

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

Applegate Realty, Co.	:	
National Development Group, Inc.	:	
Appellant,	:	
	:	
v.	:	
	:	
Town of Johnston, Board of Liquor Licensors	:	DBR No. 22LQ008
Appellee.	:	
	:	
and	:	
	:	
101 Bar and Grill d/b/a Bar 101,	:	
Intervenor.	:	

ORDER OF DISMISSAL

I. Introduction

This matter arose from an appeal filed by the National Development Group, Inc. and Applegate Realty, Co. (“Appellants”) on May 12, 2022 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 May 9, 2022 in relation to the grant of an application for a seasonal expansion from May 1, 2022 to October 15, 2022. A prehearing conference was held on May 25, 2022. Prior to the conference, the Intervenor moved to dismiss the appeal. While the Intervenor did not appear at the conference, the Board joined in the motion to dismiss to which the Appellants objected.

II. 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 (R.I. 1994). If a statute is clear and unambiguous, “the Court must interpret the statute literally and must give the words of the statute their plain and ordinary meanings.” *Oliveira v. Lombardi*, 794 A.2d 453, 457 (R.I. 2002) (citation omitted). The 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. DEM*, 553 A.2d 541 (R.I. 1989) (citation omitted). 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).

B. Relevant Statute and Regulation

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

Notice and hearing on licenses. 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.

Section 1.4.27 Premises of 230 RICR 30-10-1 *Liquor Control Administration*

(“Regulation”) provides as follows:

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.

Section 1.4.3 provides in part as follows:

Advertising License Applications - Retail/Wholesale/Manufacturers

D. No public notice or hearing shall be required for a licensee moving within the same plat and lot number.

C. Arguments

The Appellants argued that the last part of R.I. Gen. Laws § 3-5-17 that serves to exclude a seasonal expansion from the requirements for notice and advertising of said statute is not applicable since the Intervenor is not an existing liquor license holder. They argued that the Intervenor does not have a license for unit 105 and is not a *bona fide* liquor license holder for units 103 and 104.¹ The Appellants argued that the Intervenor’s license is void under *State v. Conley*,

¹ A recent decision was issued by the Department involving the same parties in relation to the Intervenor’s licensed premises. Said decision found that units 103 and 104 were the licensed premises and unit 105 was not licensed. In

22 R.I. 387 (1901). Because the Intervenor is not an existing licenseholder, the Appellants argued that the seasonal expansion provision in R.I. Gen. Laws § 3-5-17 does not apply and they have standing to appeal. The Appellants argued that in the alternative, the Department should exercise its authority under R.I. Gen. Laws § 3-2-2 to hear the appeal.

The Board argued that the Intervenor is an existing licenseholder and since this is a seasonal expansion, it is not covered by R.I. Gen. Laws § 3-5-17. The Board also relied on § 1.4.3(D) of the Regulation that provides no hearing is needed when moving inside the same plat and lot number.

D. Seasonal Expansion

R.I. Gen. Laws § 3-5-17 removed temporary seasonal expansions applications from its statutory requirements of advertising and notice being given to abutters within 200 feet. As such, a grant of a seasonal expansion is similar to a renewal in that there are no appeal rights for abutters as there are no notice requirements. When an original license is issued, abutters within 200 feet of the new licensee have the right to appeal to the Department pursuant to R.I. Gen. Laws § 3-7-21.² R.I. Gen. Laws § 3-5-17 provides what type of notice to 200 feet abutters is required to be given for an original application for license. Notice is also given to 200 feet abutters for a transfer

order for the Intervenor to expand into unit 105, it needed to follow the statutory and regulatory requirements of R.I. Gen. Laws § 3-5-17 and § 1.14.27 of the Liquor Regulation. Thus, the Intervenor was required to file an application for expansion and go through the notice and hearing process before the Board. *Applegate Realty, Co. and National Development Group, Inc. v. Town of Johnston, Board of Liquor Licensors*, DBR No. 22LQ008 (5/18/22).

² 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.

or relocation of license pursuant to R.I. Gen. Laws § 3-5-19.³ R.I. Gen. Laws § 3-7-21 also provides that those granted standing pursuant to R.I. Gen. Laws § 3-5-19 have the right to appeal. R.I. Gen. Laws § 3-5-19 applies to the transfer or relocation of a license where the notification process is the same as an original application. Appeal rights are not granted to 200 feet abutters in renewal matters since a renewal does not involve a new license, or a new location, or a new owner. Similarly, as temporary expansions are only temporary and are not permanent new locations, the statute now excludes such applications from the notice requirements. Thus, the Appellants do not have standing to appeal the seasonal expansion.

The undersigned notes that the recent decision in this matter addressed the issue of whether the Intervenor's entire license (units 103 and 104) were void. That decision rejected the Appellants reliance on *State v. Conley* finding that the statutory provisions at the time of that case did not currently exist. While the Intervenor impermissibly expanded into unit 105, it still is an existing licenseholder. Since it is an existing licenseholder, its request for a seasonal expansion is not a new application for a liquor license.

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

Transfer or relocation of license. – (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. In all cases of transfer of license, indebtedness of the licensee incurred in the operation of the licensed premises shall be paid to or released by an objecting creditor before the issuing body permits the transfer. In cases of dispute as to the amount of indebtedness, the issuing body, may, in its discretion, permit the transfer upon statement of the licensee, under oath, that the claim of indebtedness is disputed and that the statement of dispute is not interposed for the purpose of inducing transfer of the license. No creditor is allowed to object to the transfer of a license by a receiver, trustee in bankruptcy, assignee for the benefit of creditors, executor, administrator, guardian or by any public officer under judicial process. In case of the death of any licensee, the license becomes part of the personal estate of the deceased. The holders of any retail Class A license within the city or town issuing or transferring a Class A license have standing to be heard before the board, body, or official granting or transferring the license.

The Appellants argued that the Intervenor has not complied with § 1.14.27 when it sought an expansion of its premises. However, § 1.14.27 is not applicable to seasonal expansions. The Regulation requires that “[o]nce the licensed premise is established, any expansion thereafter shall require a hearing as prescribed in R.I. Gen. Laws § 3-5-17.” However, by that statute, the statute does not apply to a seasonal expansion.

Prior to the statute excluding seasonal expansion, the Department found the former version of § 1.14.27 applied to seasonal expansions. The Superior Court upheld the Department in that matter in the Court case of *City of Providence Bd. of Licenses v. State Department of Business Regulation*, 2006 WL 1073419 (R.I. Super.). However, after that decision, the law was amended to take seasonal expansion out of the statutory requirements for hearing and notice. P.L. ch. 501 § 1; P.L. ch. 511 § 1.

As noted at hearing, the seasonal expansion is for tables in front of the Intervenor on the sidewalk in front of the Intervenor. At the Board hearing, it was noted that the Fire Department, Building Department, and Police Department had all signed off on the seasonal expansion.

Currently, the Intervenor is a licenseholder (in units 103 and 104). Unlike, the issue of unit 105 where the Department took jurisdiction as the Board and Intervenor had failed to comply with regulatory requirements, there is not a similar issue here. The Appellants have not pointed to any potential regulatory or statutory violation of the Town by its granting of seasonal expansion that would cause the Department to take *sua sponte* jurisdiction at this time.⁴ Seasonal expansions are allowed. R.I. Gen. Laws § 3-5-17 does not apply.

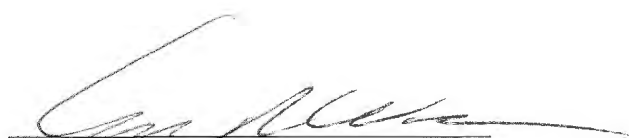
⁴ The Department has broad and comprehensive control over the traffic in intoxicating liquors. Indeed, the Department’s power of review is so broad that it has been referred to as a “state superlicensing board.” *Baginski v. Alcoholic Beverage Comm’n*, 4 A.2d 265, 267 (R.I. 1939). Because of this broad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

While not entered into evidence at hearing, the Town provided a photograph of a prior seasonal expansion which showed two or three tables on the sidewalk. As unit 105 is not licensed, its area would not be part of any seasonal expansion.

III. Conclusion

Based on the foregoing, the Appellants' appeal is dismissed as they have no standing, and no showing was made at this time for the Department to hear this matter pursuant to its authority under R.I. Gen. Laws § 3-2-2.

Dated: June 7, 2018

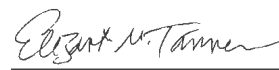

Catherine R. Warren
Hearing Officer

ORDER

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

 X ADOPT
 REJECT
 MODIFY

Dated: 06/08/2022


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 8th day of June, 2022 that a copy of the within Order of Dismissal and Notice of Appellate Rights were 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
