking lot which is an invitation for loitering. He testified that there is a railroad track in the Proposed Location's shopping plaza which is already covered with debris and a liquor store would increase the likelihood of loitering. He testified that there is already a loitering problem with the one (1) or two (2) of the non-alcoholic businesses located in the shopping plaza. He testified that he was at the local hearings on July 9 and 23, 2008. He testified that there are several neighbors who testified at those hearings that are opposed to the transfer.

On cross-examination, Kinch testified that there are already loitering problems in the parking lot because there is a Dunkin' Donuts and McDonald's at opposite ends of the plaza's parking lot and late at night, there is noise and litter. He testified that he has received complaints about Dunkin' Donuts but not about McDonald's and the complaints are about congregating, noise, and excessive music after 9:00 p.m. He testified he believes Appellant's would close at 10:00 p.m. and he has concerns that people are going to buy liquor, stay in their cars, and drink in the parking lot. He testified that he is not aware of any such violations at the Appellant's current location but that location does not have a good size parking lot. He testified that the Proposed Location is not adjacent to

the railroad tracks and the trash is in the parking lot is near the Dunkin' Donuts and the railroad tracks. He testified that his decision was based on input from his constituents.

On redirect examination, Kinch testified he didn't believe there is a community need for another liquor store in the Proposed Location.

Stephen J. Beauregard ("Beauregard") testified on behalf of the Board. He testified that he owns S. J. Beauregard Construction which performs excavating, utility and paving work and he has performed that type of construction work for 32 years. He testified that on a daily basis he makes measurements on the ground with a measuring wheel. He testified that a measuring wheel is a calibrated round wheel with a handle and it starts measuring at tens of feet and goes up to thousands of feet so when one walks around the ground with it, it tells one how far one has traveled. He testified that he has been using a measuring wheel for 32 years.

Beauregard testified that on July 16, 2008, he made measurements at the Proposed Location. See Appellees' Exhibit One (1)[1] (aerial photograph of the area). He testified that he walked from the site of the Proposed Location (vacant store) directly out to Armistice Boulevard which is marked by a jagged red line on Appellee's Exhibit One (1). He testified that he measured from that point on Armistice Boulevard to the corner of Armistice Boulevard and York Avenue and that distance was 173 feet. On re-direct examination, Beauregard testified he measured from the second store from the corner but did not include the tan store next door as seen in Appellees' Exhibit One (1).

On cross-examination, Beauregard testified that he ran the initial line at 180 degrees from the Proposed Location across the parking lot to Armistice Boulevard and from there to Darlington. He testified that the 173 feet measurement terminated at the

[1] The Appellees refers to both the Board and the Intervenors.

"granite bound" where the two (2) curbs of Armistice Boulevard and York Avenue meet on the shopping plaza side of the intersection. See Appellees' Exhibit One (1). He testified that when measuring a state highway, one measures the right-of-way which would not include private property.

The parties agreed that the R.I. Gen. Laws § 3-7-4 measurement would terminate at a current Class A liquor licensee's premises (in this matter, Darlington's parking lot) and not the building.[2] The parties agreed under R.I. Gen. Laws § 3-7-4 that crossing Armistice Boulevard and York Avenue to access Darlington is not included in the measurement because a street width is excluded.

Tomas C. Heng ("Heng") testified on behalf of the Board. He testified that he and his wife have owned Darlington for approximately four (4) years. He testified it is located on 346 Armistice Boulevard, is approximately 1,000 square feet, and most of his customers are from the neighborhood. He testified that he is familiar with the Proposed Location. He testified that he believes the neighborhood doesn't need another liquor store and his understanding is the new liquor store will be 7500 square feet which is over seven times the size of his liquor store. He testified that he believes that he will be put out of business if the Appellant moves to the Proposed Location.

On cross-examination, Heng testified that he doesn't know if the Appellant has had any complaints at the current location and his basic objection is that the size of the proposed store will result in unfair competition and another liquor store could lead to more underage drinking.

Robert Jacobs ("Jacobs") testified on behalf of the Board. He testified that he has owned Countryside since 2004. He testified that he leases the building and it is a family

[2] Transcript of first day of hearing, October 28, 2008, page 54.

owned business. He testified his business is 900 feet of retail space and is much smaller than the Proposed Location. He testified that because he has a small store with a small parking area, he is able to see what is happening. He testified that there are many liquor stores in the area and he doesn't see a need for another liquor store.

On cross-examination, Jacobs testified that there are many other liquor stores in the area but he believed that there would be a competition issue if the Appellant moves to the Proposed Location.

Steven Wiglusz ("Wiglusz") testified on behalf of the Board. He testified that he lives very near the Proposed Location and is familiar with the other two (2) liquor stores which are little stores. He testified that he testified at the local hearing. He testified that he objects to the transfer application because he believes there are enough liquor stores in the area and a large liquor store would increase traffic, loitering, and littering. He testified that there are no traffic issues for Darlington or Countryside. He provided a hand drawn map of the area and testified that there are already nine (9) liquor stores in close proximity to the Proposed Location so there are plenty of options in a one mile circle. See Appellees' Exhibit Four (4). On cross-examination, Wiglusz testified that the Proposed Location is now vacant and that any business going into it would bring traffic but he believes a liquor store would increase other traffic.

Jeanne Beach ("Beach") testified on behalf of the Board. She testified that she lives (3) blocks from the Proposed Location. She testified that she testified before the local hearing because her daughter worked at the Dunkin' Donuts in the plaza and that a lot of teenagers hang out in the plaza and while they weren't causing problems, a large liquor store would be a magnet because the people who would work there wouldn't really

know the customers and that there be more of a chance that someone underage would be served. She testified that she is familiar with Darlington and Countryside and has never seen loitering there. She testified that she doesn't believe there is a need for another liquor store because there are enough in the area. On cross-examination, Beach testified that she is not aware of any complaints against the Appellant and that her concern about the serving of minors has nothing to do with the Appellant's history.

Paul J. Wildenhain ("Wildenhain"), Pawtucket City Councilor, testified on behalf of the Board. He testified that he has been a Councilor for eleven (11) years and is a life-long resident of Pawtucket. He testified that he is familiar with the Appellant's current location and the Proposed Location which are both in his district. He testified that some neighbors spoke at the first hearing and he received a couple of telephone calls from some constituents that were concerned that the Appellant could put the other stores out of business. He testified that he voted to transfer the License to Appellant in 2005 and believes the Appellant is qualified to operate a liquor store but does not believe there is a community need for the proposed transfer. On cross-examination, Wildenhain testified that Craig Power has been operating the Appellant store for three (3) years and there have been no complaints concerning his operation. On redirect examination, Wildenhain testified that one of the reasons to deny the application was to avoid oversaturating the area with liquor stores and that based on the Pawtucket map, there are certain areas that have very high concentration of liquor stores.

Lawrence Platt ("Platt") testified on behalf of the Appellant. He testified that he owns Platt Realty Group and has been in the shopping center business for 25 years. He testified that he has been affiliated with said shopping plaza for at least seven (7) years as

an in-house leasing agent for the former landlord and now for the current landlord. He testified that the plaza is about 107,000 feet which includes the McDonald's and Dunkin' Donuts and there are about 535 parking spaces. He testified that the Proposed Location's lease is for the former Rojacks store which was about 52,000 square feet and has been vacant for three (3) to four (4) years so that half of the plaza's space has been empty.

Stephen Wildenhain ("S. Wildenhain") testified on behalf of the Appellant. He testified that he has worked as a surveyor for 27 years and conducted a survey of the area in question. He testified that he regularly works under the license of John B. Dupont, a professional land surveyor. He testified that he measured from the point on the sidewalk adjacent to the Proposed Location's building to the corner of Armistice Boulevard and York Avenue. He testified that his measurement was on the sidewalk where York Avenue was designated rather than where the measurement is designated on Appellant's Exhibit Three (3) (the exhibit has the measurement in the parking lot). He testified that the measurement was 270 feet. He testified he used a "total station" which is laser gun that shoots lasers to a prism that then gives the distance.

On cross-examination, S. Wildenhain testified that when Ronald Travers (Pawtucket Director of Zoning) made the measurement of 258 feet, he measured from the apron in front of the building rather from the corner of the building. He testified he believed the apron is approximately ten (10) feet wide. See Joint Exhibit One (1) (Travers' memorandum of July 17, 2008 and map).

Craig Power ("Power"), the Appellant's owner, testified on the Appellant's behalf. He testified that he is the sole officer, director, and stockholder of the Appellant's and has been affiliated with the company since he purchased it in October 2005. He

testified that he hasn't had any problems with his location but believes that the Proposed Location is a better location. He testified that the Proposed Location has better visibility from the street in that his current location doesn't face Central Avenue. He testified that there would be more vehicles passing by the Proposed Location and the increased square footage would allow him to offer more products. He testified that his hours are 9:00 a.m. to 9:00 p.m. Mondays through Thursdays, 9:00 a.m. to 10:00 p.m. on Fridays and Saturdays, and 12:00 noon to 6:00 p.m. on Sundays. He testified that he currently has two (2) full-time employees and a part-time employee. He testified he has a tentative ten (10) year lease for the Proposed Location subject to transfer approval.

Power testified that he obtained from the Department website a 2006 listing of Pawtucket Class A liquor licensees and there are 27 Class A licensees in Pawtucket. He testified that he reviewed the map and went to all the Class A liquor licensees' locations in order to plot them on the map because of the Board's concerns about oversaturation by liquor stores. See Appellant's Exhibits Four (4) and Five (5) (Pawtucket map with Class A licensees). He testified that he does not believe the area is oversaturated with liquor licensees.

On cross examination, Power further testified that he leases his current location of 2000 square feet and he wants to leave for economic gain. He testified that he has been in the retail business since 1975 with over fifteen (15) years experience in the liquor industry. He testified that he works for wine and spirit retail which is a consulting firm and a franchisor.[3]

[3] The parties confirmed that the Appellant was not part of the matter prosecuted by the Department of Business Regulation involving "Douglas Wine and Spirits" that related to the franchising of liquor licenses. In addition, the Board had previously reviewed such allegations against this Appellant and found them to be meritless. See Joint Exhibit One (1).

V. DISCUSSION

A. Legislative Intent

The Rhode Island Supreme Court has consistently held that it effectuates legislative intent by examining a statute in its entirety and giving words their plain and ordinary meaning. *In re: Falstaff Brewing Corp.,* 637 A.2d 1047, 1049 (R.I. 1994). See *Parkway Towers Associates v. Godfrey*, 688 A.2d 1289 (R.I. 1997). The Rhode Island Supreme Court has also established that it will not interpret legislative enactments in a manner that renders them nugatory or that would produce an unreasonable result. See *Defenders of Animals v. Dept. of Environmental Management,* 553 A.2d 541 (R.I. 1989) (citing *Cocchini v. City of Providence*, 479 A.2d 108, 111 (R.I. 1984). In cases where a statute may contain ambiguous language, the Rhode Island Supreme Court has consistently held that the legislative intent must be considered. *Providence Journal Co. v. Rodgers*, 711 A.2d 1131, 1134 (R.I. 1998). The statutory provisions must be examined in their entirety and the meaning most consistent with the policies and purposes of the legislature must be effectuated. *Id.*

In regard to the liquor statutory scheme, the Rhode Island Supreme Court has stated that the legislature expressly provided for state control and has adopted a system for administering such control in a manner which it deems the "most likely to be productive of the public good." *Bd. of License Comm'rs v. Daneker*, 78 R.I. 101, 107 (R.I. 1951).

B. Statutory Construction

The Rhode Island Supreme Court has stated that it will not read a statute literally if to do so will attribute to the legislature a meaning or result which is contrary or inconsistent with the evident purposes of the act. *See Rhode Island Consumers' Council v. Public*

Utilities Commission, 267 A.2d 404 (R.I. 1970). Thus, for example one cannot interpret a statutory section based on its title alone. *See Orthopedic Specialists, Inc. v. Great Atlantic & Pacific Tea Co., Inc.*, 388 A.2d 352 (R.I. 1978) (declaring that "as a general proposition of statutory construction, titles do not control meaning of statutes").

C. Relevant Statutes

The Board based one of its reasons for denying the Appellant's application on R.I. Gen. Laws § 3-7-4 which states in part as follows:

> Proximity of Class A licenses. – (a) Retailer's Class A licenses under this chapter shall not be issued to authorize the sale of beverages in any store or place within two hundred feet (200') measured by any public way of another premises holding a Class A license. Licenses presently issued to premises within two hundred feet (200') of the premises where another Class A license is presently issued, may continue to be issued to those premises so long as those premises are in continuous operation under the license. Any transfer or removal from those premises of the license is subject to the provisions of this section. Where a proposed licensed place is upon the opposite side of the street from an existing license, the width of the street is to be disregarded in measuring the distance so as to ascertain if it is two hundred feet (200') away from the premises.

The Appellant argued that this statute is similar to R.I. Gen. Laws § 3-7-19 which states in part as follows:

> Objection by adjoining property owners – Proximity to schools and churches. – (a) Retailers' Class B, C and I licenses under this chapter shall not be issued to authorize the sale of beverages in any building where the owner of the greater part of the land within two hundred feet (200') of any point of the building files with the body or official having jurisdiction to grant licenses his or her objection to the granting of the license, nor in any building within two hundred feet (200') of the premises of any public, private, or parochial school or a place of public worship. In the city of East Providence, retailer's Class A licenses shall not be issued to authorize the sale of beverages in any building within five hundred feet (500') of the premises of any public, private, or parochial school or a place of public worship.

The regulation relating to the implementation of R.I. Gen. Laws § 3-7-19(a) is Rule 41 of *Commercial Licensing Regulation 8 - Liquor Control Administration* ("CLR8") which states as follows:

> Rule 41 200 Foot Rule – Retail The area within two-hundred feet (200') of a proposed licensed premise as referred to in §3-7-19 shall be measured from the closest point of the building constituting the proposed licensed premises to the premises of the property owner entitled to object, including the building or land or appurtenances. The licensed premise shall not be altered or expanded without the written approval of the licensing authority issuing the license.

D. The Transfer of a Liquor License

It is a matter of law that local licensing boards have broad discretion in deciding whether or not to grant a liquor license application. "The granting or denying of such licenses is in no sense an exercise of the judicial process. On the contrary it is purely administrative. In performing that function the board act (sic) as agents of the legislature in the exercise of the police power. . . . [I]t is a matter of discretion whether or not they shall grant the license and this court has no control over their decision." *Bd. of Police Comm'rs v. Reynolds*, 86 R.I. 172, 176 (1975). The Department has the same broad discretion in the granting or denying of liquor licenses. *Id.*, at 177. See also *Domenic J. Galluci, d/b/a Dominic's Log Cabin v. Westerly Town Council*, LCA –WE-00-04 (10/25/00); *Donald Kinniburgh d/b/a Skip's Place v. Cumberland Board of License Comm'rs*, LCA–CU-98-02 (8/26/98).

R.I. Gen. Laws § 3-5-19 governs the transfer or relocation of a liquor license. The transfer of a liquor license pursuant to R.I. Gen. Laws § 5-3-19 is treated the same as a new application. *Ramsay v. Sarkas*, 110 R.I. 590 (1972). See *Island Beverages v. Town of Jamestown*, DBR No. 03-L-0007 (3/13/03). The application to transfer the

License to the Proposed Location is to be treated as a new application for a Class A liquor license.

The Department will not substitute its opinion for that of the local town but rather will look,

> for relevant material evidence rationally related to the decision at the local level. Arbitrary and capricious determinations, unsupported by record evidence, will be considered suspect. Since the consideration of the granting of a license application concerns the wisdom of creating a situation still non-existent, reasonable inferences as to the effect a license will have on a neighborhood must be logically and rationally drawn and related to the evidence presented. A decision by a local board or this Office need not be unassailable, in light of the broad discretion given to make the decision. *Kinniburgh*, at 17.

i. R.I. Gen. Laws § 3-7-4

R.I. Gen. Laws § 3-7-4 applies to a transfer of a Class A liquor license. Said statute states that a Class A liquor license cannot be authorized "within two hundred feet (200') measured by any public way of another premises holding a Class A license" and when making such measurement, "[w]here a proposed licensed place is upon the opposite side of the street from an existing license, the width of the street is to be disregarded in measuring the distance so as to ascertain if it is two hundred feet (200') away from the premises." There is no dispute that another Class A liquor licensee is located across the street from the Proposed Location. The Proposed Location is located at 295 Armistice Boulevard and Darlington is located at 346 Armistice Boulevard. See Appellees' Exhibit One (1) and Appellant's Exhibit Three (3). Instead, the parties dispute what is the correct way to measure the distance between the Proposed Location and Darlington.

After the end of prohibition of liquor within the United States, Rhode Island implemented a new system of statewide control of liquor coupled with local authority to grant certain licenses. See P.L. 1933 ch. 2013. The intent of the new system was to

eliminate the old unsupervised system of local regulation that resulted in a lack of uniformity and instead vested broad powers of control and supervision in a state system. *Baginski v. Alcoholic Beverage Commission*, 4 A.2d 265 (R.I. 1939).[4]

It is instructive to review the pertinent legislative history of R.I. Gen. Laws § 3-7-4 as there has not been any Department, Superior Court or Supreme Court case that addresses the issue of the method of measurement under said statute. The first mention of any type of 200 feet measurement is in the initial liquor law of 1933 which contains the prohibition against issuing a class C license (a "saloon" license) to any building or place where the owners of the greater part of land within 200 feet of such building object. It also prohibited issuing a Class C license to any building or place within 200 feet measured by "any public way" of the premises of a public or parochial school or a place

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[4] *Baginski*, at 266-267, found as follows:

> Chapter 2013 is a familiar and well-recognized example of the legitimate exercise of the police power. *Tisdall v. Board of Aldermen*, 57 R.I. 96, 188 A. 648. The act is entitled an act to promote temperance and to control the manufacture, transportation, possession and sale of alcoholic beverages. Its chief purpose may, without question, be said to be the safeguarding of the public health, safety and morals. *Clark v. Alcoholic Beverage Commission*, 54 R.I. 126, 170 A. 79.
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> The traffic in intoxicating liquors has ever been a prolific source of evils, gravely injurious to the public welfare. The need of its regulation and control is undisputed. In a search for a system of effective, impartial and uniform regulation and control of this traffic our legislature enacted the above chapter [P.L. 1933 ch. 2013] which was later amended by P.L.1934, chap. 2088. This system is a departure from that which had long existed here prior to the advent of national prohibition. Then the regulation and control of substantially every phase of the liquor traffic was vested exclusively in the local governing bodies. The state exercised over this local administration no administrative supervision or control, except occasionally in some cities and towns the legislature intervened to set up state-appointed license commissions or police commissions with licensing powers; but such commissions were vested with purely local administrative powers only. They were not commissions with state-wide jurisdiction.
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> Chapter 2013 changed all this. Where, before, the emphasis was exclusively on control locally, now it is predominantly on state control. This is evident in many sections of the act. Running through the entire act is the central idea that the traffic in intoxicating liquors is a problem that is state-wide; and correspondingly, that state supervision and control, either originally in some phases or ultimately in others, alone can adequately cope with it. However, along with the incorporation into the law of this new idea, there has been retained a remnant of local administration. An example of this is the right of local boards to grant and to revoke, at least in the first instance, class C licenses. Such licenses correspond to the retail licenses, popularly known as saloon licenses under the old law.

of worship. See P.L. 1933 ch. 2013 § 21. In 1936, Class B licenses were included in the same prohibitions applicable to Class C licenses. In addition, the law was amended to provide, "[c]lass A licenses under this act shall not be issued to authorize the sale of beverages in any building or place within two hundred feet measured by any public way of another premises holding a class A license." See P.L. 1936 ch. 2338 § 4. In 1941, the statute was amended so that the 200 feet measurement for the Class A licensee's proximity to another Class A licensee that is to be made by any public way shall exclude the width of the street. See P.L. 1941 ch.1038 § 1. In 1956, R.I. Gen. Laws § 3-7-4 and R.I. Gen. Laws § 3-7-19 were codified into those sections.

In 1961, the Rhode Island Supreme Court in *Newport Motor Inn, Inc. v. McManus*, 171 A.2d 440 (R.I. 1961) interpreted R.I. Gen. Laws § 3-7-19. *Newport* found that the fact the word "premises" was not used in the statute in connection with "building or place" where liquor was to be dispensed was not significant. The Court stated that schools usually have grounds attached to them while a building where liquor is to be sold more often adjoins the highway itself. The Court went on to find "that in passing the statute the legislature had in mind the nearness of the respective premises to each other." However, the Court was not substituting the term "premises" for "building" as it had already found that buildings used for liquor locations as opposed to schools or churches did not have playgrounds, etc. Merely, the Court was stating that the intent of the statute was to determine how close two (2) entities are. As the Court found, it is at the entrance to "church property" that parishioners entering or leaving would observe the patrons of the place serving liquor. *Id.*, 442-443. In addition, *Rice v. Board of License*

Commissioners of Central Falls, 88 A. 885 (R.I. 1913) had found that the term "premises" when used to refer to real estate includes appurtenances and property.

In 1962, after the *Newport* case, R.I. Gen. Laws § 3-7-19 was amended and the 200 feet measurement between a Class B, C, or I license and a public or parochial school or a place of worship was no longer to be measured by any public way. See P.L. 1962 ch. 238. However, R.I. Gen. Laws § 3-7-4 was not amended and the 200 feet measurement by any public way stayed the same

Clearly the legislature chose different methods of measuring in R.I. Gen. Laws § 3-7-4 and R.I. Gen. Laws § 3-7-19. Prior to the 1962 amendment, Class B and C licenses' proximity to schools and places of worship was to be measured by "any public way." The 1962 amendment changed the measurement to the 200 feet radius used to measure the owners of the land within 200 feet of the licensee. The legislature chose not to amend the method of measuring the proximity of two (2) Class A licensees.

In terms of the measuring under R.I. Gen. Laws § 3-7-19, the Department has consistently found that pursuant to *Newport* and *Rice,* the proper measurement under R.I. Gen. Laws § 3-7-19(a) is from the building where the liquor license is to be located to the church or school premises. See *J.A.P., Inc., d/b/a Café Pazzo v. City of Providence Board of Licenses*, DBR 02-L-0037 (3/29/04); *Sahara–African Buffet, Inc. v. Providence Board of Licenses*, DBR 03-L-0183 (2/26/04); and *Falcone v. Town of Charlestown*, LCA-CH-99-28 (5/16/00). See Rule 41 of CLR8.

Because R.I. Gen. Laws § 3-7-19 had been raised as part of the parties' arguments, the undersigned reopened the record in light of the Superior Court decision entitled *Aldo's Place Inc. d/b/a Water Street Café v. Jeffrey Greer, et al.*, C.A. No. 07-

5154 (January 2, 2009). This decision remanded a decision to the Department in order for it to consider the effect of parking areas and access areas on measuring from a building pursuant to R.I. Gen. Laws § 3-7-19.

The Appellant argued that *Aldo's* is distinguishable from this matter in that it applies to R.I. Gen. Laws § 3-7-19 which does not measure by a public way as does R.I. Gen. Laws § 3-7-4. The Board and Intervenors argued that R.I. Gen. Laws § 3-7-4 does not permit the License transfer to be granted and that Aldo's supports their interpretation that the measurement does not include the parking lot.

Both R.I. Gen. Laws § 3-7-19 and R.I. Gen. Laws § 3-7-4 refer to measuring from a building/store to a premise. R.I. Gen. Laws § 3-7-19 speaks of the distance from the premises of a school or a place of worship. R.I. Gen. Laws § 3-7-4 speaks of the distance from the premises of another Class A licensee. In light of the use of "premises" in the statute, the parties agreed that as in R.I. Gen. Laws § 3-7-19, the measurement in R.I. Gen. Laws § 3-7-4 was to be made from the Proposed Location to the edge of Darlington's parking lot so that Darlington's building and adjoining property is part of its premises. However, R.I. Gen. Laws § 3-7-19 uses a radius measurement which is not the measurement used in R.I. Gen. Laws § 3-7-4. Thus, R.I. Gen. Laws § 3-7-19 is only similar as it relates to its use of the term "premises."

Thus, the issue remains where to measure from the Proposed Location. The Appellant argued that as in R.I. Gen. Laws § 3-7-19, the measurement should be from next to the Proposed Location's building and along York Avenue to the intersection of York Avenue and Armistice Boulevard (across the street from Darlington's premises) so that the street width is excluded. That measurement is 270 feet. Excluding the apron in

front of the Proposed Location, that same measurement is 258 feet. The Board argued that the measurement should start in front of the Proposed Location but not from the building but on Armistice Boulevard so that the parking lot in front of the building is excluded. The measurement along Armistice Boulevard to Darlington's premises (so excluding the same intersection as above) is 173 feet.

There is no dispute that either of those actual numerical measurements is wrong. What is in dispute is which measurement is the appropriate measurement under the statute. The statute requires the determination of whether the Proposed Location is within 200 feet of another Class A measuring by "any public way."

The term "any" has a broad meaning that on its face does not limit or specify the number of things to which it refers. Thus, it does not limit the measurement between two (2) Class A licensees to only one (1) measurement if there can be more than one (1) measurement under the statute by a public way.[5] It is conceivable that depending on the location of a licensee, its building, its premises, a proposed licensee, and the public ways, that there could be more than one way to measure by a public way between a Class A licensee and a proposed Class A licensee.

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[5] Even if a statute does not define every term, that does not make that statute ambiguous. In *Roadway Express, Inc. v. Rhode Island Commission for Human Rights*, 416 A.2d 673 (R.I. 1980), the Court relied on a dictionary definition in applying the "ordinary meaning" of "must." *Id.*, at 674. As the Court has found, "[i]n a situation in which a statute does not define a word, courts often apply the common meaning given, as given by a recognized dictionary." *Defenders of Animals, Inc.*, at 543.

Random House Webster's Unabridged Dictionary, 2nd Edition (2001) defines "any" as follows:

> 1. one, a, an, or some; one or more without specification or identification ion: *If you have any witnesses, produce them. Pick out any six you like.* 2. whatever or whichever it may be: *cheap at any price.* 3. in whatever quantity or number, great or small; some: *Do you have any butter?* 4. every; all: *Any schoolboy would know that. Read any books you find on the subject.* 5. (following a negative). at all: *She can't endure any criticism –pron.* 6. an unspecified person or persons; anybody, anyone: *He does better than any before him.* 7. a single one or ones; an unspecified thing or things; a quantity or number. *We don't have any left. –adv.* 8. in whatever degree; to some extent; at all: *Do you feel any better?*

The Appellant measured from the Proposed Location's building to Darlington's premises. That measurement is over 200 feet so would allow the License to be granted. The Board argues that there is another way to measure between the Proposed Location and Darlington's premises by a public way and that is from the front of the Proposed Location (rather than the side of the building) on Armistice Boulevard so that the shopping plaza's parking lot is excluded. Thus, there needs to be a determination of whether the shopping plaza's parking lot is a public way as envisioned by the statute.

"Public way" is not defined in the statute. There is no dictionary definition for public way. But a public way is understood to be a street or highway; something that the public travels on. The Motor and Other Vehicles statute defines "private road or driveway" as "every way or place in private ownership that is used for vehicular travel only by the owner and by those others having express or implied permission from the owner." See R.I. Gen. Laws § 31-1-23(g). Platt testified as to the buildings and parking lots in the shopping plaza. There is no dispute that the shopping plaza's owners own the buildings as well as the parking lot. The parking lot is there for the shopping plaza's customers to park so that the customers may shop at the plaza.[6] Thus, the parking lot is not considered a public way as envisioned in the statute.

In terms of traversing between Darlington and the Proposed Location, a patron of the Proposed Location can walk out the store's front door and continue in a straight line across the parking lot to Armistice Boulevard, turn right on the sidewalk, and walk to the

[6] In a U.S. Constitutional first amendment case, the Rhode Island Supreme Court discussed the difference between a sidewalk in front of shops and a parking lot for a shopping mall. The Court found that a sidewalk in front of shops is a public way which pedestrians may use for the purpose of going to said shops or may use just to walk on without any shopping. The Court contrasted that to parking lot of a mall which only exists for the purpose of accommodating those who wish to shop at the mall. See *Homart Development Co. v. Fein*, 293 A.2d 493 (R.I. 1972).

intersection in order to cross the street to Darlington. The same is true that a patron of the Proposed Location can walk out of the front door, turn right, walk to York Avenue, turn left, and walk on the sidewalk to the intersection in order to cross the street to Darlington.

The Appellant's and the Board's measurements are both by a public way. Neither party argued that the measurement should be from the other end of the building along George R. Bennett Highway turning right on Armistice Boulevard. Such a measurement would be a roundabout measurement by a public way between the two (2) locations and would be over 200 feet. The statute prohibits the granting of a license if the locations are within 200 feet of each other by *any* public way. The statute does not allow the granting of the license even if there are two (2) ways of traveling between the two (2) locations that are over 200 feet by a public way but there is also a way to travel that is under 200 feet.

Clearly the intent of R.I. Gen. Laws § 3-7-4 is to maintain a certain distance between Class A liquor stores. Thus, the statute prohibits the granting of a license if a proposed licensee's location would be within 200 feet by *any* public way to a current licensee because of the closeness of the two (2) locations. Therefore, if there is any measurement by any public way between a current Class A licensee and a proposed Class A license location that is less than 200 feet, the license "shall not" to be granted.

Interestingly, unlike R.I. Gen. Laws § 3-7-19 which refers to the liquor licensee's building, R.I. Gen. Laws § 3-7-4 refers to a liquor licensee's store or place. Thus arguably the measurement is from the store's entrance rather than from the building where the liquor store is located. In this matter, the Board measured from in front of the store (entrance) on Armistice Boulevard and that was less that 200 feet. If the Board had measured from Armistice Boulevard but in front of the corner of the building on Armistice Boulevard

(rather than from the side of the building where the Appellant measured), it would be less than 200 feet since the measurement taken from its left is less than 200 feet.

Based on the forgoing, R.I. Gen. Laws § 3-7-4 prohibits the granting of the transfer application since there is a measurement by any public way that is within 200 feet between Darlington and the Proposed Location.

ii. Neighborhood Concerns

The Board also argued that the objections by City Councilors, the two (2) liquor licensees, and neighbors supported its denial of the transfer application on the basis of concerns about increased traffic, litter, underaged drinking, competition, and no community need for another Class A licensee in that area. Since R.I. Gen. Laws § 3-7-4 prohibits the granting of the License, the undersigned will not address the other reasons given by the Board to deny the License transfer application.

VI. FINDINGS OF FACT

1. On or about July 23, 2008, the Board denied a request by Appellant to transfer its License from its current location to the Proposed Location.

2. Pursuant to R.I. Gen. Laws § 3-7-21, Appellant appealed that decision by the Board to the Director of the Department

3. A *de novo* hearing was held on October 28 and November 13, 2008 before the undersigned sitting as a designee of the Director.

4. The parties timely filed briefs by December 22, 2008 and timely filed supplemental briefs by January 30, 2009.

5. The parking lot of the shopping plaza within which the Proposed Location is located is not considered a public way within R.I. Gen. Laws § 3-7-4.

6. The Appellant measured from the Proposed Location's building along the sidewalk on York Avenue to Darlington's premises. That measurement was 270 feet.

7. The Board measured from Armistice Boulevard in front of the Proposed Location (excluding the parking lot) to Darlington's premises. That measurement was 173 feet.

8. The facts contained in Sections IV and V are reincorporated by reference herein.

VII. CONCLUSIONS OF LAW

Based on the testimony and facts presented:

1. The Department has jurisdiction over this matter pursuant to R.I. Gen. § 3-5-1 *et seq.*, R.I. Gen. Laws § 3-7-1 *et seq.*, R.I. Gen. Laws § 42-14-1 *et seq.*, and R.I. Gen. Laws § 42-35-1 *et seq.*

2. In this *de novo* hearing, the Board presented evidence that its measurement between the Proposed Location and Darlington's premises was 173 feet.

3. Since there is a measurement by any public way between the Proposed Location and Darlington's that is within 200 feet, R.I. Gen. Laws § 3-7-4 prohibits the granting of the transfer application.

VIII. RECOMMENDATION

Based on the above analysis, the Hearing Officer recommends that the decision of the Board denying the transfer of the location of the License be upheld as the granting of the License is prohibited by R.I. Gen. Laws § 3-7-4.

Dated: February 18, 2009

Catherine R. Warren
Hearing Officer

ORDER

I have read the Hearing Officer's Decision and Recommendation in this matter, and I hereby take the following action with regard to the Decision and Recommendation:

_____ ADOPT
_____ REJECT
_____ MODIFY

Dated: 2-19-2009

A. Michael Marques
Director

NOTICE OF APPELLATE RIGHTS

THIS DECISION CONSTITUTES A FINAL ORDER OF THE DEPARTMENT OF BUSINESS REGULATION PURSUANT TO R.I. GEN. LAWS § 42-35-12. PURSUANT TO R.I. GEN. LAWS § 42-35-15, THIS ORDER MAY BE APPEALED TO THE SUPERIOR COURT SITTING IN AND FOR THE COUNTY OF PROVIDENCE WITHIN THIRTY (30) DAYS OF THE MAILING DATE OF THIS DECISION. SUCH APPEAL, IF TAKEN, MUST BE COMPLETED BY FILING A PETITION FOR REVIEW IN SUPERIOR COURT. THE FILING OF THE COMPLAINT DOES NOT ITSELF STAY ENFORCEMENT OF THIS ORDER. THE AGENCY MAY GRANT, OR THE REVIEWING COURT MAY ORDER, A STAY UPON THE APPROPRIATE TERMS.

CERTIFICATION

I hereby certify on this 19th day of February, 2009 that a copy of the within Decision was sent by first class mail, postage prepaid to Frank Milos, Jr., Esquire, Assistant City Solicitor, City of Pawtucket, 137 Roosevelt Avenue, Pawtucket, RI 02860; Michael F. Horan, Esquire, 393 Armistice Blvd., Pawtucket, RI 02861, and Michael Sendley, Esquire, McKinnon & Harwood, 1168 Newport Avenue, Pawtucket, RI 02861 and by hand delivery to Maria D'Alessandro, Associate Director, Department of Business Regulation, Pastore Complex, 1511 Pontiac Avenue, Building 68, Cranston, RI.

Shirley P. Dos Santos