

**STATE OF RHODE ISLAND
DEPARTMENT OF BUSINESS REGULATION
PASTORE COMPLEX
1511 PONTIAC AVENUE
CRANSTON, RHODE ISLAND**

**Patrick Joseph Paolozzi,
Appellant,**

v.

**City of Warwick, Board of Public Safety,
Appellee**

and

**1776 Hospitality, LLC d/b/a Jefferson Tavern,
Intervenor**

DBR No.: 22LQ007

DECISION

I. INTRODUCTION

This matter arose from an appeal filed by Patrick Joseph Paolozzi (“Appellant”) with the Department of Business Regulation (“Department”) pursuant to R.I. Gen. Laws § 3-7-21 regarding a decision taken by the City of Warwick, Board of Public Safety (“Board”) on April 2, 2022 to grant a Class BV license (“License”) to 1776 Hospitality, LLC d/b/a Jefferson Tavern (“Intervenor”).¹ A hearing was held on July 26 and August 9, 2022 before the undersigned.² The parties were represented by counsel. Written closing arguments from the Appellant and Intervenor were timely received by October 4, 2022. The Board chose not to file a written closing argument.

¹ The Intervenor was allowed to intervene on April 28, 2022.

² Pursuant to a delegation of authority by the Director of the Department.

II. JURISDICTION

The Department has jurisdiction over this matter pursuant to R.I. Gen. § 3-2-1 *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.*

III. ISSUE

Whether to uphold or overturn the Board's grant of the License to the Intervenor.

IV. MATERIAL FACTS AND TESTIMONY

Alex Collazo ("Collazo") testified on behalf of the Intervenor. He testified that he owns the Intervenor, and the proposed location was previously a bar, and he would like to reopen the building with its existing use, rehabilitate it, and have an upscale bar and tavern with gourmet sandwiches and craft beers. He testified the capacity will be 50 on one side of the building and 25 on the other side, so it would have a total capacity of 75. He testified the building is at a dead end and next door are railroad tracks owned by Amtrak where trucks service the tracks. He testified that it is a largely industrial area with a plumbing company next door, and a child care center next to his back lot. He testified there are houses across the street. Intervenor's Exhibits One (1) and Two (2) (maps).

Collazo testified that the building has a left and a right wing, and he plans to keep the same lay out as before. He testified that there are egresses in the front, back, and side, and he plans to only use the rear and side egresses so that entrance will be via the parking lot. He testified he will not use the front entrance, and there is an existing kitchen which he plans to keep. He testified that on the left [facing building] will be the bar area with a bar and bar stools and food service with the right side having restaurant and table service. He testified that both sides will serve food and alcohol with the same menu and service. He testified that there is an outside deck between the two sides, and he would love to use the exterior deck sometime, but he would need an extra permit,

so it is not part of his plan right now. He testified the building entrance will be by the rear egress via the parking lot with the front egress only for emergencies. He testified that to get to the bar area from the restaurant area, one has to go outside and back in. He testified that he currently has another BV licensed establishment on the same street in Warwick. He testified that for the Intervenor, he will establish a traffic pattern in the parking lot which will keep the traffic in the back of the building so that patrons will not park in the front of the building near the houses.³ He testified that he has a lease for the building. He testified that he does not plan to have entertainment. Intervenor's Exhibits Three (3) (floor plan); Five (5) (lease); and Seven (7) (menu).

On cross-examination, Collazo testified that he has not submitted his plans for the building to Warwick building officials. He testified there will be no changes to the existing blueprints. He testified that to go between both sides of building, one needs to go outside. He testified that the kitchen connects to both sides. He testified that he plans to have three (3) to five (5) employees. He testified that on the restaurant side, one cannot see the bar so patrons would have to order through wait staff. He testified that he is using a room upstairs for storage for his paperwork and would plan to use it for storage for alcohol and supplies. He testified that he has a window air conditioning unit in the upstairs. He testified that he runs the Jefferson Speakeasy at night so after it closes, he goes to the Intervenor at 1:00 a.m. or 2:00 a.m. to clean and paint. He testified that he might leave shortly thereafter or if he has been cleaning a lot, he might leave at 8:00 a.m. He testified that police officers have come to his property but there have not been any problems. He testified that he parks his extra vehicles or allows his friends to park in the parking lot. He testified that his plan is to close at 12 midnight but he was granted a 1:00 a.m. license which he wanted so there would be no issues with cleaning up.

³ The proposed traffic flow is on what the Intervenor had marked as Exhibit I-4, but a review of the transcript shows that the Exhibit was not admitted.

On re-direct examination, Collazo testified that there has been no public use of the property, and he does not live there, and he has had no issues from the police. On re-cross examination, he testified that he plans to run both establishments and his other one is only open at night so can be at the Intervenor during the day, and he plans to hire a manager for the Intervenor. On questioning from the undersigned, he testified that a cook would be one of his employees, and he would expect that he would hire a bar/manager and then have two (2) waitstaff.

Alfred DeCorte, Director of Code Enforcement and Building Official for Warwick, testified for the Appellant. He testified that the proposed location is zoned intermodal which is a funny kind of zoning area. He testified that he believes there was a restaurant there before, but he is not sure what would be allowed on the second floor. He testified that no building permit has been applied for this building. He testified that under the local Code, the hours of operation for renovating a commercial building are 7:00 a.m. to 8:00 p.m. except in the case of an emergency. On cross-examination, he testified that intermodal zoning is for mixed usage. He testified that renovation in the Code is defined as construction which is the act of adding to an existing structure or erecting a new structure.

Police Officer Jackson Acciaioli, Warwick Police Department, testified on the Appellant's behalf. He testified that he has responded to the building several times for complaints. He testified that he has not heard noise from the building but there are always at least three (3) vehicles parked there. On cross-examination, he testified that when he has responded he has not substantiated any noise complaints, but there have been many complaints from the neighbors across the street.

Deborah Hafferty testified for the Appellant. She testified that she works at the Building Department in Warwick as the office manager. She testified that she does not have personal knowledge of the opening and closing times of commercial establishments in the intermodal

district and that would be typically handled through the licensing office or police department. On cross-examination, she testified that when an application is received, it would be circulated to the departments in terms of hours allowed.

Seth Goblitz testified on the Appellant's behalf. He testified he is a commercial and planning reviewer for the Building Department in Warwick and is familiar with the proposed location and only a permit for the front steps has been issued. He testified that he has spoken with the Intervenor about the kitchen and a ramp. On cross-examination, he testified a building cannot be occupied without a certificate of occupancy, and that nothing is on hold at this time.

Alicia Covill ("Covill") testified for the Appellant. She testified she lives across the street (42 feet) from the front of the proposed location. She testified that she is opposed to the liquor license being granted because Collazo is there every night with multiple people and cars with lights blaring on at all hours. She testified that she took videos of this starting in March. She testified that she has contacted the police and has kept track of her complaints. On cross-examination, she testified that she has made many calls to the police, but the police told her the Intervenor found a loophole. She testified that Collazo is using the building as an office and four (4) weeks ago, the police told him that he should not be there all night as there is no certificate of occupancy.

Various police reports were entered into evidence. They covered March to July, 2022 and showed that the Intervenor's neighbors have called the police at various times to report people staying overnight, parties, and noise. The reports show that when the police responded, they did not find any evidence of anyone sleeping or living or construction in the building, but Collazo was working upstairs. Intervenor's Exhibit Eight (8) (police reports).

V. DISCUSSION

A. **Legislative Intent**

The Rhode Island Supreme Court has consistently held that it effectuates legislative intent by examining a statute in its entirety and giving words their plain and ordinary meaning. *In re Falstaff Brewing Corp.*, 637 A.2d 1047 (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 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 (R.I. 1998).

B. **The Appeal before the Department**

The Department has broad and comprehensive control over the traffic in alcohol. 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). Thus, the Director has the authority under R.I. Gen. Laws 3-7-21, “to make any decision or order he or she considers proper.”⁴ The hearing before the undersigned is a *de novo* hearing so that the parties start afresh during the appeal. *A.J.C. Enterprises v. Pastore*, 473 A.2d 269 (R.I. 1984); and *Cesaroni v. Smith*,

⁴ 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.

202 A.2d 292 (R.I. 1964) (Department's jurisdiction is *de novo* and the Department independently exercises the licensing function). A new hearing was held for this appeal. The outcome of an appeal is a decision whether to uphold, overturn, or modify a licensing board's decision. The undersigned will make her findings on the basis of the evidence and will determine whether that evidence justifies said decision. See below.

C. Arguments

The Appellant argued that the Intervenor failed to present a plan that complies with Rhode Island law and failed to present evidence of how it will control 75 people from moving in and out of the building with alcoholic beverages. The Appellant argued that the Intervenor is currently breaking the law by using a vacant building as a storage facility and office as evidenced by the air conditioning unit on the second floor. It argued that patrons cannot go to the bar when they are sitting in the restaurant area since the only access is through the kitchen so they will have to walk outside since cannot go through the kitchen. It argued that patrons cannot walk outside with alcoholic beverages. The Appellant argued that the Intervenor does not have a building permit so Collazo should not be in the property at all hours, and he is always there doing repairs and disturbing the peace of the neighborhood.

The Intervenor argued that it presented a plan that complies with Rhode Island law and has been complying with Warwick ordinances. The Intervenor argued that there was no evidence showing that it is not able or is unqualified to operate a BV license.

D. Regulation

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.

E. Discussion

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 (sic) act 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 (1957).

The Department has the same broad discretion in the granting or denying of liquor licenses. *Id.*, at 177. *Domenic J. Galluci, d/b/a Dominic's Log Cabin v. Westerly Town Council*, LCA-WE-00-04 (10/25/00); *Donald Kinniburgh d/b/a Skip's Place v. Cumberland Board of License Comm'rs*, LCA-CU-98-02 (8/26/98). However, 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 discussing the discretionary standard enunciated in *Kinniburgh*, the Department has also 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.

As articulated through liquor licensing decisions at the State court level and the Departmental level, the standard of review for a new license or a transfer of license is subject to the discretion of the issuing authority. Arbitrary and capricious determinations not supported by the evidence are considered suspect. *Infra. W&D Parkview Enterprise, Inc. d/b/a Parkview v. City of Providence, Board of Licenses*, DBR No.: 19LQ021 (12/12/19).

As cited above in *Chapman*, there must be evidence supporting community concerns. 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) the Department found that the Newport licensing authority had not abused its discretion in granting that license despite 42 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 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 the various concerns. See also *Liquor Depot v. City of East Providence, et al.*, DBR No. 08-L-0250 (6/2/09) (Class A license denial overturned since objections were speculative).

However, neighborhood objections can demonstrate the negative impact a proposed licensee may have. In *Crazy 8's Bar/Billiards v. Providence Board of Licenses*, DBR No.: 09-L-0042 (8/24/09), the Department upheld the local authority's denial of application because the location had a history of problems, and the applicant had no relevant business experience. In *Domenic J. Galluci*, the local authority found that 1) the prior liquor license located at the proposed location was linked to disorderly conduct, assaults, and traffic issues; 2) the applicant was associated with past licensee; and 3) local licensing authority could reasonably infer from the evidence that reopening the establishment could have a similar negative effect on the neighborhood.

In this matter, there were objections from neighbors presented to the Board and to the Department.⁵ The neighbors are concerned about noise and traffic from the Intervenor once it opens. At hearing, there was no evidence that the prior liquor licensed establishment in that location had problematic issues, and that this proposal would be similar.

The Appellant raised the issue that Collazo seems to be at the property after midnight and all night. The building apparently is zoned for mixed use but there is no certificate of occupancy for the building and no living quarters. The testimony was that the City prohibits construction

⁵ At the Board meeting, the issue of a legal remonstrance under R.I. Gen. Laws § 3-7-19 was raised. However, as the property owned by Amtrak must be included in the radius calculation, the objectors were unable to reach the over 50% threshold. Prior to the Department hearing, the Appellant was again unable to reach that threshold for a legal remonstrance. As a result, the issue was not raised at hearing.

overnight unless in an emergency. None of the police reports indicated that there was ongoing construction upstairs. Collazo testified that he has been cleaning and painting the upstairs late at night. However, he did not provide any details over what this meant for this four (4) month period. For instance, he did not give any details such as he stripped the wallpaper, spackled the walls, sanded the walls, primed the walls, painted the walls, painted the ceiling or trim, or swept and mopped the floors.

The Appellant was very dubious of Collazo's claims about the upstairs usage. It certainly seemed odd that there seemed to be so much time spent there without any evidence to show for it in terms of what painting and cleaning were actually completed. Covill testified that she had videos; though, none were introduced as evidence. But it is not disputed that Collazo is there late at night. He just denies sleeping there and claims to be cleaning. From his testimony, it appears he has spent many a night there, and there was no clear explanation or evidence of exactly what is being cleaned or painted for such a long period. Collazo testified that his friends park in the building's parking lot, and he stores his extra vehicles there as well. The Appellant believes Collazo and/or his friends are sleeping there at night.

The Appellant argued that Collazo was not credible about his upstairs usage. The hours kept and lack of detail over the cleaning and painting does lead one to wonder exactly for what the upstairs is being used. Nonetheless, Collazo currently holds another Class BV liquor license, and no evidence was introduced to show that his other establishment was not well run.

The Intervenor is located at the end of a dead end. Certainly, when the Intervenor opens, cars will be coming and going from the Intervenor and passing the neighbors' houses. There will be increased traffic as no one uses a dead end unless if going there on purpose. The evidence about how much noise there would be from the Intervenor as a liquor licensee is speculative but a bar/

restaurant with patrons will have more noise and traffic than a vacant building or office building since it is located at the end of the dead end.

Collazo testified that his parking plan is to have parking in the rear and have the traffic parking pattern keep the cars at the back of the building (away from the houses/neighbors). Collazo testified the only public entrances will be in the back and the rear (away from the houses/neighbors) so that the front egress would only be an emergency exit. At the Board hearing, Collazo represented the Intervenor would be a smoking bar, but at the Department hearing, he said it would not be a smoking bar. 7/26/22 transcript, p. 64. At the Board hearing, Collazo indicated that it would not be offering entertainment. At the Board and Department hearing, Collazo testified that he would be closing at midnight even though it is a 1:00 a.m. license. At the Department hearing Collazo testified that he would put a fence up between his back lot and the day care center in the back. *Id.* at 41. Collazo offered to the Board to be on probation and come in every 30 days to the Board for the Board to be able to review the status of his operations. Board 3/8/22 minutes, p. 16.

In terms of the proposed establishment, the lay out is troublesome. There are two (2) sides to the building where patrons will be seated and can be served alcohol, and patrons cannot walk between those two (2) areas because only the kitchen connects the two (2) sides. There is an outside patio that connects the two (2) sides, but the Intervenor is not seeking to be licensed there (seasonally). This raises the concern that patrons with alcoholic drinks will be walking outside between the two (2) sides. Pursuant to the Regulation, liquor service, sale, and storage have to stay within the licensed premises so patrons cannot be outside with drinks.⁶ Collazo did not address the issue regarding the lay out of the building and potential problems with alcohol service.

⁶ At hearing, there was no discussion of where the restrooms would be located. Will patrons have to go from one side to the other to use a restroom? If the patron uses the restroom on the bar side and then orders a drink to take back to the restaurant side, there is no way to walk back with the drink. The same is true if parties choose to sit at the bar and order drinks while waiting for a table to be available on the restaurant side.

A licensee is not obligated to stay with the business plan presented to a board but if a licensee changes its business plan and that causes problems, the local licensing authorities often take a dim view.⁷ However, under *Thompson v. East Greenwich*, 512 A.2d 837 (R.I. 1986), a town may grant a liquor license upon conditions that promote the reasonable control of alcoholic beverages.⁸ Thus, it is within the Board's discretion to grant the liquor license application with

⁷ As discussed in *Vosler Inc. d/b/a Café Four 12 v. Providence Board of Licenses*, DBR No. 07-L-0001 (3/29/07):

The Department has previously ruled on the issue of a change in business format and disorderly conduct that may arise from such a change and such decisions inform the review of this matter. In *C & L Lounge, Inc. d/b/a Gabby's Bar and Grill; Gabriel Lopes v. Town of North Providence and the North Providence Town Council*, LCA-NP-98-17 (4/30/99), the Department modified the town's revocation of the license to a thirty (30) day suspension.

In *Gabby's*, the licensee's owner represented at its licensing hearing that it would create a family dining atmosphere but at the revocation hearing, he testified that he had to diversify its format. *Gabby's* found that the licensee had adopted a new business format that caused regular disorderly incidents and that it had been warned by the town but had continued to operate with that type of business. The decision found that when a licensee changes its business format, it does so at its own peril and must face the consequences:

There is nothing per se illegal about a licensee changing his business format without Town approval to maximize profits. However, a Town need not tolerate a business format yielding negative neighborhood conditions it never bargained for, and specifically warned against, at the time of licensure.[footnote omitted] A liquor licensee has the responsibility to follow through on his representations of how he will conduct his business, made at the time of licensure. When a liquor licensee shifts his business format from his representations, he does so at his own peril. In the instant case the result of the shift was volatile disorderly conditions warned against as a condition of licensure. *Gabby's*, at 15. *Vosler*, at 15-16.

See also *Tropics, Inc. d/b/a Club Tropics v. City of Warwick, Board of Public Safety*, LCA-WA-97-05 (2/28/97); and *Picasso's Pizza and Pub, Inc. d/b/a Score's RI Ultimate Sports Pub v. North Providence Board of License Commissioners*, DBR No. 03-L-0250 (6/3/04).

⁸ *Thompson* relied on R.I. Gen. Laws § 3-1-5 and R.I. Gen. Laws § 3-5-21.

R.I. Gen. Laws § 3-1-5 states 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.

R.I. Gen. Laws § 3-5-21 states 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 breach by the holder of the license of the conditions on which it was issued or for violation by the holder of the license of any rule or regulation applicable, or for breach of any provisions of this section.

Thompson found R.I. Gen. Laws § 3-5-21 allows municipalities to impose conditions on liquor licensees in accordance with R.I. Gen. Laws § 3-5-1 which restricts such conditions to be in the promotion of the control of alcoholic beverages.

conditions. *Megan Kenney v. Providence Board of Licenses*, DBR No.: 14LQ044 (11/20/14); *Sugar, Inc., and Sharlene Alon v. City of Providence, Board of Licenses*, DBR No.: 09-L-0119 (3/8/10); and *Newport Checkers Pizza, Inc. d/b/a Scooby's Neighborhood Grille v. Town of Middletown*, LCA-MI-00-10 (12/7/00) (Department upheld Town's condition of an early closing of 11:00 p.m. as reasonable under *Thompson* to balance interests of neighbors and licensee). The conditions become part of the liquor license. E.g. *Krikor S. Dulgarian Trust v. Providence Board of Licenses*, DBR No.: 10-L-143 (5/20/11).

The Board could have chosen to grant the License with conditions that parallel the plans that Collazo presented to the Board. E.g. the parking pattern, the entrances, the fence, the entertainment. Collazo indicated that the parking pattern and entrances would minimize noise and traffic in front of the building; thus, lessening disruption to the neighbors. Before the Department, Collazo indicated it would not be a smoking bar. That also could be a condition of licensing. Collazo represented that it would close at midnight despite being licensed to 1:00 a.m. The Board could make a midnight closing a condition of licensing or earlier. Indeed, the Appellant requested that if the Intervenor is allowed to open that a 10:00 p.m. closing be imposed.

While the Board did not choose to condition the license, such conditions serve to ensure that an applicant abides by its representations for its business plan especially when such representations are for the purpose of making the application more palatable to the licensing authority and/or neighbors.⁹

The Board did not address the issue of liquor service and how the Intervenor will ensure compliance with the Regulation. Service, sale, and storage are to be within the licensed premise.

⁹ After the Board approved the License, a city councilor indicated that the Board's job is to approve or deny a permit. Board 4/12/22 transcript, p. 24. Obviously, this statement is not binding on this appeal or hearing but it is noted that an approval for a liquor license does not mean that a licensing authority's vote must either be "yes" or "no" but rather a licensing authority has the authority to impose conditions as noted above.

The licensed premise would not include the outside deck.¹⁰ While this building was previously a liquor licensed establishment, it is not known how it addressed this issue. Thus, there is an issue of how the Intervenor will address the issue of preventing people walking back and forth outside with drinks between the bar and restaurant side.

The imposition of conditions on the granting of the License ensures that this situation remains as presented by and testified to by Collazo. See *Scooby's*. The conditions provide for the reasonable control of alcohol by ensuring that the Intervenor is held to its representations to the Board and the Department so that the reasons relied on by the Board to grant the License remain based in fact.

Therefore, this License shall be granted upon the following conditions:¹¹

1. Public entrances to the building shall only be in the back and side of the building.
2. Parking for the Intervenor shall be in the back parking lot with a traffic pattern to minimize exiting and entering the lot.
3. Fence erected between the back parking lot and daycare.
4. No entertainment.
5. Not a smoking bar.
6. The discovery by the Board that any of the testimony given at hearing was erroneous or constituted a misrepresentation of the facts presented would be grounds to revisit the granting of this License.

¹⁰ Nor would it include the upstairs despite Collazo's testimony of his plan to store liquor upstairs. Section 1.4.27 of the Regulation confines the service, sale, and storage of liquor to the licensed premise which is downstairs where the restaurant and bar are to be located. If the Intervenor did not file the requisite drawing of the licensed premise with its application to the Board, the licensed premise is determined by the approval of the licensing board.

¹¹ Some of the conditions – egress, parking, entertainment, no smoking bar - relate to the ongoing operation of the licensee. The fence is required prior to opening.

7. These conditions may be augmented by the Board, if necessary, because of new facts or circumstances.

8. The Intervenor shall comply with statutory requirements and all applicable parking, zoning, fire, building code, etc. before the issuance of said license. (E.g. Sections 1.4.14; 1.4.27 of the Regulation).

9. The Intervenor cannot open without providing the Board a plan for its approval to address how it will avoid people going outside with alcoholic beverages in order to get to the other side of the building. Thus, for the purposes of the Board being able to consider the Intervenor's alcohol service plan, this matter is remanded to the Board for that issue. Any approval of the plan will become a condition of License.

10. In order to ensure an orderly opening, the License shall be issued with a 10:00 p.m. closing with the Intervenor to appear before the Board within three (3) months after opening for the Board to review its operations and compliance with its License. At that time, the Board will consider whether the 10:00 p.m. closing time should be continued or made earlier or later.

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. Therefore, the issue is whether there was competent evidence to support the Board's decision to grant the License. The imposition of the above detailed conditions ensures that there is legally competent evidence to support the decision by the Board to grant the License since the conditions ensure that the Intervenor's representations to the Board are followed. The Board will also further consider the alcohol service

plan to ensure the Intervenor is able to comply with the Regulation upon opening. If the Board approves the plan, the implementation of the plan becomes a condition of License.¹²

VI. FINDINGS OF FACT

1. On April 2, 2022, the Board approved a Class BV liquor license for the Intervenor.
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 July 26 and August 9, 2022 with written closings being timely filed by October 4, 2022.
4. The facts contained in Section IV and V are reincorporated by reference herein.

VII. CONCLUSIONS OF LAW

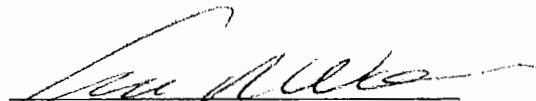
Based on the testimony and facts presented:

1. The Department has jurisdiction over this matter pursuant to R.I. Gen. § 3-2-1 *et seq.*, R.I. Gen. Laws § 3-7-1 *et seq.*, R.I. Gen. Laws § 42-14-1 *et seq.*, and R.I. Gen. Laws § 42-35-1 *et seq.*
2. In this *de novo* hearing, a showing was made that the License should be issued with conditions subject to the Board being able to approve an alcohol service plan.

VIII. RECOMMENDATION

Based on the above analysis, the Hearing Officer recommends that the decision of the Board to grant the License is modified as detailed above, and the matter remanded to the Board for the consideration of the alcohol service plan.

Dated: October 28, 2022


Catherine R. Warren
Hearing Officer

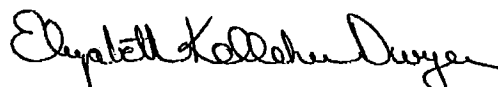
¹² If a plan cannot be approved, the Intervenor would be unable to open as it would not be able to ensure compliance with the Regulation.

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: 10/31/2022



Elizabeth Kelleher Dwyer, Esquire
Interim 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 31st day of October, 2022 that a copy of the within Decision was sent by first class mail, postage prepaid and by electronic mail to Peter Petrarca, Esquire, Petrarca & Petrarca, 330 Silver Spring Street, Providence, R.I. 02904; Ralph M. Kinder, Gilstein, Kinder & Levin, LLP, 300 Metro Center Blvd., Suite 150A, Warwick, R.I. 02886; and David R. Petrarca, Jr., Esquire, Ruggiero, Brochu & Petrarca, 1130 Ten Rod Road, Suite D-102, North Kingstown, R.I. 02852, and by electronic delivery to Pamela Toro, Associate Director, Department of Business Regulation, Pastore Complex, 1511 Pontiac Avenue, Bldg. 68-69, Cranston, RI 02920.

