



### **III. ISSUE**

Whether to uphold or overturn the Board's decision that it had no jurisdiction to issue the Appellant a Class C liquor license because the Board found there was a place of public worship within 200 feet of the Appellant's proposed location pursuant to R.I. Gen. Laws § 3-7-19(a).

### **IV. MATERIAL FACTS**

The parties filed an agreed stipulation of facts which is summarized as follows:<sup>2</sup>

1. The property located at 575 Charles Street is within 200 feet of the proposed location of the Appellant's liquor license.
2. The current owner purchased the property located at 575 Charles Street, Providence, R.I. on August 10, 2021.
3. Masjid Ali was registered as a non-profit corporation with the Rhode Island Secretary of State on August 16, 2021 for the purpose of "RELIGIOUS ORGANIZATION FOR THE PURPOSE OF WORSHIP IN ACCORDING WITH THE MUSLIM FAITH. IT SHALL BE A MOSQUE."
4. According to Masjid Ali, within a week or two of purchasing the property the building was utilized for individual prayer on a daily basis.
5. In the first week of September a sign containing an outline of a dome structure and the words "Masjid Ali" [was affixed to the building at 575 Charles Street]. Joint Exhibit One (1) (photograph).
6. According to Masjid Ali, during September regular Friday services began and continued on a weekly basis.
7. The current use of the property in the Department of Inspections and Standards is as a bank.
8. The owner of the property housing the mosque has not changed the use of the property as required by the Department of Inspections and Standards.
9. Under the laws of the City of Providence, a use is not lawfully established until a building permit has been applied for and approved by the Department of Inspections and Standards, even if no physical work is to be done.

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<sup>2</sup> See statement of stipulated facts filed February 10, 2022.

10. A place of worship is a permitted use at that location under Section 1200 of the Zoning Ordinance of the City of Providence subject to applicable building and fire inspections.

11. The licensee applied for its liquor license on November 8, 2021.

12. A hearing was scheduled before the Providence Board of Licenses to be held on December 16, 2021. That hearing was continued until January 12, 2022 and then until January 20, 2022.

13. The Board of Licenses began a public hearing on January 20, 2022 at which time the issue of the place of worship came to light.

14. The Board continued the matter until January 27, 2022 for a determination.

15. On January 27, 2022 the Board ruled that they did not have jurisdiction to hear the matter because of the property located at 575 Charles Street.

16. There were no applications made for a change of the use of the building by the owner of the mosque until January 22, 2022. An assembly building permit was issued on February 9, 2022; however, no inspections have been completed and no Certificate of Occupancy has issued pursuant to Section 1917 of the Providence Zoning Ordinance.

17. There was no documentation in the public record maintained by the City of Providence to indicate that there was any lawfully established place of religious assembly or worship within 200 feet of the proposed licensee at all times relevant hereto.

#### **IV. 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.*

**B. R.I. Gen. Laws § 3-7-19(a)**

R.I. Gen. Laws § 3-7-19(a) states in part as follows:

(a) Retailers' Class B, C, N and I licenses, and any license provided for in § 3-7-16.8 of 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. \*\*\*

The parties do not dispute that the building (“Building”) at 575 Charles Street houses a mosque and is within 200 feet of the Appellant’s proposed location. The parties dispute whether the mosque is a place of public worship under the statute. If there is a place of public worship within the 200 foot radius then the local licensing authority is without jurisdiction to grant a Class B, C, N, and I liquor license. R.I. Gen. Laws § 3-7-19(a). *Perez Smith, LLC Paris Bistro Lounge v. City of Providence Board of Licenses*, DBR No.: 19LQ001 (3/6/19); and *Falcone v. Town of Charlestown*, LCA-CH-99-28 (5/16/00).

**C. Arguments**

The Appellant argued the Building has historically been used as a bank, and the purchaser has never lawfully established a change in purpose from a bank to a mosque. It argued that no new use has been established, and it was only on January 22, 2022, two (2) days after the Board’s public hearing did the mosque’s owner apply for a change in use from a bank. The Appellant argued that a public place of worship cannot just exist because

someone opens a door and posts a sign. It argued that to find in favor of the Board would allow the mosque's unlawful, unpermitted, uninspected use of property to prevail over the Appellant's lawful efforts to use its property. It relied on *Perez Smith* to argue that the test for whether an entity is a public place of worship is what is in the public record; in other words, what can an applicant rely on. The Appellant argued neither the abutters' list nor the building department's records showed the Building is a mosque. It argued the mosque is registered as a domestic non profit at the Secretary of State's office but that does not indicate it is a mosque. It argued that it is bad precedent to deny this applicant on the basis of an illegal use, and the City and Board's position is that the City's laws do not matter.

The City argued that *Perez Smith* addressed what was available in the public record about that matter's contested public place of worship such as the church's annual report, photographs, and zoning but there was never a discussion about a lawfully permitted use. The City argued *Perez Smith*'s use of public records was broader than the Appellant's argument. The City argued that this is a narrowly applied law in the context of liquor licensing, and a mosque is a permitted use of the Building under zoning. The City argued that the mosque was purchased in August, 2021 before the application and has a sign up indicating what it is so it is not hiding that it is a mosque. Joint Exhibit One (1).

The Board agreed with the City. The Board argued that this is a very specific law that speaks of public worship and the use of mosque is allowed by zoning and the Building is openly being used as a mosque. The City argued that the use may not be condoned by the City as no certificate of occupancy has issued but the use is allowed by zoning.

#### **D. Whether the Board was Correct in Refusing to Issue the License**

As set forth above, the words of a statute are to be given their plain and ordinary meaning. 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.

Place of worship is defined as “any building where congregations gather for prayer”<sup>3</sup> and “a building where people gather to worship together, such as a church, synagogue, or mosque.”<sup>4</sup> Here, the Building was purchased in August, 2021 and a sign denoting it as a mosque was put up in September, 2021, and apparently weekly meetings began in September, 2021.

As agreed by the parties, Masjid Ali – the name of the mosque on the Building’s sign - was registered as a non-profit with the Secretary of State’s office on August 16, 2021. The entity summary for that registration indicated that its purpose was for worship and to be a mosque. While it listed 575 Charles Street as the address for the registered agent, it did not list a location of a principal office. Masjid Ali also filed articles of incorporation with the Secretary of State’s office indicating that its purpose was for worship and to be a mosque.<sup>5</sup>

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<sup>3</sup> <https://www.thefreedictionary.com/place+of+worship>.

<sup>4</sup> <https://www.collinsdictionary.com/dictionary/english/place-of-worship>.

<sup>5</sup> The undersigned takes administrative notice of both documents that can be found online at the secretary of state’s office a [www.state.ri.gov](http://www.state.ri.gov) in its business portal. The parties were aware that the hearing officer would access these documents. *Arnold v. Lebel*, 941 A.2d 813 (R.I. 2007).

As the parties noted in their arguments, the Department previously addressed the issue of what can be considered a place of public worship under this statute in *Perez Smith*. That decision found there had been no Rhode Island Department or court cases relating to that issue so reviewed other state cases. The decision rejected the argument that the determination of whether an entity is a place of public worship should be based on the IRS and Rhode Island tax standards for whether a religious organization is tax exempt. *Perez Smith* concluded that the determination of an organization being “operated exclusively for religious purposes”<sup>6</sup> is a different focus from determining whether a building is a “place of public worship” for the purposes of the liquor statute.

*Perez Smith* discussed the *American Law Reports*’ summary of cases in other states with the same kind of liquor licensing statute. That summary found there was great liberality in favor of the status of a questioned building or institution. See "*Church" or the like, within statute prohibiting liquor sales within specified distance thereof*, 59 A.L.R.2d 1439. Various state courts have found that such factors as size of building, number of parishioners, whether any formal church organization, or the strength or weakness of a church organization are immaterial to the issue of whether a place is place of public worship. The cases have found that a place used principally for religious worship and bible study is a church even if there is some incidental use of the building by other organizations allied or closely aligned with the values of the religious organization. If it is shown that a location is not being used predominately for worship, the courts have found in the context of liquor licensing that a building is not a place of public worship. *Gates v. Chadwick*, 812 F.Supp. 1233 (D. Ga. 1993) ) (liquor license can issue because church not function for a

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<sup>6</sup> *Church of Pan, Inc. v. Norberg*, 507 A.2d 1359, 1361 (R.I. 1986) (religious tax exemption standards).

long time); *Arkansas Alcoholic Beverage Control Div. v. Person*, 832 S.W. 249 (Ark. 1992) (liquor license not issue when church's minister's affidavit showed church had 40 members and Sunday services); *Brasero Restaurant, Inc. v. New York State Liquor Authority*, 574 N.Y.S.2d (N.Y. 1<sup>st</sup> App. 1991) (church building's usage was not merely incidental even though rented out space); and *Fayez Restaurant, Inc. v. State Liquor Authority*, 489 N.E.2d 1277 (N.Y. 1985) (occupied exclusively as a church despite incidental use).

In *Perez Smith*, the evidence was that that for over ten (10) years, a church, a place of public worship, had been located within 200 feet of the proposed location. The evidence included the annual reports from 2008 to 2018 for said church that indicated its business was as a religious organization conducting religious services, bible study, and prayer meetings. A photograph in evidence showed the church building with its name and day and time for services affixed to the building, and another photograph showed an awning above the door of the building, and the awning had the name and telephone number for the church.

The mosque has not been located in the Building for as long as the church existed in *Perez Smith*. In *Perez Smith*, no one came forward from the church to explain or testify as to its organization.<sup>7</sup> *Perez Smith* relied on information available to the public. Certainly, if an entity is to be considered a place of public worship, information about its purpose should be available to the public. The statute is not concerned with private religious meetings or a group of friends meeting once a week or month for bible study.

The Building is in an area that is zoned to allow for places of public worship. If the Building was not in such a zone, no claim could be made that it was a place of public worship. Thus, if someone put a sign on his or her house in a residential area claiming to

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<sup>7</sup> Unlike in *Arkansas Alcoholic Beverage Control Div.* where the Court received information from the church's pastor regarding membership and services.



be a church, it could not qualify as a place of public worship since the area would not be zoned for such a use.

The Appellant argued that the mosque had not complied with the zoning ordinance about changing the Building's use to a mosque when it filed its application. Certainly, the City has a strong interest in compliance with its ordinances. The undersigned does not endorse residents and entities within Providence ignoring and flouting either zoning or municipal ordinances. However, in this narrow issue of what is a place of public worship in terms of the liquor licensing statute, the issue is not one of whether there was a timely change of use filed by an entity but one of whether the entity is a place of public worship.

A place of public worship is place where people regularly congregate to worship. A mosque is a place of public worship. Unless it was shown otherwise,<sup>8</sup> the Board rightfully relied on the public record (information in the public domain) that showed there was a mosque in the Building at that location and had been in that location prior to the Appellant's application.

## **VI. FINDINGS OF FACT**

1. On January 27, 2022, the Board refused to issue a Class C liquor license to the Appellant.

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

3. A *de novo* hearing was held on February 10, 2022 before the undersigned sitting as a designee of the Director. The parties were represented by counsel and rested on the record.

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<sup>8</sup> E.g. The *Gates* case where it was shown that the church no longer functioned as a church. *Supra*.

4. A mosque, Masjid Ali, is located within 200 feet of the Appellant's proposed location. It was located there at the time that the Appellant filed its application for a liquor license.

5. 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. § 3-5-1 *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. The Board is without jurisdiction to grant or issue the License.

3. In this *de novo* hearing, no showing was made by the Appellant that would warrant overturning the Board's decision not to issue the Appellant a Class C liquor license.

## **VIII. RECOMMENDATION**

Based on the above analysis, the Hearing Officer recommends that the Board's decision that it was without jurisdiction to grant the License and not to grant the Class C liquor license be upheld.

Dated: March 30, 2022


  
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:

  X   ADOPT  
       REJECT  
       MODIFY

Dated:   03/30/2022  


  
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Elizabeth Tanner, Esquire  
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   31<sup>st</sup>   day of March, 2022 that a copy of the within Decision and Notice of Appellate Rights was sent by electronic delivery and first class mail, postage prepaid to Mario Martone, Esquire, Providence Law Department, 444 Westminster Street, Suite 220, Providence, R.I. 02903; Nicholas Hemond, Esquire, DarrowEverett, LLP, 1 Turks Head Place, Suite 1200, Providence, R.I. 02903; and Louis A. DeSimone, Jr., Esquire, 1554 Cranston Street, Cranston, R.I. 0288; and by electronic delivery to Pamela Toro, Esquire, Associate Director, Department of Business Regulation, Pastore Complex, 1511 Pontiac Avenue, Cranston, RI 02920.

  
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