

**STATE OF RHODE
DEPARTMENT OF BUSINESS REGULATION
JOHN O. PASTORE COMPLEX, BLDG 68-69
1511 PONTIAC AVENUE
CRANSTON, RI 02920**

Applegate Realty, Co. and	:	
National Development Group, Inc.	:	
Appellant,	:	
	:	
v.	:	
	:	
Town of Johnston, Board of Liquor Licensors	:	DBR No. 21LQ008
Appellee.	:	DBR No. 21LQ010
	:	DBR No. 21LQ011
and	:	
	:	
101 Bar and Grill d/b/a Bar 101,	:	
Intervenor.	:	

DECISION

I. INTRODUCTION

This matter arose from an appeal filed by the National Development Group, Inc. (“NDG”) and Applegate Realty, Co. (“Applegate”) (collectively “Appellants”) on December 15, 2021 with the Department of Business Regulation (“Department”) pursuant to R.I. Gen. Laws § 3-7-21 regarding the decision taken by the Town of Johnston, Board of Liquor Licensors (“Board”) on December 13, 2021 in relation to the renewal of the Class BV liquor license (“License”) of 101 Bar and Grill d/b/a Bar 101 (“Intervenor”).¹ NDG had earlier filed an appeal with the Department over the Board’s decision taken on November 8, 2021 in relation to the renewal of Intervenor’s License. In that matter, NDG filed a motion requesting the Intervenor be ordered to cease and desist from using unit 105 in its commercial building as part of its licensed premises. A hearing was held on December 8, 2021

¹ This matter came before the undersigned pursuant to a delegation of authority from the Department director.

on that motion but since the Board was to further consider Intervenor’s renewal on December 13, 2021 and a motion of clarification was filed with the Board by the Intervenor regarding the Intervenor’s licensed premises, the Department chose not to rule on the cease and desist motion and to wait for the Board’s decision. At the Board’s December 13, 2021 hearing, the Board granted the Intervenor’s motion of clarification. The Appellants then filed their appeal of the Board’s December 13, 2021 decision. These appeals are consolidated. By order dated December 23, 2021, the undersigned found that the Appellants did not have standing to appeal the Board’s decision but that this matter could proceed under the Department’s *sua sponte* authority of R.I. Gen. Laws § 3-2-2. The parties agreed that this matter could be decided by stipulated facts and exhibits. The parties were represented by counsel. The Appellants and the Board timely filed briefs and all parties made oral argument at a remote hearing on April 27, 2022.²

II. JURISDICTION

The Department has jurisdiction over this matter pursuant to R.I. Gen. Laws § 3-7-1 *et seq.*, R.I. Gen. Laws § 3-2-2, R.I. Gen. Laws § 42-14-1 *et seq.*, and R.I. Gen. Laws § 42-35-1 *et seq.*

As discussed in more detail in the December 23, 2021 order, the Department has broad and comprehensive control over the traffic in intoxicating liquors. Indeed, the Department’s power of review is so broad that it has been referred to as a “state superlicensing board.” *Baginski v. Alcoholic Beverage Comm’n.*, 4 A.2d 265, 267 (R.I. 1939). Because of this broad authority to enforce Title 3, the Department may review matters on appeal pursuant to its authority under R.I. Gen. Laws § 3-2-2³ rather than R.I. Gen. Laws § 3-7-21. The Department exercises its authority

² The transcript of the closing arguments was received on April 29, 2022.

³ R.I. Gen. Laws § 3-2-2 provides as follows:

Supervision. – (a) The department has general supervision of the conduct of the business of manufacturing, importing, exporting, storing, transporting, keeping for sale, and selling beverages.

(b) The department may lease a warehouse for the purpose of efficiently exercising its powers and duties of inspection and may upon reasonable charges store beverages for license holders in the

under R.I. Gen. Laws § 3-2-2 when the matter rises to a level that impacts its broad authority over statewide licensing. *City of Providence Bd. of Licenses v. State Department of Business Regulation*, 2006 WL 1073419 (R.I. Super.) upheld the Department’s authority to hear a matter on appeal pursuant to the Department’s *sua sponte* authority under R.I. Gen. Laws § 3-2-2. See *Green Point Liquors v. McConaghy*, 2004 WL 2075572 (R.I. Super). See also *Bourbon Street, Inc. d/b/a Senor Froggs/Sully’s Sports Bar v. Newport Board of Licenses Commissioners*, 1999 WL 1335011 (R.I. Super.).

III. ISSUE

As set forth in the December 23, 2021 order, this matter relates to the applicability of § 1.4.27 of the 230-RICR-30-10-1 *Liquor Control Regulation* (“Regulation”)⁴ and any pertinent statutes and other regulatory provisions to the Intervenor’s use of unit 105. More specifically, whether the Intervenor expanded into unit 105 in violation of § 1.4.27 and if so, what is the remedy/sanction.

IV. MATERIAL FACTS

The parties filed an agreed stipulation of facts which is summarized as follows:⁵

1. NDG is the owner of premises located at 1450 Atwood Avenue (AP 44 Lot 96) in the Town of Johnston. Exhibit O (radius map).
2. Applegate is the owner of premises located at 205 Atwood Avenue (AP 44 Lot 181) in the Town of Johnston. Exhibit O.
3. The owner of the premises located 1478 Atwood Avenue (the property that is the subject of these proceedings) is Northeast Ventures, Inc.

warehouse. No lease shall be for a longer period than five (5) years and every lease shall contain the provision that if it becomes unlawful to manufacture, keep for sale, and to sell beverages in this state it shall become void.

(c) The department has the power at any time to issue, renew, revoke and cancel all manufacturers', wholesalers' and retailers' Class G licenses and permits as are provided for by this title.

(d) The department shall supervise and inspect all licensed places to enforce the provisions of this title and the conditions, rules and regulations which the department establishes and authorizes.

⁴ The references to sections within this decision will refer to various sections of the Regulation.

⁵ See statement of stipulated facts filed February 24, 2022.

4. The operator and BV license holder at that address is the Intervenor “101 Bar and Grill, Inc.” utilizing the trade names “Bar 101” and/or “The Gathering at 101.”

5. Both Appellants’ properties fall within a 200 foot radius of the Intervenor. Exhibit O.

6. The Intervenor was granted a Class BV liquor license by the Town of Johnston in 2009 and again in 2012. The license was renewed annually. Exhibits A1 and A2. The business address of the licensed premises is listed on the licenses as “1478 Atwood Avenue, Johnston.” Exhibit A

7. 1478 Atwood Avenue, Johnston is a two story commercial strip mall built in 1965 containing 20,640 square feet of floor space having numerous separate units. Exhibit B (Johnston Tax Assessors data sheet).

8. A marketing publication described the facility as “Atwood Centre” having a capacity for 22 “stores” and having a total of 50 parking spaces situated on .63 acres. Exhibit C (“Loopnet” posting).

9. “Atwood Centre” is comprised of multiple rentable units.

10. The applications and licenses for the subject premises did not list the actual unit numbers that were proposed for the sale, consumption, service and storage of alcoholic beverages. The applications and licenses for the subject premise did not list the areas within Atwood Centre that were owned, licensed or controlled by the proposed licensee.

11. No plans or sketches showing the layout, dimensions or interior of the area to be licensed were filed with the Town prior to the issuance of the license in 2009 and its renewal through 2020.

12. When first licensed in 2009 and until 2020, the Intervenor occupied, leased or controlled only two units at 1478 Atwood Avenue – units 103 and 104.

13. As of 2019, the adjoining unit (unit 105) was occupied, leased or controlled by a launderer known as “*Go Green Cleaners*.” Exhibit D (Google map photos (July 10, 2019)).

14. In approximately 2020, after *Go Green Cleaners* vacated unit 105, the Intervenor commenced operations including the sale, consumption, service and storage of alcoholic beverages in the adjacent unit 105 for the first time.

15. A building permit for new construction intended to be performed in unit 105 was obtained in October, 2020. Exhibit E.

16. The building permit application filed in advance of the Intervenor’s use of unit 105 did not identify the unit dimensions or area. The stated purpose of the permit was to allow for the

“expansion of existing bus[iness].” Exhibit E. The un-named “existing business” referenced in the Building Permit application was the Intervenor.

17. Shortly after the Building Permit was granted by the Town, the Intervenor for the first time began operations into unit 105. Exhibits F-1, F-2, F-3 and F-5 (Intervenor’s postings for “the Gathering at 101-Est. 2020”). (Exhibit F-4) (Intervenor’s recent Instagram posting).

18. Photographs of the area taken on August 25, 2021 show Bar 101 occupying units 103, 104, and 105. Exhibit G-1.

19. As of August 25, 2021, signs above unit 105 and on the Atwood Centre’s marquee stated the name of the prior tenant “*Go Green Cleaners.*” Exhibit G-1.

20. As of August 25, 2021, the signs above original Intervenor (units 103 and 104) stated “Bar 101” and Bar 101’s motto “Keepin’ It Simple,” respectively. Exhibits D, G-1 and G-2.

21. No new liquor license has been separately issued to Intervenor or to Northeast Ventures for the new portion (unit 105) of the Intervenor operation.

22. As shown in Exhibits F-2, F-3, F-4 and F-5, the expanded area in unit 105 is controlled or leased by the Intervenor and is used and marketed for the serving of alcoholic beverages.

23. No notice of liquor license expansion was provided to the abutters or to the general public before the Intervenor commenced its operations in unit 105.

24. The licenses granted or renewed to the Intervenor in 2009 through 2020 did not particularly describe and identify “that portion of the licensees properly owned, leased or controlled by the Licensees or which or from which alcoholic beverages may be sold, services or stored.” Regulation § 1.4.27(A) and R.I. Gen. Laws. § 3-5-9.

25. The Intervenor, did not, prior to 2021 submit to the local licensing board or keep current an accurate drawing of the licensed premises outlining and giving the dimensions of the area owned, leased or controlled by the Licensee or which was actually the subject of any liquor license. Regulation § 1.4.27(B).

26. The Intervenor did not file “plans along with the other pertinent information” with the local Licensing Board along with its Licensing or Renewal Applications prior to 2021. Johnston Code Section 204-1.

27. The Intervenor has sold, served or stored “alcoholic beverages outside [of]” units 103 and 104 which were the only units occupied when the liquor license was originally granted.

28. The Intervenor did not provide statutory Notice of its liquor service and sales operations to abutters within the 200' statutory radius of the operation.

29. When the Intervenor was first licensed in 2009, it operated in and controlled only units 103 and 104.

30. A letter was written by NDG to the Intervenor advising it of a parking problem on November 8, 2019. Exhibit L.

31. Because NDG believed that the expansion violated the clear terms of State law, State Regulation and local ordinance, NDG filed a Commercial Liquor Licensing complaint with the Department on September 15, 2021, as well as a letter addendum and numerous exhibits.

32. Shortly thereafter, on the date of filing, Department advised counsel for NDG that because the Department also has appellate jurisdiction over such matters, it preferred that the complaint be filed initially with the Johnston Liquor Licensing Board in order "to allow the local authority to investigate the Complaint without any advice from the Department."

33. Respecting that determination, NDG immediately filed a complaint with the Appellee Johnston Board of Liquor Licenses based on precisely the same facts and law.

34. In that communication to the Town, NDG advised the town that the Department wished the Town to "initially investigate and consider the allegations and render a decision thereon," and that the decision be rendered "prior to consideration of any renewal of the current license."

35. The Johnston Town Clerk assured counsel that "the topic will appear on the Town Council's October 12th meeting for them to schedule a show cause hearing."

36. The matter appeared on the October 12, 2021 agenda as a "commercial liquor licensing complaint . . . regarding Bar 101 units 103, 104, and 105 located at 1478 Atwood Avenue."

37. The minutes from October 12 indicate that the solicitor (William Conley) "discussed the complaint received and requested a show cause hearing at the next regular scheduled meeting."

38. In keeping with that communication, the November 8 agenda showed that a "Hearing for the Business [101 Bar] to show cause why the BV-full license should not be suspended or revoked due to a complaint . . . particular to the licensed premises area of the business" was to be held followed by "annual Liquor License Renewals for year 2021-2022."

39. NDG thereafter on November 2, 2021 filed an objection to the impending "renewal." Exhibit 2 (transcript).

40. At the scheduled meeting on November 8, 2021, before any evidence was taken on the “Show Cause Hearing,” the Assistant Solicitor “clarified” that “this item is considered an objection to the renewal of the liquor license and not a Show Cause Hearing.” See Minutes of November 8, 2021 meeting.

41. Counsel for NDG then presented exhibits (A-1 through K-2) for the record, outlined the [Commercial] complaint and requested remedies to the alleged issues and also requested that the license be revoked, suspended or not renewed. See Hearing transcript at p. 25.

42. A review of the transcript at pp. 22-23 indicates that when specifically asked whether there was going to be a show cause hearing or whether it was to be considered together “with the renewal,” the Assistant Solicitor replied “I’m not presenting evidence against the licensee to show cause why their license is not revoked, I’m handing the floor to you for a full objection on the renewal.”

43. NDG proceeded to present evidence on the Show Cause issue, as well as the renewal, and in conclusion asked “that there be no renewal and that the license should be revoked and suspended.” Transcript, p. 49.

44. Thereafter, the Intervenor stated “yeah – did we increase the size? Yeah . . .” Transcript at p. 53 and “we would like the opportunity to apply for a new renewal license and probably an expanded one at some later point.” Transcript at 54. And, “could we have done and should we have done maybe a little more on the application? Yeah, we will.” Transcript p. 55.

45. No separate testimony or documentary evidence was produced by either the Town or Intervenor at the November 8, 2021 meeting.

46. The Assistant Solicitor addressed the Board at pp. 60-62 of the transcript.

47. After oral argument by the Intervenor’s attorney, a motion was made, and passed, “dismissing” the complaint of NDG which was the subject of the show cause hearing. *Id.* at p. 63.

48. A motion was then made and passed to continue the “renewal” for the Intervenor to December 13, 2021, and finally, a motion was made and passed “to allow Bar 101 to operate during the period after the expiration of the license until December 31, 2021.” *Id.*, at pp. 63-67.

49. NDG appealed the actions of the Board, and an interim Order was entered by the appointed hearing officer. See Department Order dated December 9, 2021.

50. On November 8, 2021, the Intervenor requested that the show cause hearing be dismissed (Tr. p. 63) and that the license for the entire premises, *including expanded unit 105* be allowed to operate and then considered for renewal on December 13 under the theory that the entire building had already been licensed.

51. The matter came before the Board on the continuation of the “renewal” hearing on December 13, 2021.

52. On or about November 29, 2021, the Intervenor filed a so-called “motion to clarify the location of its BV license.” Exhibit N.

53. Upon learning of that motion, NDG filed an Objection. Exhibit P.

54. At the hearing on December 13, 2021, NDG objected to the proceedings. Transcript pp. 16-19 and Exhibits N, and 2 and P (objections).

55. On November 8, 2021 documents previously marked as Exhibits 1, 2, and A-1 through K-2 were entered into evidence before the Board without objection.

56. On December 13, 2021, Exhibits L through N were entered into evidence before the Board without objection.

57. After hearing on December 13, 2021, the Johnston Licensing Board granted Bar 101’s “motion to clarify,” granted the “renewal” of the license and denied all objections interposed by NDG.

58. Applegate did not participate in any of the proceedings before the Johnston Licensing Board.

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. Relevant Statute and Regulations

R.I. Gen. Laws § 3-1-5 provides as follows:

Liberal construction of title. This title shall be construed liberally in aid of its declared purpose which declared purpose is the promotion of temperance and for the reasonable control of the traffic in alcoholic beverages; provided, however, that the promotion of incentive programs or discounts for any person sixty-five (65) years of age or older, active duty members of the armed forces of the United States, and members of the National Guard or Reserves shall be allowed.

R.I. Gen. Laws § 3-5-9 provides as follows:

Premises covered. Not more than one retail license, except in the case of a retailer's Class E license, shall be issued for the same premises. Every license shall particularly describe the place where the rights under the license are to be exercised and beverages shall not be manufactured or kept for sale or sold by any licensee except at the place described in his or her license.

R.I. Gen. Laws § 3-5-17 provides in part as follows:

Before granting a license to any person under the provisions of this chapter and title, the board, body or official to whom application for the license is made, shall give notice by advertisement published once a week for at least two (2) weeks in some newspaper published in the city or town where the applicant proposes to carry on business, or, if there is no newspaper published in a city or town, then in some newspaper having a general circulation in the city or town. Applications for retailer's Class F, P and Class G licenses need not be advertised. The advertisement shall contain the name of the applicant and a description by street and number or other plain designation of the particular location for which the license is requested. Notice of the application shall also be given, by mail, to all owners of property within two hundred feet (200') of the place of business seeking the application. The notice shall be given by the board, body or official to whom the application is made, and the cost of the application shall be borne by the applicant. The notices shall state that remonstrants are entitled to be heard before the granting of the license, and shall name the time and place of the hearing. At the time and place a fair opportunity shall be granted the remonstrants to make their objections before acting upon the application; provided that no advertisement or notice need be given pursuant to this section when a license holder applies for a temporary seasonal expansion of an existing liquor license.

R.I. Gen. Laws § 3-5-19 provides in part as follows:

(a) The board, body or official which has issued any license under this title may permit the license to be used at any other place within the limits of the town or city where the license was granted, or, in their discretion, permit the license to be transferred to another person, but in all cases of change of licensed place or of transfer of license, the issuing body shall, before permitting the change or transfer, give notice of the application for the change or transfer in the same manner as is provided in this chapter in the case of original application for the license, and a new bond shall be given upon the issuance of the license provided, that notice by mail need not be made in the case of a transfer of a license without relocation. ***

Section 1.4.27 of 230-RICR-30-10-1 *Liquor Control Regulation* (“Regulation”) provides as follows:

Premises - Retail

A. All licenses granted or issued must identify a premise for operation under the license. The licensed premises is that portion of the licensee’s property owned, leased or controlled by the licensee, on which or from which alcoholic beverage may be sold, served or stored. It shall be defined by the licensee at the time the application (new or renewal) is filed and finally determined by the approval of the local licensing board.

B. In addition, every applicant is required to submit to the local licensing board and keep current an accurate drawing of the licensed premises outlining and giving dimensions of the area which is actually the subject of the license. Any sale, service or storage of alcoholic beverages outside the licensed premises is a violation.

C. Once the licensed premise is established, any expansion thereafter shall require a hearing as prescribed in R.I. Gen. Laws § 3-5-17 and the approval of the local licensing board. A decrease in the area of the licensed premises requires notification to the local licensing board and filing of a revised drawing. Any notice of a decrease in the area shall not require a public hearing.

C. Arguments

The Intervenor argued that this matter is a *sua sponte* action by the Department to ensure that liquor licensing laws were followed by the Board so that the Appellants introduction of post hearing evidence such as affidavits was not appropriate. The Intervenor argued that it believes that this was a reduction and not an expansion but that if the Department finds it is an expansion, it would and should remand it back to the Board. The Intervenor argued that has there has already been a hearing before the Board in relation to its motion for clarification and the Appellants were heard then about

the reduction or expansion so that there is nothing else for the Department to do as all regulations were followed.

The Board agreed with the Intervenor. It argued that the entire mall has been licensed by the Board upon the grant of the License in 2009 as the only description of the premise was the mall's address. The Board argued that the Town's records show that the License was only identified by the address, so the Town did not want to deprive the Intervenor of its rights to use unit 105. It argued that the Appellants have already been heard so there would be no reason to remand the matter back to the Board. The Board argued that the License was not void.

The Appellants argued that the initial License is void due to lack of specificity in the Intervenor's application and noncompliance with the Regulation. The Appellants argued that the Intervenor did not comply with the regulatory requirements to file and be approved by the Board for its expansion of its premises into unit 105 and therefore, its use of unit 105 is in contravention of the Regulation. The Appellants argued that the Intervenor had no pre-existing right to use unit 105, and the Board circumvented the regulatory requirements by granting the motion for clarification.

D. Whether the Intervenor Violated the Regulation

It is undisputed that when the Intervenor initially applied for its License, it provided the Board with the street address of the 1478 Atwood Avenue, a 22 unit, two-story strip mall in which it is located. It is undisputed that when it was initially licensed, the Intervenor only occupied, leased or controlled two (2) units at 1478 Atwood Avenue: units 103 and 104. It is undisputed that at that time and until 2020, unit 105 was a dry cleaning establishment.

Section 1.4.27(A) first requires that all licenses granted or issued must identify a premise for operation. It then defines the licensed premise as that portion of "property owned, leased or controlled by the licensee, on which or from which alcoholic beverage[s] may be sold, served or

stored.” Finally, the section provides that the licensed portion is defined at the time of the application (new or renewal) is filed and finally determined by the approval of the local licensing board. Thus, an applicant submits an application to a local licensing authority for a license. The licensed premise is the part that the applicant/license controls (e.g. owns or leases). When the local licensing board approves the license, the portion that is controlled is the licensed portion. That licensed portion is determined by the approval of the local licensing authority.

The Town took the position that there is nothing in the Regulation that prevents the grant of a liquor license beyond that which is controlled by the licensee. However, the Regulation clearly requires that the area in control of the applicant is the area that is the licensed premise. A local licensing authority cannot allow an applicant to have a liquor license in areas not in its control. That would be an absurd result allowing the Intervenor to serve liquor at any place in the mall whether in its control or not solely because of the street address given on its application. Not only would it be an absurd result, such a conclusion is not supported by statute and Regulation.

R.I. Gen. Laws § 3-5-9 requires every license shall particularly describe the place where the rights under the license are to be exercised. R.I. Gen. Laws § 3-5-17 requires that the “advertisement shall contain the name of the applicant and a description by street and number or other plain designation of the particular location for which the license is requested.” Section 1.4.3⁶

⁶ Section 1.4.3 of the Regulation provides in part as follows:

Advertising License Applications - Retail/Wholesale/Manufacturers

A. In advertising applications for, or transfer of, an alcoholic beverage license, notice must be given once a week for two weeks on days other than Sunday or legal holidays and at least fourteen (14) days must elapse between the first publication and the date of hearing on the application.

B. The advertisement must include the following:

1. Name of applicant (individual, corporation, limited liability company, or partnership) and the name of any person(s) owning more than 10% of the interest in the proposed license holder, if applicable;
2. D/B/A (name of business);
3. Address of proposed licensed premise; and
4. Date, time, and place of public hearing.

requires that advertisements for liquor applications must include the name of the applicant and name(s) of anyone owning over 10% of interest in the proposed license holder and address of proposed licensed premises. The statute requires that the notice give the street and number or another designation of the particular location. A street address is enough to describe the proposed license location subject to notice and advertising requirements for a new application. If a street name and number are not available, a plain designation can be given.

However, the street address requirement for notice of an application does not then allow a license to be issued to an area not in the control of an applicant. An applicant may apply for a license and not yet be in control of the proposed licensed premises. It could be that the applicant has signed a lease subject to the approval of a liquor application. Section 1.4.14⁷ distinguishes between the grant and issuance of a license. A license may be granted prior to the applicant controlling the area but the license cannot issue without the control of the area.⁸

Section 1.4.27(B) requires that all applicants submit and keep current an accurate drawing of the licensed premises and all alcoholic sales must be made inside the license premises. Here, the Intervenor applied for a liquor license in 2009. At that time, it controlled units 103 and 104. It did not submit the drawing to the Board. However, pursuant to § 1.4.27(A), the Board

⁷ Section 1.4.14 of the Regulation provides as follows:

Granted License (Not Issued) -Retail

A retail alcoholic beverage license may be granted but not issued pending full compliance with conditions and criteria necessary for the issuance of said license. All such “grants” of alcoholic beverage licenses shall be in writing. The license shall particularly describe the place or premises where the rights under the license are to be exercised. The applicant shall have no more than one (1) year after the original granting of the license to meet all conditions and criteria set forth in the granting order. If the applicant does not meet all the conditions and criteria within one (1) year, the license shall become null and void without further hearing by the local licensing authority; provided, however, said time period shall not be calculated when the license at issue is involved in litigation, from the date of commencement of the action to final disposition.

⁸ See *Oaklawn Discount Liquors, Inc. and MAB Liquors, Ltd. v. City of Cranston, et al.* DBR No. 21LQ007 (4/14/22) for a discussion of identifying the premise for the purpose of an application and notice given to abutters and in the newspaper.

determined the licensed portion when it approved that license in 2009. The approval was for the area under the Intervenor's control - units 103 and 104 – from which alcoholic beverages were to be sold, served, or stored. Once the Board approved the license application, units 103 and 104 became the licensed premises and any expansion of that licensed premise would have had to comply with the Regulation. The Intervenor did not control unit 105 when it became licensed in 2009 so unit 105 was not determined to be part of the licensed premises when the Board approved the application.

The Intervenor moved to clarify its location with the Board by the filing of a motion dated November 29, 2021 and heard by the Board on December 13, 2021. The Intervenor argued that because it only gave the strip mall address in 2009 but had no intention of using the entire mall, it was unclear what portion of the mall was its licensed premise. The Intervenor took the position that its motion for clarification was a reduction request of the licensed premises. The Intervenor requested that the Board approve that it was located at units 103, 104, and 105 despite the fact that it was not located in unit 105 in 2009. Indeed, there was nothing to clarify in 2021 in regard to the Intervenor's licensed premise. The Regulation clearly provides that the licensed premise is defined as the property controlled by the applicant and approved by the local licensing authority. That was done in 2009 upon the approval of the application. The Board cannot approve an expansion by renewing a license that includes an expansion area where the licensee has not followed the regulatory requirement on how to obtain approval for the expansion.

Here, the Intervenor controlled units 103 and 104 in 2009 which became the licensed premise on approval by the Board. The approval of the license in 2009 did not cause the entire mall to become the licensed premise because the Intervenor only put the street address and not the unit numbers on its application. Since the Intervenor did not control the mall, there is no question under the Regulation,

that the mall is not the licensed premise. The Intervenor's argument that the licensed premises needed to be clarified is not supported by the Regulation. The licensed premise was and still is units 103 and 104. While the Intervenor should have submitted a diagram as required by § 1.4.27(B), the fact that it did not does not make it unclear which units it controlled at the time of its application. While it may have prudent for the Intervenor to include the unit numbers in its initial application, the fact that it did not does not make it unclear which units it controlled at the time of its application and the issuance of the License.

Indeed, the Intervenor's motion for clarification taken to its logical conclusion would mean that any applicant within a mall or multi-use building could be licensed for the entire building if that applicant did include the unit or store number in its application. It would allow the service of liquor in areas not in control of the licensee and not known the local licensing authority. Not only would that be an absurd result, such a result would run contrary to the intent of the liquor licensing laws to ensure the control of liquor licenses. R.I. Gen. Laws § 3-1-5. *Green Point*. That argument is without merit.

Section 1.4.27(C) requires that any expansion outside of the licensed premise shall require a hearing as prescribed in R.I. Gen. Laws § 3-5-17 and approval by the local licensing authority. Following the requirements of R.I. Gen. Laws § 3-5-17 means that notice must be given to those within a 200 foot radius. It means the local licensing authority must hold a hearing after notice is given and those within the radius have appeal rights to the Department. The regulatory requirement for approval of expansion is consistent with the aims of the liquor licensing statute for the control of liquor trafficking. *Supra*. Local licensing authorities are to know where alcohol is being served. This ensures they have control over liquor licensing which is why a licensee cannot expand its licensed premises without local approval.

While the Board and Intervenor argued that a hearing was already held on the expansion to unit 105, there was no hearing held as prescribed by R.I. Gen. Laws § 3-5-17. Notice needs to be given to the abutters in the 200 feet radius. A hearing must be held. And with such a hearing, there are appeal rights to the Department which includes a *de novo* hearing as opposed to the Department hearing the matter *sua sponte*. Since it has to be noticed pursuant to statute, the Appellants would have had standing to appeal any decision to grant the expansion. The Board in considering the expansion request would obviously want to consider such factors as the Intervenor's knowledge of liquor licensing requirements and ability to abide with such requirements as well as its general fitness for licensing.⁹

The undersigned is troubled that the Intervenor moved into unit 105 without filing with the Board for the approval of such an expansion. Such behavior either indicates a lack of knowledge regarding liquor licensing requirements or an intentional violation of the Regulation. The undersigned is bewildered that the Board abdicated its statutory authority over liquor licensing and allowed an after fact expansion by the Intervenor of its licensed premises in violation of the Regulation.¹⁰

The Appellants relied on *State v. Conley*, 22 R.I. 387 (1901) to argue that the Intervenor's violation of the Regulation caused its initial grant of the License for units 103 and 104 to be voided by operation of law. A review of that case shows that the law at issue provided that a liquor license was void by operation of law if the statutory entrance requirements were violated. The current liquor

⁹ The Appellants submitted evidence to the undersigned regarding what it argued are incidents of continuing trespass, illegal parking, and property damage arising from the Intervenor's use of 105. Certainly that evidence can be brought up to the Board on the remand hearing. And depending what happens on remand, this matter could end up again before the Department at which time such evidence most likely would be relevant.

¹⁰ The Board argued that it did not want to deprive the Intervenor of its right to use unit 105. However, pursuant to the Regulation and statute, the Intervenor had no right to use unit 105 for the service of alcohol without requesting and receiving approval by the Board. The undersigned does not understand the Board's theory in relation to allowing the Intervenor's continued use of unit 105 to serve alcohol in violation of the Regulation.

licensing statute does not include any similar provisions making a violation of the statute or Regulation operate to void the license.¹¹

Nonetheless, a liquor licensee certainly can be sanctioned for violating statutory and regulatory requirements.¹² In this matter, the Intervenor has been serving alcohol in unit 105 since 2020 in contravention of the Regulation. At this time, the Department will not consider the imposition of either a monetary penalty or suspension or revocation of the Intervenor's License for this continuous and overt violation. However, such penalties are certainly within the Department's authority to impose in its oversight of liquor.¹³ *Supra*. The Department has the authority to order the Intervenor to desist from such violations as part of its oversight of liquor licensing.

¹¹ However, § 1.4.14 provides a license is void if the applicant does not meet the conditions of licensing within one (1) year of the grant of the license. R.I. Gen. Laws § 3-5-16.1 provides for a Class A liquor license to be canceled if abandoned. But there are not any current relevant provisions similar to the 1901 law.

¹² R.I. Gen. Laws § 3-5-21 provides in part as follows:

Revocation or suspension of licenses — Fines for violating conditions of license. (a) Every license is subject to revocation or suspension and a licensee is subject to fine by the board, body, or official issuing the license, or by the department or by the division of taxation, on its own motion, for:

- (1) Breach by the holder of the license of the conditions on which it was issued; or
- (2) Violation by the holder of the license of any rule or regulation applicable; or

(5) Operating in any manner inconsistent with the license, or in any manner consistent with another class license, without first coming before the board for a new license application.

(b) Any fine imposed pursuant to this section shall not exceed five hundred dollars (\$500) for the first offense and shall not exceed one thousand dollars (\$1,000) for each subsequent offense. For the purposes of this section, any offense committed by a licensee three (3) years after a previous offense shall be considered a first offense.

¹³ R.I. Gen. Laws § 3-7-21 provides in part as follows:

Appeals from the local boards to director. (a) Upon the application of any petitioner for a license, or of any person authorized to protest against the granting of a license, including those persons granted standing pursuant to § 3-5-19, or upon the application of any licensee whose license has been revoked or suspended by any local board or authority, the director has the right to review the decision of any local board, and after hearing, to confirm or reverse the decision of the local board in whole or in part, and to make any decision or order he or she considers proper, but the application shall be made within ten (10) days after the making of the decision or order sought to be reviewed. Notice of the decision or order shall be given by the local or licensing board to the applicant within twenty-four (24) hours after the making of its decision or order and the decision or order shall not be suspended except by the order of the director.

Based on the foregoing, this matter shall be remanded back to the Board so that the regulatory requirements are properly followed, statutory notice is given, and a hearing held.

Based on the foregoing, the Intervenor is in violation of § 1.4.27 by using unit 105 to serve alcohol. Unit 105 is not part of the Intervenor's licensed premise. The Intervenor shall **immediately** cease and desist from using unit 105 for the sale, service, or storage of alcoholic beverages.

VI. FINDINGS OF FACT

1. On November 8, 2021, NDG filed an appeal pursuant to R.I. Gen. Laws § 3-7-21 with the Department over the Board's decision taken in relation to the renewal of Intervenor's License.

2. On December 15, 2021, the Appellants filed an appeal with the Department pursuant to R.I. Gen. Laws § 3-7-21 regarding the decision taken by the Board in relation to the renewal of the Intervenor's License.

3. The Appeals are consolidated.

4. By order dated December 23, 2021, the undersigned found that the Appellants did not have standing to appeal the Board's decision but that this matter could proceed under the Department's *sua sponte* authority of R.I. Gen. Laws § 3-2-2.

5. The parties agreed that this matter could be decided by stipulated facts and exhibits. The Appellants and the Board timely filed briefs and all parties made oral argument at hearing on April 27, 2022.

6. Unit 105 was not controlled, leased, or owned by the Intervenor at the time of its application for its License in 2009.

7. The Intervenor controlled units 103 and 104 when its License was first approved and issued in 2009.

8. The Intervenor did not request approval from the Board to use unit 105 as part of its licensed premises before expanding into unit 105 and using it for the sale of alcohol.

9. 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. Laws § 3-7-1 *et seq.*, R.I. Gen. Laws § 3-2-2, R.I. Gen. Laws § 42-14-1 *et seq.*, and R.I. Gen. Laws § 42-35-1 *et seq.*

2. The Intervenor violated § 1.4.27 of the Regulation by expanding into unit 105 without filing for or receiving approval from the Board pursuant to R.I. Gen. Laws § 3-5-17.


3. The Board had no legal basis to grant the motion for clarification heard by the Board on December 13, 2021 as the licensed premise was only units 103 and 104 and any expansion into unit 105 must follow the statutory and regulatory requirements.

VIII. RECOMMENDATION

Based on the above analysis, the Hearing Officer finds that the Intervenor violated § 1.4.27 of the Regulation by expanding into unit 105 without filing for or receiving approval from the Board pursuant to R.I. Gen. Laws § 3-5-17. Since the Board had no legal basis to grant the motion for clarification heard by the Board on December 13, 2021 and allow the Intervenor to use unit 105 without following the statutory and regulatory requirements, this matter is remanded back to the Board. If the Intervenor still desires to use unit 105 as part of its licensed premises, it must make such a request to the Board in accordance with § 1.4.27, and the Board must comply with the Regulation and follow the process set forth in R.I. Gen. Laws § 3-5-17 for a hearing. Additionally, the Intervenor

shall **immediately** cease and desist from using unit 105 for the sale, service, or storage of alcoholic beverages.

Dated: May 17, 2022

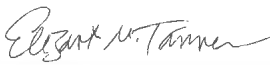

Catherine R. Warren
Hearing Officer

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: 05/18/2022


Elizabeth M. 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 18th day of May, 2022 that a copy of the within Decision was sent by electronic delivery only to the following Peter Petrarca, Esquire, Petrarca & Petrarca, 330 Silver Spring Street, Providence, R.I. 02904 Peter@petrarcalaw.com; James P. Marusak, Esquire, Gidley, Sarli & Marusak, LLP, One Turks Head Place, Suite 900, Providence, R.I. 02903 jpm@gsm-law.com; Dylan Conley, Esquire, Law Office of William J. Conley, Jr., 123 Dyer Street, Second Floor, Providence, R.I. 02903 dconley@wjclaw.com and by electronic delivery to Pamela Toro, Esquire, Department of Business Regulation, Pastore Complex, 1511 Pontiac Avenue, Cranston, R.I. 02920.

Diane L. Paravisini
