

IV. MATERIAL FACTS AND TESTIMONY

Rafael Barahona (“Barahona”) testified on behalf of the Appellant. He testified that he owns the building in which the proposed class BV liquor license would be located.² He testified that he applied for the License. He testified that he had experience in Guatemala in the liquor industry where he worked at a bar, managed liquor, bought liquor, and kept security. He testified that he will be onsite managing the bar during working hours and proposes to have it open from 5:00 p.m. to 1:00 am Monday through Friday and from 2:00 p.m. to 1:00 a.m. on Saturday and Sunday. He testified that he bought the building in June, 2016 and it is compliant with the fire code. He testified that there will be no dancing or live entertainment, but there will be a pool table and a jukebox. He testified that there is currently no kitchen, but he plans to heat food like hot dogs and re-heat items on a warmer. He testified that he does not plan to enlarge the capacity beyond the existing capacity. He testified that he will monitor the sidewalk to prevent loitering and with the capacity only being 43 people, he does not believe a police detail will be necessary, but if there was one on a trial basis, he would not mind. He testified that he has rented about 15 parking spaces for one (1) year with a renewable annual lease year and there is on-street parking. He testified that he also believes that the parking lot across the street that would be available for parking. He testified that there is a dumpster available for the trash and that he planned to empty the trash during the day and to have a doorman on the weekend. He testified that his bar will not be like the previous bar in the same location as he will be onsite.

On cross-examination, Barahona testified that he is familiar with the establishment that was located there before about four (4) years ago and closed in 2012. He testified that he has lived in Pawtucket for 13 years and he does not have any personal knowledge of the problems at the

² The location is on Broad Street and the parties stipulated that Broad Street runs through Pawtucket, Cumberland, and Central Falls.

prior bar, but the previous owner told him that he did not pay enough attention, which is why there were problems. He testified that he owns the building individually but an LLC will hold the liquor license. He testified that he has lived in United States for 24 years and has not run a business and never had a liquor license in the United States and has not worked in a Class B liquor licensee in the United States. He testified that his liquor experience was in Guatemala over 24 years ago working in his mother's bar. He testified that he was aware of the Pawtucket alcoholic beverage ordinance that regulates parking, which is why he rented the parking lot. He testified that the ordinance is one (1) parking lot for every four (4) people of capacity so with a capacity of 43, he should have 15 spaces. He testified that the lease is for 16 parking spaces. He testified that he will put a sign up in front about where patrons can park. He testified that he did not have a kitchen when he applied for the license, but he can make one. He testified that he told the Board that customers would be able to purchase pre-cooked foods, but he now realizes he needs a kitchen, so he will do that for when he opens. He testified that he did not tell the Board that he would install a kitchen. He testified that with the property he leases for parking, there also is a dumpster and the owner will allow him to dispose the garbage there. He testified that he will do that every afternoon and leave it inside overnight. He testified that he is currently employed at Stop and Shop and that he will continue to work there, but would go part-time to concentrate on the business.

On redirect, Barahona testified that he would be agreeable to conditioning the granting of the license on the completion of the kitchen and that he is not hiring anyone who had worked at the prior location.³ He testified that when he bought the building it had been closed and had not been operating as a business for about two (2) years.

³ It was stipulated that the prior license lapsed and there was no formal revocation.

Captain Roberto Dasilva, Pawtucket Police Department, testified on behalf of the Board. He testified that he is familiar with the prior establishment and that there had been a stabbing there and many problems with parking because there was no off-street parking so customers parked on the street and side street which was before the CVS was built across the street. He testified that he is familiar with the parking lot that has been leased and that between it and the establishment, one needs to cross two (2) streets if walking and the distance is approximately 450 feet based on Google maps. He testified that there will be issues with people exiting, walking to their cars, and having to cross two (2) streets if they are inebriated. He testified that the walk to the parking lot passes residential units and businesses and a multifamily home. He testified that there is a concern about people being drunk crossing the street and noise and disturbances. He testified that he believes the CVS property across the street is owned by CVS, but he does not know. He testified that this neighborhood has improved over the last few years in that it had been a haven for prostitution and drug sales and the properties were dilapidated, but in the last few years the properties have been rehabbed. He testified that there is a kids' playground which is closer to the parking lot than the bar location. He testified that based on his experience, prostitutes used to hang out at the previous bar and that granting the License would be a step backwards in the improvement of the community. He testified that there would be an increase in people coming into the neighborhood, an increase in intoxication, and it would be a magnet again for prostitutes and drug users. He testified that since 2012 when the previous bar went out of business, there has been less of a need for police presence in the area.

On cross-examination, Dasilva testified that Barahona had improved his building. He testified that he has never made any arrests for prostitution at the location. He testified that the opening times in the bar in the summer could overlap with playground time. He testified that there

is no prohibition against parking on the street. He testified that there is no evidence that this current applicant is connected to the prior licensee. He testified that the prostitution was a neighborhood problem and not solely the result of the prior bar, but it was a loitering spot for prostitutes.

On redirect, Dasilva testified that the drug and prostitution problems were not primarily caused by the prior bar, but since it has been closed, the issues have diminished substantially, and he knows that from his personal knowledge. On re-cross, he testified that based on his experience, the prior bar was a magnet for the drugs and the prostitutes.

Timothy Rudd ("Rudd"), city councilor, testified on behalf of the Board. He testified that he has been on the city council for four (4) years and the proposed location is in his district. He testified that he reviewed the history of said location and the Board minutes at that time and previously there were issues of underage drinking and a stabbing. See City's Exhibit One (1) (prior Board minutes). He testified that there was a neighborhood meeting with the applicant, but he had not met with him prior to the application being filed. He testified that members of the community reached out to him because of concerns over trash removal, parking, hours of operation, and who would be there to run it. He testified that there was testimony before the Board from residents concerned about litter, noise nuisance, the closeness to the playground, the transformation of the neighborhood, and a concern that the area might go backwards with a new bar opening. He testified that the area has transformed and that people now feel comfortable there and want to raise their children there as opposed to before when the area was run down. He testified that the application was unanimously voted down and there was a public outcry against the application. He testified that he is not suggesting that Appellant had anything to do with the previous issues or that the previous bar was primarily responsible, but with the transformation, the big concern is that there is no need for a liquor establishment there. He testified that the Pawtucket

Central Falls Foundation has rehabilitated/renovated many properties nearby to get people to come in and purchase the homes. He testified that there was no representation made at the Board hearing about putting in a kitchen. He testified that there was concern about the business plan and how would the applicant regulate smoking, parking, and trash removal.

On cross-examination, Rudd testified that the neighborhood is mixed use and there is a CVS across from the proposed location. He testified that the neighborhood had problems before he was elected, but it has improved a lot and he feels if one introduces these elements into the area, the problems could reoccur. He testified that based on his experience as a police officer, he believes that problems can come back with a new bar. On redirect, he testified that the neighborhood changed for the better after the prior bar closed.

James Ruthowski ("Ruthoswki"), Pawtucket Housing Authority ("PHA"), testified on behalf of the Board. He testified that he is director of operations for PHA and has worked there since 2001 and prior to that he spent 21 years in Central Falls Police Department. He testified that one of PHA's location is Kennedy Manor which is an eight-story elder/ young disabled apartment building at 175 Broad Street right near the proposed location [at 212 Broad Street]. He testified that he appeared before the Board and raised issues on behalf of the housing authority. He testified that there are concerns that Kennedy Manor will be used for parking by patrons as happened previously. He testified that Kennedy Manor is not air conditioned so there is concern regarding noise in the summer when windows will be open. He testified that until last February, he was director of security so he is aware that some residents brought commercial sex workers back to the building and some of the women in the manor became commercial sex workers and brought their clients back from the bar. He testified that four (4) or five (5) times they had to take action against people bringing those kind of troubles into the building. He testified that the area is mixed use and

is not 100% cleaned up. On cross examination, Ruthowski testified that Kennedy Manor is about 200 feet from the proposed location and the street is a busily-travelled street and is noisy, but not as noisy as when the prior bar was open.

Linda Weisinger (“Weisinger”) testified on behalf of the Board. She testified that she is the executive director of Pawtucket Central Falls Development Corporation (“PCF”). She testified that PCF is a nonprofit affordable housing developer that develops affordable housing in Pawtucket and Central Falls and owns approximately 250 apartments in Pawtucket and Central Falls. She testified that she has held the position since 2015 and testified before the Board on this application. She testified that PCF is adjacent to 212 Broad Street at 204 Broad Street on the left hand side and completely surrounds the proposed location so that it is land locked with PCF. She testified that there was concern over trash since the Appellant does not have access to any trash removal. She testified that Baharona cannot access repairs on his property without going through PCF. She testified that there is concern over parking and the hours of operation. She testified that there are 16 residential units in PCF buildings within 300 feet. She testified that she is aware and familiar with the area having working in Providence on affordable housing and worked with PCF. She testified that she is concerned with the lack of the kitchen and that if preprocessed food is brought in, that would mean an increase in trash. She testified that the major concern is noise, loitering, and where the trash is going because the proposed location is landlocked. She testified that PCF would work with Baharona to improve the property because PCF supports small businesses, but do not want a bar. On cross examination, she testified that if the license was granted conditionally on a kitchen, she would not object to the use of the kitchen.

V. DISCUSSION

A. Standard of Review

R.I. Gen. Laws § 3-7-7 provides for the granting of a Class B 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); and *Donald Kinniburgh d/b/a Skip’s Place v. Cumberland Board of License Commissioners*, LCA–CU-98-02 (8/26/98).

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.

In *International Yacht Restoration School Inc. and Jose F. Batista v. Newport City Council and Dockside North, LLC et al.*, DBR No. 02-L-0037 (6/30/03) at 9-10, the Department held as follows:

The undersigned recognizes that the Department has the same broad discretion to grant or deny licenses on original applications or transfer requests in a hearing *de novo* as that of a local board. See *Reynolds* at 86 R.I. at 177 (citing *Kaskela v. Daneker*, 76 R.I. 405, 407 (1950)). However, as stated in *Kinniburgh*, the Department, generally less familiar than the local board with individuals and/or neighborhoods associated with the application, will not simply substitute its opinion for that of the local board. [the decision then cites to *Kinniburgh* at 17 *infra*].

Furthermore, the Department has found as follows:

[T]he Department, often less familiar than the local board with the individuals and/or neighborhoods associated with the application, will generally hesitate to substitute its opinion on neighborhood and security concerns if there is evidence in the record justifying these concerns. To this end, the Department looks for relevant material evidence supporting the position of the local authority. (citation omitted). *Chapman Street Realty, Inc. v. Providence Board of License Commissioners*, LCA-PR-99-26 (4/5/01), at 10.

The Department has the same discretion as the local licensing authority to grant or deny a liquor license application. However, as discussed above, the Department relies on the local licensing authority's familiarity with the area. The Board has consistently reviewed the record at a *de novo* hearing to see if there is evidence supporting a local authority's decision. See also *Tedford v. Reynolds*, 141 A.2d 264 (R.I. 1958). See also *101 North Main Street Condominium Association v. City of Providence, Board of Licenses*, DBR No. 16LQ003 (8/9/16); and *Crazy 8's Bar/Billiards v. Providence Board of Licenses*, DBR No.: 09-L-0042 (8/24/09).

B. Relevant Regulation

Rule 5 of *Commercial Licensing Regulation 8 – Liquor Control Administration* (“CLR8”) provides in part as follows:

(b) VICTUALER - An applicant for a Class B alcoholic beverage license (also referred to as a Class B-V) may be granted a license subject to, but not limited to, the following terms and conditions:

(1) Demonstration to the satisfaction of the licensing board that a kitchen is established on the proposed premises as evidenced by a certificate of occupancy from the local building official and inspection and approval by the Department of Health.

(2) Furnishing to the licensing authority a copy of the proposed menu and food services to be provided.

(c) Pursuant to R.I.G.L. § 3-1-1,⁴ a Class B Licensee is defined as “Any shop or place where a substantial part of the business is the furnishing of food for consumption at the place where it is furnished.” In order to comply with the foregoing provision, the licensee must offer to the public, in conjunction with the sale of alcoholic beverages, the opportunity to purchase and consume food to be served on the premises in the same area designated for the sale and consumption of alcoholic beverages. These foods must be offered for sale during all times that alcoholic beverages are sold and consumed on the licensed premises.

(d) All Class B licensees shall:

(1) Publish and conspicuously post a menu from which all patrons of the licensed establishment can see and order food.

(2) Ensure that food offered on the menu is prepared and stored on the licensed premises.

(e) Licensees shall be presumed to meet the requirements of this provision by offering food at a sandwich level, as opposed to offering solely snack foods including but not limited to potato chips, pretzels, pickled eggs, pizza strips, stuffies and crackers and cheese.

Rule 21 of CLR8 provides as follows:

KITCHEN – RETAIL A “kitchen” is hereby defined as a room or area in which food is cooked or prepared which shall at all times meets the minimum requirements of the Department of Health. Where a kitchen is required by law, the local licensing authority shall approve an adequate menu.

C. Arguments

The Board argued that the Appellant failed to comply with the kitchen requirements and in fact had represented to the Board that it would serve pre-cooked food. The Board also argued that the Appellant did not comply with the City’s parking ordinances and that there is no community need for the license. The Board argued that 11 objectors appeared before the Board and the Board received three (3) letters of objection.

⁴ R.I. Gen. Laws § 3-1-1(21) definition of victualing house.

The Appellant argued that it had the experience to run a bar and has no connection to the prior licensee. The Appellant argued that the objections were speculative and did not link the Appellant to any specific incidences. The Appellant argued that it has enough parking and is willing to accept conditions, if found to be necessary. The Appellant argued that the area is zoned for a bar so that shows that “need” has been met.

D. Whether the Denial of the License Should be Upheld

The Board’s reasons for denying the License can be summed up as location, experience, business plan, community need, and parking.

i. Location/Experience/Business Plan

In *DeCredico v. City of Providence, Board of License Commissioners*, DBR No. LCA-PR94-27 (1/20/95) (“*DeCredico I*”), the applicant’s liquor license application was rejected because neighbors were concerned about the growing number of liquor-serving facilities in the vicinity and that the establishment would be “almost identical” to a past problematic bar at the proposed location. The Department⁵ found that at night the proposed establishment would attract a crowd similar to the previously problematic bar. The Department found that the applicant was a proven restaurant operator but did not have the requisite experience of managing a late-night, full-bar drinking establishment to be able handle the potential problems that had plagued the area in the past.

Similarly in *Crazy 8’s Bar*, the applicant proposed to establish a bar in a location that previously was a troubled social club masquerading as a bar. The Department upheld the denial of the application as the applicant did not present sufficient evidence to show that conditions surrounding the proposed establishment would be any different than what had been experienced in the past and

⁵ At the time of *DeCredico I*, the Liquor Control Administrator adjudicated said appeal. The position of Liquor Control Administrator was abolished by P.L. 1996, ch. 100 art. 36 § 4 with the Department assuming those functions. For ease of reference, any discussions of decisions issued by the Liquor Control Administrator will refer to the Department.

the applicant did not have the requisite experience to run a bar. Like *DeCredico I*, the applicant had not put enough separation between its proposed business and the past problem-causing establishment.

Conversely, in *DeCredico v. City of Providence, Board of License Commissioners*, DBR No. LCA-PR94-26 (1/23/95) (“*DeCredico II*”) upheld by *DeCredico v. City of Providence Board of Licenses*, 1996 WL 936872 (R.I. Super.), the applicants presented a well-financed project to open an upscale jazz club. Many neighbors objected to the application because of past problems with liquor licensees in the neighborhood. The decision found that the proposed club was likely to attract a different clientele from the patrons of the establishments that created problems for the neighborhood in the past. Thus, the liquor license application was approved despite objections from the neighbors. The decision found that a licensing authority can move a neighborhood forward without duplicating past errors by denying application requests to those that are poorly planned or whose plan and locus are similar or identical to past problem spots.

In *Crazy 8's* and *DeCredico I*, neither applicant had the requisite experience to run their proposed new establishments differently than the prior licensees. In *DeCredico II*, the applicants had the experience and a plan. The Department has previously upheld the rejection of a liquor license based on location and an unacceptable business plan.

ii. Need/ Local Objections

The Board argued that there was no community need for this License. The Department’s decision, *Douglas, Inc. and Derby Liquors, Inc. v. Pawtucket Board of License Commissioners* (3/14/83), found “[w]e are of the opinion that in the proper circumstances, community sentiment, not just the fitness of the applicant, may properly be heard and should be given thoughtful consideration with regard to a transfer of an alcoholic beverage license.” *Id.*, at 4-5. Similarly in

Vel-Vil, Inc. v. Pastore, WL 732870 (R.I.Super.1986), the Department⁶ overturned the local granting of a license finding that the applicant had not sustained its burden that there was an additional need to serve alcohol in the proposed location's neighborhood and that another liquor license might threaten the area's ongoing revitalization and there were three (3) liquor establishments in the immediate vicinity and twenty (20) within fifteen (15) blocks.

The Department reviews whether a local licensing authority has abused its discretion by failing to have relevant material evidence in support of its decision. If a local licensing authority finds there is no community need, it must articulate what is meant by community need; otherwise, the term is too vague. *Douglas* also spoke of the need to carefully consider community sentiment. The Department has continuously considered community sentiment but ensures that such sentiment is based on evidence and not just speculation.

In reviewing the many cases that have come before the Department over the years since *Douglas* and *Vel-Vil* that address "community sentiment," the Department has not sought proof by a local licensing authority when it grants a license that the applicant is providing a needed service of selling liquor. Nor has the Department reviewed a denial of a license and upheld the denial if there is no proof that the applicant is needed to provide liquor sales. Instead, the Department will uphold denials when a local authority has found based on the evidence that a community does not need another license because of past problems, traffic, etc. The concept of community need must be based on a specified reason why the license would not benefit the area.⁷ As discussed, the local authorities have broad discretion in making such determinations.

⁶ The undersigned relies on the Superior Court case to summarize the Department's findings.

⁷ 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. See *Baginski v. Alcoholic Beverage Commission*, 4 A.2d 265 (R.I. 1939). The purpose of this system is to safeguard the public.

In *Corina Street Café v. City of Providence, Board of Licenses*, LCA-PR-96-20 (11/25/96), the Department upheld the denial of the application for a liquor license. Said decision found that the applicant wanted to change the character of its business (from a deli to a bar/restaurant), but the majority of neighbors opposed the application regardless of the applicant's responsibility and good faith intentions. The decision found that the City had a specific policy to eliminate liquor licenses in the area by not issuing new licenses and not replacing those licenses that had been eliminated because of the area's history of problems with liquor licensees and alcohol consumption. That decision pointed out that community opinion is not sacrosanct but in that matter community opposition, previous issues associated with liquor licensing in that area and the city's resulting licensing policy as well as the applicant's inexperience supported the denial of the application because the license would not be in the best interests of the neighborhood.

In *Cadillac Lounge, LLC v. City of Providence*, LCA-PR-99-15 (10/18/02), the Department found that the substantial neighborhood opposition was based on the detailed problems of an existing licensee and its relation to the transfer application at issue. The Department also found that the applicant had "[a] sketchy business plan." *Id.*, at 10. The Department concluded that a liquor licensee takes a neighborhood as it finds it and the local authority has the right to review how an application may alter local conditions which in this matter consisted of troubled conditions.

In *Gallucci*, there was testimony from residents and the police regarding the problems associated with the applicant's proposed location in that its prior liquor licensee was linked to disorderly conduct, assaults, and traffic issues. In that matter, the applicant argued that there had been a license at the location for decades but the Department found that a local licensing authority can take a fresh look and determine if a continuous license in a location is in the best interests of the community. In that matter, the Department found that the local licensing authority could reasonably

infer from the evidence that reopening the establishment could have a similar negative effect on the neighborhood and further noted that the applicant was even associated with the past licensee.

The term “community need” in *Douglas* is not to be associated with whether an applicant can prove that the neighborhood needs an establishment at which to purchase liquor. Rather that term is part of the Department’s continuous review and consideration of community sentiment and evidence in its review of liquor licensing decisions. As further clarified and discussed after *Douglas* by numerous Department decisions, the term “need” must be based on specific articulated reason(s). Such reasons could be that the neighbors object because the previous license holder made the area miserable and the new applicant will be the same as it lacks experience (so there is no need for the applicant).

iii. Local Objections

Thus, as cited above in *Chapman*, there must be evidence supporting community concerns. In *International Yacht Restoration School Inc.*, there were approximately 42 objectors to the transfer of a liquor license in Newport and the license was granted. The Department found that the Newport licensing authority had not abused its discretion in granting that license despite the neighbors’ objections because the local authority found the application represented a desirable business proposal for an additional business establishment in the wharf area in Newport. The Department decision found said decision was not an aberration but followed a pattern to allow that area to become high-density commercial. The decision further found that the Newport applicant had operated liquor establishments for six (6) years without any significant violations of local or State law. The Decision found that the neighbors did not “focus on specific incidents attributable to [the applicant] or its management, but rather on unruly behavior emanating” from the area. *Id.*, at 10.

In *Krikor S. Dulgarian Trust v. Providence Board of Licenses*, DBR No.: 08-L-0175 (6/18/09), the abutter appellant had broad concerns regarding traffic, parking, safety, noise, and late night liquor closings in the area. However, the decision upheld the local authority's grant of a license because it found that there was no evidence from the objecting neighbors that linked the applicant to noise or underage drinking. See also *Liquor Depot v. City of East Providence, et al.*, DBR No. 08-L-0250 (6/2/09) (local authority's denial of a Class A license was overturned since the concern over a nearby school was speculative).

However, neighborhood objections can demonstrate the negative impact a proposed licensee may have. *Supra*. See *Crazy 8's*; and *Galluci*.

iv. Parking

The Board expressed concern about parking. However, the Appellant has a leased parking spaces and while the lease could be broken, there is street parking. The area was zoned for a bar so presumably that would have taken parking into consideration. There was not enough evidence to support a finding that there was not enough parking for the Appellant's location.

D. Conclusion

As articulated through liquor licensing decisions at the State court level and the Departmental level, the standard of review for a new license is subject to the discretion of the issuing authority. Such discretion must be based on reasonable inferences drawn from the evidence. Arbitrary and capricious determinations not supported by the evidence are considered suspect. *Infra*. In light of the broad discretion given to the Board, the undersigned only reviews the Board's decision for evidence to support it. The Board's decision need not be unassailable but rather there must be evidence to support the Board's decision.

In this matter, there was evidence that the Appellant's location was in an area that had a history of problems associated with a bar at the same location. The Appellant has prior experience with a liquor business in Guatemala, but no recent experience. The Appellant was not familiar with the statutory and regulatory requirements of the License for which it applied and instead of having a kitchen as required by CLR8, the Appellant proposed to the Board that it serve pre-cooked food. At the Department hearing, the Appellant represented that it could put in a kitchen and was willing to obtain a license conditioned on installing a satisfactory kitchen. Nonetheless, the Appellant was unfamiliar with the regulatory requirements of the License. The Appellant has no connection to the prior bar and the testimony was that the owner would be onsite which would prevent the problems of the prior bar. Hands-on ownership is usually a good approach to a business. However, the Appellant is not familiar with the statutory and regulatory requirements to run a bar and except for onsite management, the Appellant did not fully explain how it would be able to avoid the problems that plagued the prior bar. There was not enough evidence that the Appellant would differentiate itself from past problems associated with a liquor license holder at said location.

Based on the evidence presented, this matter is analogous to *Crazy 8's* and *DeCredico I* where neither applicant had the requisite experience and/or a plan to run their proposed new establishments differently than the prior licensees.

VI. FINDINGS OF FACT

1. On or about November 10, 2016, the Board denied the Appellant's application for License.
2. Pursuant to R.I. Gen. Laws § 3-7-21, the Appellant appealed that decision by the Board to the Director of the Department.

3. A *de novo* hearing was held on January 9, 2017 before the undersigned sitting as a designee of the Director. Briefs were timely filed by July 31, 2017.

4. The facts contained in Section IV and V are reincorporated by reference herein.

VII. CONCLUSIONS OF LAW

Based on the testimony and facts presented:

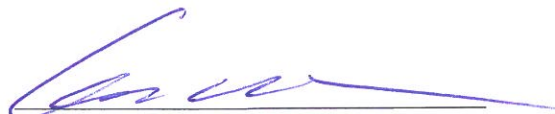
1. The Department has jurisdiction over this matter pursuant to R.I. Gen. § 3-7-21 *et seq.*, R.I. Gen. Laws § 42-14-1 *et seq.*, and R.I. Gen. Laws § 42-35-1 *et seq.*

2. Based on the forgoing, the Appellant did not make a showing that would warrant the overturning of the denial of the License by the Board.

VIII. RECOMMENDATION

Based on the above analysis, the Hearing Officer recommends that the decision of the Board denying the application for the License be upheld.

Dated: August 29, 2017




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: 9/1/17


Scottye Lindsey
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 1 day of August, 2017 that a copy of the within Decision was sent by first class mail, postage prepaid to Frank Milos, Esquire, City Solicitor, 137 Roosevelt Avenue, Pawtucket, R.I. 02860 and Richard A. Pacia, Esquire, Joseph J. Voccola & Associates, 454 Broadway, Providence, R.I. 02909 and by hand delivery to Maria D'Allesandro, Deputy Director, Department of Business Regulation, Pastore Complex, 1511 Pontiac Avenue, Bldg. 68-69, Cranston, R.I. 02920.

