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 Appellee.	:	**DBR No. 22LQ010**
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 June 16, 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" or "Town") on June 13, 2022 to grant an application by 101 Bar and Grill d/b/a Bar 101 ("Intervenor" or "Bar 101") for an expansion of its Class BV liquor license ("License") into what is known as unit 105 of the Intervenor's building.[1] A hearing on this matter was held on March 23 and 24, 2023 with briefs being filed by May 12, 2023. All parties were represented by counsel.[2]

[1] Prior to hearing, the Intervenor moved to intervene which was granted.
[2] At hearing, the Intervenor moved to dismiss which was taken under advisement. In light of this decision, the motion is now moot.

By way of background, NDG previously filed an appeal with the Department over the Town's decision taken on November 8, 2021 to renew the Intervenor's License. Subsequent to that appeal, the Intervenor filed a motion with the Board to clarify its licensed premises which the Board granted at its December 13, 2021 hearing. The Appellants then filed an appeal of the Board's December 13, 2021 decision. Those appeals were consolidated, and the Department heard those appeals under the Department's *sua sponte* authority of R.I. Gen. Laws § 3-2-2. The Department issued a decision ("Decision") on May 18, 2022 finding that the Intervenor had violated § 1.4.27 of the 230-RICR-30-10-1 *Liquor Control Regulation* ("Regulation") by expanding into unit 105 of its premises 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 that allowed the Intervenor to use unit 105 without following the statutory and regulatory requirements, the matter was remanded back to the Board. After the remand, the Intervenor filed for an expansion of its liquor license with the Board which was granted by the Board on June 13, 2022. The Intervenor was initially licensed in 2009 for units 103 and 104, and the expansion was granted for it to also be licensed for unit 105. It is that decision that the Appellants have appealed and what is before the undersigned.

II. JURISDICTION

The Department has jurisdiction over this matter pursuant to R.I. Gen. Laws § 3-7-1 *et seq*., R.I. Gen. Laws § 3-7-21, 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 Intervenor's application for expansion of liquor license for its Class BV liquor license.

IV. MATERIAL FACTS AND TESTIMONY

The Intervenor is located at 1478 Atwood Avenue ("1478") in Johnston on the left side of the street going north. NDG is to its left at 1450 Atwood Avenue ("1450") and Applegate is to the right with a Hartford Avenue address as Hartford Avenue intersects there with Atwood Avenue. The Applegate property is a CVS. As testified to below, 1450 and 1478 each contain several businesses. The CVS parking area is separated from 1478 by a wall and a fence. While 1450 and 1478 are two (2) separate buildings, there is a continuous parking lot between both buildings. There is an entrance to 1450 from the street going north where 1450 begins. There is an entrance between the two (2) buildings so that a car driving north can turn into the entrance, turn left, and park in front of 1450 or turn right and park in front of 1478. There is an entrance at the end of 1478 where a car driving north would turn left to park in front of 1478 but cannot turn right as it would hit the wall between 1478 and CVS. Intervenor's Exhibits Five (5) (Google image of 1450 and 1478); and Six (6) (1478 survey).

Christopher Colardo ("Colardo") testified on behalf of the Appellants. He testified that he is general counsel and vice president of NDG and general counsel and president of Applegate which are family businesses. He testified that NDG owns 1450 which has 12 units and currently has about eight (8) or nine (9) tenants. He testified that there are about 40 parking spaces, and each tenant has a right to the common parking space under their lease agreements. He testified that no one else has a right to that parking. He testified that as the owner, he is responsible for evicting trespassers. He testified that there is a knee wall and fence between 1478 and the CVS so one cannot drive from CVS to 1478. He testified that he erected the fence because the Intervenor's patrons would park at CVS and climb down the wall and trample the landscaping. He testified that he saw that on the surveillance video, and private security observed it.

Colardo testified that in 2019, he hired Metro Security ("Metro") from 4 p.m. onwards and at weekends to staff the parking lot because of the parking encroachments onto 1450 from the Intervenor's patrons. He testified that Northeast Ventures owns 1478 which has 24 units, and the Intervenor now occupies three (3) units. He testified that in November, 2019, his general manager, Robert Vesey ("Vesey"), wrote to 1478's owner, the Intervenor, and 1478's other tenants about the parking issues. Appellants' Exhibit L. He testified that the parking did not improve, and he noticed an increase in traffic early 2020. He testified that Vesey investigated the traffic and believed it was due to the Intervenor, and the increased traffic flow hindered 1450 operations.

Colardo testified that in order to stop parking in front of 1450, the security company would put up the cable at about 5:00 p.m. and remove it at about 6:00 a.m. or 7:00 a.m. the next morning. He testified that he had the security guard ask drivers driving into the 1450 parking lot where they were going and tell them to move if they said 1478 or Intervenor. He testified the monitoring was an evolving process in how to gather information and how it should be detailed so they added comments to the reports. He testified that he should not be responsible for monitoring the lot.

Colardo testified the Johnston police chief's letter of March 13, 2023 (Appellants' Exhibit II) that stated there were no incidents in the past three (3) years that were a threat to public safety in relation to the Intervenor was incorrect. He testified that Appellants' Exhibits I-2, I-3, D, V, W, JJ, and BB show police activity. He testified that he installed security cameras in 2020 in the parking lot and downloaded relevant video clips about the ongoing problems. Appellants' Exhibit KK[3] (video) and T (Vesey affidavit).

Colardo testified that Metro stopped providing security in May, 2022 since Metro was constantly getting harassed by the Intervenor's patrons, and did not want to deal with it anymore.

[3] Some of the video clips on this exhibit were in MPV4 format and some were in .MOV format. The undersigned was unable to view the videos in the .MOV format but that had no impact on this decision.

He testified that he did not hire another security company as it is too expensive. He testified that currently the parking situation is a bit different and "a little bit better," but there are still violators from the bar and when there are big events at the property, there are violators parking at 1450 and walking over to the Intervenor. (3/23/23 transcript p. 165). He testified that he does not currently have security onsite to tell vehicles where to park.

On cross-examination by the Intervenor, Colardo testified that Vesey works for NDG and Applegate and he, Colardo, is his supervisor. He testified that between 2009 and 2019, there were no parking violations. He testified that in 2019, the parking issues increased and that is when he contracted with Metro. He testified that during the height of Covid19, it did slow down but there were still issues since the Intervenor had seating in the parking lot. He testified that he would object to unit 105 opening without alcohol. He testified that while not all exhibits mention the Intervenor, they were submitted to document issues with Bar 101. He testified that he hired Metro in 2019 and at some point asked security to be more specific with their reports. He testified the reports indicated when people parked at 1450 and went to 1478 or when someone was turned away by security after being asked where they were going.

On cross-examination by the Town, Colardo testified that 1450 has 40 parking spaces. He testified that Appellants' Exhibit J indicated that over eight (8) days of observation of six (6) hours each, there were 46 vehicles parking with 39 parties going into Intervenor. He testified that a barrier cannot be put up between the two (2) lots because of the lot line and the property configuration. He testified it would be better to have a parking lot attendant and security.

Peter Matteo ("Matteo") was called by the Appellants. He testified that he started the Intervenor in 2009 with a partner who he bought out in 2011. He testified that he opened unit 105 in February, 2021 before the Super Bowl. He testified that the dry cleaners in unit 105 closed in

Spring, 2020, and there had been a dry cleaners in unit 105 for the previous nine (9) years. He testified that with social distancing for Covid19, the Intervenor could only seat 30 rather than 70 so that obtaining unit 105 allowed them to seat more people. He testified he obtained the building permit in October, 2020 but realized there would no 2020 holiday openings so slowed the project down. He testified that he believes there are more than 40 parking spaces for 1478 since there are 40 in front but also four (4) spots along the wall with 15 to 18 spaces in back. He testified the Intervenor is open on Sunday from noon to 9:00 p.m. and from Monday to Thursday, it opens at 4 p.m. and closes at 10 p.m. on Monday to Wednesday and about 11 p.m. on Thursday. He testified that on Friday and Saturday, it opens about noon and closes between 11:30 p.m. to 1:00 a.m.

Matteo testified that when he expanded into unit 105, he assumed that the License encompassed the entire space. He testified that the first time he learned there was an issue about the License was when he received notice for the show cause hearing [November, 2021]. He testified that he heard the theory that he should have gotten a liquor license. He testified that he called the Town and was told to get an attorney which he did. He testified that he assumed he was OK until the Department said he was not (May, 2022).

Matteo testified that when he received the November, 2019 letter about parking, he told his landlord and talked to his staff and patrons. He testified that he did not station someone outside, but he might go outside or have staff circulate outside to check, and if they saw someone park at 1450, they would tell them not to. He testified that the next time he knew about parking issues was the November, 2021 complaint. He testified that he does not pay for security.

Matteo testified that unit 105 opened in February, 2021 and the Intervenor still had the same capacity but people were spread out and less congested. He testified that the capacity stayed the same and while the Intervenor always had private parties, unit 105 gave them a space for private

parties. He testified that on November 20, 2021, his wife was told someone was parked across the street watching them, and he wanted to see what was going on, so he and his wife went across the street and talked to the security guard in the car. Appellants' Exhibit LL (transcript of recording).

On cross-examination by the Town, Matteo testified that he has four (4) signs posted on the restaurant's windows about parking and A-frame sign by the front door saying not to park next door. He testified he has staff speak to patrons and watch the lot about parking and for private parties, he will tell the host to tell guests to park in 1478 and not in 1450.

Matteo testified on behalf of the Intervenor. He testified the Intervenor's patrons are mostly 35 to 65 years old. He testified that private parties run from baptisms to 80 year old birthday parties, and most customers just eat and do not drink. He testified that his customers are about 70% to 80% regulars with Saint Patrick's Day, March 17, being his busiest day of the year. He testified to photographs taken over ten (10) days in March, 2023 in the evening that show neither the inside of Intervenor nor the 1478 parking lot were full. Intervenor's Exhibit 34 (photographs taken about 7:00 p.m. from March 10 to 19, 2023 showing the parking lot and inside the Intervenor each night). He testified that even on St. Patrick's Day, there were spots available in the parking lot and the Intervenor was not full. Intervenor's Exhibit 34H. He testified that delivery trucks for 1450 park in front of 1478, but he does not say anything because they are doing their job. Intervenor's Exhibit Seven (7) (photographs of delivery trucks). He testified that 1450 patrons will park in 1478. Intervenor's Exhibit Eight (8) (Intervenor employee affidavit that saw people park in front of 1478 and walk to a business in 1450). He testified as to the closing times of the businesses at 1450 based on the businesses' websites, and the closing times are mostly between 6:00 to 8:00 p.m. Intervenor's Exhibit Ten (10) (website printouts).

Matteo testified that with Covid19, it was a balancing act so when unit 105 opened up, he thought it would be a good idea to grab it when he could. He testified that he opened in 2009 and served alcohol in units 103 and 104. He testified that The Gathering (unit 105) opened in 2021 even though its logo (Intervenor Exhibit 37)[4] says 2020. He testified that when he obtained the building permit and spoke to the Town, the Town knew he was expanding liquor service, and he was not told that he needed to file an expansion application. Intervenor's Exhibit 20 (2020 building permit). He testified that capacity did not change with the opening of unit 105, and it is open about once a week. He testified that he thought he had everything that he needed for the expansion based on his conversation with the Town.

Matteo testified he found out about the parking issue at the Town hearing and hired an attorney. He testified that he was not aware of the hearings at the Department and did not read the May, 2022 Decision but stopped serving alcohol as his attorney told him to. He testified that he stopped serving alcohol, took out his alcohol stock, and put up signs saying, "no alcohol." Intervenor's Exhibit 30 (photographs). He testified that he then filed an expansion of license application. Intervenor's Exhibit 31. He testified that he only opened unit 105 again once he got permission from the Town. He testified that only Colardo objected to the expansion.

Matteo testified that the first time he heard about parking issues was from the November, 2019 letter. He testified he has four (4) signs in the windows about where to park and puts out an A frame sign every day about not parking at 1450. Intervenor's Exhibit 32 (photographs of various signs). He testified in April, 2022, he sent a letter to all staff about parking issues and to direct patrons where to park. Intervenor's Exhibit 33. He testified on St Patrick's Day, he had a staff member stationed outside and put out a couple of orange cones to direct traffic. He testified that

[4] The cover sheet for the Intervenor's exhibits indicated that Exhibit 37 is the recording of the November 20, 2021 discussion among the security guard, Matteo, and his wife. However, it actually a printout of the logo and website.

of those ten (10) days when he took photographs in March, 2023, unit 105 was only open on two (2) nights. He testified that the November, 2021 incident with the security guard was the night of the Intervenor's anniversary party, and he felt under siege. He testified that he no longer has an interior security camera as it no longer works.

Eric L. Croce testified on behalf of the Intervenor. He testified that he is the deputy chief of public safety at Providence College. He testified that he started going to the Intervenor in 2015 and still goes with his family about once a week, and it has a small town vibe and is very orderly.

Richard J. Delfino, Jr., testified on behalf of the Intervenor. He testified that he currently is the Executive Director of Johnston Senior Center and has two (2) children in their 30's and four (4) grandchildren. He testified that he began going out for food with the little league at the location prior to it becoming the Intervenor and currently goes two (2) or three (3) times a month because the food is so good and reasonable and the waitstaff very friendly. He testified that he has never felt unsafe there and if he felt it was unsafe, he would not take family there.[5]

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

[5] Both Mr. Croce and Mr. Delfino were asked on cross-examination about their knowledge of a criminal investigation into someone who apparently is friends with the former co-owner of the Intervenor. They testified they had heard about the investigation from the news.

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."[6] 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*, 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. Thus, this appeal is not bound by the Board's reasons for its decision but whether the Board presented its case before the undersigned. The undersigned will make her findings on the basis of the evidence and will determine whether that evidence justifies said decision.

[6] 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.

C. Arguments

The Appellants argued that it has already been decided that the Intervenor illegally expanded into unit 105. The Appellants argued that the Intervenor's patrons have disturbed the surrounding neighborhood, and the evidence shows the ongoing severe and negative impact that the Intervenor has had on the Appellants. They argued that the Intervenor has not controlled its parking, trespass, or parking damage so is unfit to hold an expanded license or any license. However, the Appellants argued that if the expansion is not denied outright, the expansion should be suspended, and conditions imposed.

The Intervenor argued that it did not know about the need to file for an expansion of license, but it stopped serving alcohol in unit 105 and filed such an application as soon as it found out (May, 2022). It argued that when it found out about the parking complaint in November, 2021, it hired an attorney and was not told by the Town that it needed to file an expansion of license application. The Intervenor argued it has been open for 13 years with no issues and sought to expand because of Covid19 and was not trying to avoid any requirements. It argued that the Appellants' parking claims cannot be all attributed to the Intervenor, but it has taken steps to mitigate parking by posting signs and have staff direct customers were to park. The Intervenor argued that there are no grounds to support the denial of the expansion as the evidence does not support a finding of disorderly conduct by the Intervenor.

The Town argued that at all times, it was aware of the Intervenor's use of unit 105. It argued the Intervenor complied with all local requirements, and when the Department found that an expansion of license application was required, the Intervenor and Town complied with those requirements. It argued that no sanction can be imposed because the Town gave permission when it had jurisdiction, and in the alternative, there is an exemption as a nonconforming use due to

Covid19 pursuant to R.I. Gen. Laws § 45-24-46.5. The Town argued that this matter involves a private parking dispute which is not a public safety issue, and the Department's regulatory interpretation has been resolved and cured.

D. Discussion

i. Parking and Other Incidences

The Appellants argued the Intervenor is responsible for continual trespasses in the 1450 parking lot due the Intervenor's patrons parking at 1450 rather than 1478. The Appellants argued that along with parking, there are other incidences that can be linked to the Intervenor that rise to disorderly conduct. The Appellants argue that this makes the Intervenor unfit for an expansion of license.

R.I. Gen. Laws § 3-5-23 states in part as follows:

> (b) If any licensed person permits the house or place where he or she is licensed to sell beverages under the provisions of this title to become disorderly as to annoy and disturb the persons inhabiting or residing in the neighborhood . . . he or she may be summoned before the board, body, or official which issued his or her license and before the department, when he or she and the witnesses for and against him or her may be heard. If it appears to the satisfaction of the board, body, or official hearing the charges that the licensee has violated any of the provisions of this title or has permitted any of the things listed in this section, then the board, body, or official may suspend or revoke the license or enter another order.

In revoking a liquor license, it is not necessary to find that a liquor licensee affirmatively permitted patrons to engage in disorderly conduct. Rather, the Rhode Island Supreme Court held in *Cesaroni* at 295-296 as follows:

> [T]he legislature, in enacting the pertinent provision of the statute, intended to impose upon such licensee the obligation to maintain an efficient and affirmative supervision over the conduct of his patrons in his place to such an extent as is necessary to maintain order therein. It is our opinion that as a practical matter a licensee assumes an obligation to affirmatively supervise the conduct of his patrons so as to preclude the generation therefrom of conditions in the neighborhood of like character to conditions that would result from maintenance of a nuisance therein.
>
> It is to be conceded that this imposes upon a licensee an onerous burden in the management of the licensed premises. It is, however, within the authority of the legislature, the liquor traffic being peculiarly within the police power of the state.

Furthermore, the Court found that "disorderly" as contemplated in the statute meant as follows:

> The word "disorderly" as used here contemplates conduct within premises where liquor is dispensed under a license that causes either directly or indirectly conditions in the neighborhood in annoyance of or disturbing to the residents thereof. *Id*. at 296.

Thus, a liquor licensee has the "responsibility to control the conduct of its patrons both within and without the premises in a manner so that the laws and regulations to which the license is subject will not be violated." *Schillers, Inc. v. Pastore*, 419 A.2d 859 (R.I. 1980). A liquor licensee is accountable for violations of law that occur on its premises and outside. *Vitali v. Smith*, 254 A.2d 766 (R.I. 1969). It is not a defense that a licensee is not aware of the violations or provided supervision to try to prevent violation. While such a responsibility may be onerous, a licensee is subject to such a burden by the legislature and accepted such conditions by becoming licensed. *Therault v. O'Dowd*, 223 A.2d 841 (R.I. 1966); and *Scialo v. Smith*, 99 R.I. 738 (1965). As the Supreme Court has found, "the responsibility of a licensee for the conduct of his patrons within the licensed premises that makes it disorderly within the meaning of the statute is established by evidence showing a toleration or acquiescence in such conduct by the licensee." *Cesaroni*, at 296. See *A.J.C. Enterprises* and *Furtado v. Sarkas*, 118 R.I. 218 (1977).

The Appellants argued their Exhibits H, I-1, I-2, I-4, J, K-2, S, T, U-1 to U-23, V, W,[7] X,[8] Y,[9] Z,[10] FF,[11] JJ,[12] KK, and BB show the incessant and severe and negative impact the operation

[7] Metro towing reports for six (6) tows in 2022 for the Intervenor's patrons.
[8] Tow log for 1450 showing six (6) dates in 2022 with tows.
[9] Department's May 18, 2022 decision.
[10] The Appellants' objection to the patio expansion granted by the Town. Their appeal to the Department on the seasonal expansion in 2022 was dismissed by the Department on June 8, 2022.
[11] Payables to Metro that went through May, 2022.
[12] Eleven (11) police reports from 2019 to 2020 that included a wellness check and a criminal report and a few calls for disorderly conduct for 1478.

of unit 105 has had on the neighbors. Colardo also testified that he hired Metro due to ongoing parking problems because 1478 and/or Intervenor patrons would park at 1450 rather than 1478. The Appellants' Exhibits H and U are reports from their security company.

The Intervenor countered the Appellants' Exhibit H's listing of parking violations with its Exhibit 39A[13] which color coded when the parking log for 1450 indicated the driver was going to the Intervenor. Of the 224 parking incidences recited in Intervenor's Exhibit 39, only eight (8) referenced the Intervenor. Colardo testified that they worked on their monitoring and their process to gather information evolved over time, and they started to gather more information for the reports. The Exhibit H reports started on November 21, 2019 and ended on July 2, 2021. They are not every day but cover 30 days from that time period. The time period for each day usually started about 4 p.m. or 5 p.m. and ended at 10 p.m. or 11 p.m.

The Intervenor countered Appellants' Exhibit U-1 to U-23 with its Exhibit 39B which color coded when the parking violations for 1450 indicated the drivers were going to the Intervenor. Of the 271 parking incidences recited in Intervenor's Exhibit 39B, about 86 referenced the Intervenor. Colardo testified that they worked on their monitoring and their process to gather information evolved over time and they started gathering more specific information for their reports. The Appellants' Exhibit U report started in October, 2021 and ended in March, 2022 and covered about 52 days. Intervenor's Exhibit 39B did not include the last report from March, 2022.

Appellants' Exhibit J was a report from the Appellants' private investigator monitoring 1450 and the security company. The report indicated that in June and July, 2021, the company monitored the 1450 parking lot in the late afternoon and evening. The report indicated that on eight (8) nights, the investigator observed parking security asking 59 drivers to leave since they could not park at 1450

[13] Initially, Intervenor's Exhibits 39A and 39B were marked for identification as Exhibits 42 and 43. Those were deleted and the numbers used for other exhibits.

and of those 59, seven (7) vehicles were documented as leaving the area with 46 being documented as parking across the street or in 1478 and of those 46, 39 went into the Intervenor.

Based on Appellants' Exhibit J, the Town estimated that there was a 2% rate of non-permissive parking. The Town based that on 39 instances of parking over 48 hours (six (6) hours of observation over eight (8) nights) compared to the available 40 spaces at 1450. While the undersigned will not vouch for the Town's math,[14] there was no testimony regarding any 1450 tenants having an issue with parking. The owner of 1478 filed an affidavit that he has never received a complaint about parking from a 1450 tenant. Intervenor's Exhibit Ten (10). Colardo's testimony was that the parking trespasses hindered the operations of 1450. However, Colardo did not explain what that meant. He did not testify that there were any parking issues that impacted the tenants' businesses in any way. There was no testimony that the parking infringements from 1478 in 1450 blocked exits, entrances, fire lanes, or parking spaces, etc.

Besides the evidence of drivers parking in front of 1450 when going to 1478 whether to the Intervenor or not, the Appellants brought in evidence of property damage and poor behavior of drivers. These include three (3) incidences of damage by drivers to the chain put up between 1450 and 1478. On May 16, 2021, the evidence was that someone leaving a party at the Intervenor's damaged the chain. Appellants' Exhibits I-2 (police report about May 16, 2021 incident); I-3 (private investigator report about same incident); KK, H-2, H-3, and K-2 (damage estimate). On December 18, 2021, a patron from the Intervenor damaged the chain as well. Appellants' Exhibits S (police report); T (Vesey affidavit); and Intervenor's Exhibit 36 (affidavit of driver). Vesey indicated in his affidavit that on February 5, 2022 a driver with blacked out windows and license plate crashed through said parking chain and speculated that this could be an Intervenor patron. Appellants' Exhibit

[14] However, 39 instances over 48 hours would be less than one (1) vehicle parking an hour in 1450 where there are 40 spaces.

KK (video); and V (police report). Of the three (3) accidents that caused damage to the parking chain, two (2) definitely involved the Intervenor's patrons.

Along with the property damage, the Appellants presented evidence that on February 9, 2022, four (4) people drank nips in the 1450 parking lot before going into the Intervenor. On March 5, 2022, Intervenor's patrons yelled at a tow truck operator and stopped him from towing a vehicle. Appellants' Exhibit KK (video).[15] On March 10, 2022, an Intervenor patron moved the parking barrier between the lots.[16] Appellants' Exhibit W (police report). On March 11, 2022, an Intervenor patron exited and urinated against the 1478 building. Appellants' Exhibit KK. On March 11, 2022, an Intervenor patron is seen taking what is apparently a parking notice off his car and approaching the Metro security guard and either handing it back or pushing it on the guard. *Id.* and Appellants' Exhibit U-23. On December 3, 2021, a driver is seen being spoken to by the security guard in the 1450 parking lot and then running into the 1478 lot into the Intervenor. Appellants' Exhibit KK. On November 20, 2021, Matteo and his wife walked across Atwood Avenue to speak to a Metro security guard who was sitting in a car filming the Intervenor. *Id.* and Appellants' Exhibit LL (transcript).

A.J.C. Enterprises v. Pastore, 473 A.2d 269 (R.I. 1984) addressed the type of behavior that rises to disorderly conduct in the context of R.I. Gen. Laws § 3-5-23. It found as follows:

> We have examined the extensive testimony of the individuals who appeared before the administrator, and we feel that it constitutes "substantial grounds" and is "legally competent evidence." The hearing before the administrator was, in a manner of speaking, a not-so-instant replay of what had been heard by the council. As mentioned, numerous witnesses, all of whom live near Back Street [liquor licensee], testified at length concerning the increase in noise, parking congestion, litter, public urination, patrons either screaming, intoxicated, or pugnacious, as well as an increase in various other activities, all of which disrupted the neighborhood's established way of life.

[15] The video for this incidence was in the .MOV format so the undersigned could not watch it. Nonetheless, it was not disputed that this occurred.
[16] *Id.*

> Back Street also argues that the trial justice was wrong in upholding the administrator because there is no direct connection between the neighbors' complaints and Back Street's patrons. They claim that without this connection there is no legally competent evidence on which the administrator could have made his decision.
>
> We have said at least twice recently that there need not be a direct causational link between incidents occurring outside or nearby a drinking establishment and its patrons. Such a link is established when it can be reasonably inferred from the evidence that the incidents occurred outside a particular establishment and had their origins within. *The Edge-January, Inc. v. Pastore, Manuel J. Furtado, Inc. v. Sarkas,* both *supra.*
>
> In this case several witnesses testified that they watched people urinate on private property after leaving Back Street and that when the establishment closed at night there was a great deal of noise because people were yelling, screaming, slamming car doors, and revving engines. These occurrences did not take place before Back Street opened. We feel it is reasonable to infer from the evidence that the undesirable activities that occurred outside and around Back Street had their origin within. Consequently, we shall not disturb the conclusions and the actions of the trial justice. *Id.* at 274-75.

It is clear that the Appellants believe that patrons of 1478 continually park in the 1450 parking lot and more particularly that these are patrons of the Intervenor. Indeed, the Appellants have filed a Superior Court action against the Intervenor and Matteo and his wife for trespass and tortious interference with prospective economic advantage in relation to the incidences of parking and damages as recited in this matter. Intervenor's Exhibit 14 (suit filed September 23, 2022).

The issue for a liquor licensee is whether the licensee is directly or indirectly responsible for conduct that is "disorderly as to annoy and disturb the persons inhabiting or residing in the neighborhood." R. I. Gen. Laws § 3-5-23. The type of evidence offered in *A.J.C. Enterprises* to show disorderly conduct was numerous neighbors testifying extensively to noise, parking congestion, litter, public urination, patrons either screaming, intoxicated, or pugnacious, yelling, screaming, slamming car doors, and revving engines. The Court found that the type of behavior essentially disrupted the way of life of the neighborhood.

It could be possible that continual parking trespasses on residential streets where no parking is allowed or when residential driveways are continually blocked by patrons of a nearby liquor licensee could fall under disorderly conduct. It could be possible that parking trespasses in a parking lot that blocks residents or patrons or fire lanes or entrances and exits could fall under disorderly conduct. Indeed, local licensing authorities usually are mindful of ensuring there is appropriate parking for a licensed premise in order to avoid such problems. Here, the issue is that patrons for one building apparently park in front of the building next door where the parking lot is open and attached for both buildings. Presumably 1450 patrons sometimes park in front of 1478 depending on which parking lot entrance they use and where they see an open parking space.

The drivers at 1450 and 1478 are not parking illegally on residential streets. They are not blocking people's driveways. There was no evidence that any business in 1450 was in any way negatively impacted by people parking at 1450 when they wanted to go to 1478.[17] Colardo testified that as the owner of 1450, he is responsible for the parking lot. That is true. But in looking at the liquor licensing statute, the disorderly conduct requirements are different than whether the patrons are just trespassing by parking in an adjacent parking lot that is open and easily accessible between the two (2) buildings.

The evidence included complaints about the parking and how 1478 should not park at 1450 but there was no evidence of parking congestion. Colardo did not testify that any of the tenants had complained that their patrons could not park. There was evidence of open spaces in front of 1478 on St. Patrick's Day. There was no evidence of screaming, noise, or fighting. There were a couple of incidences of harassing a tow truck operating and pushing the security guard. Obviously, that is not

[17] While Colardo testified that he put a fence up to block people parking at the CVS from walking to the Intervenor, there were no other complaints about people parking at the CVS and going to Bar 101. All the exhibits about parking and other incidences were about parking at 1450.

the type of behavior that should be condoned. While the individuals involved were patrons of the Intervenor, this poor behavior twice in two (2) years is not an ongoing nuisance to the neighborhood.

Of the three (3) incidents of property damage, it is not known what business one of the drivers was patronizing. There was no evidence that those two (2) patrons that had been at the Intervenor's were drunk from overservice. Or that their driving was somehow connected directly or indirectly to the Intervenor. The same is true of the March 10, 2022 incidence of the patron removing the barrier.

There was much discussion about Matteo and his wife's discussion and/or confrontation with the Metro security guard on November 20, 2021. Appellants' Exhibit LL (transcript). The security guard was parked across the street filming the Intervenor. Matteo and his wife walked to the security guard and asked to see her driver's license and told her she was in violation of the private investigator law. The undersigned does not understand by what authority Matteo and his wife would demand to see the guard's driver's license. (The guard was not in the Intervenor trying to buy drinks). Nonetheless, the activities of Matteo and his wife do not rise to disorderly conduct. They may have been rude. They may have been wrong about the private investigator law. But the issue is about disorderly conduct in the context of liquor licensing. Their behavior while perhaps ill-advised does not rise to the level of a nuisance as described in *A.J.C. Enterprises*.

On February 9, 2022, four (4) people who seemed to arrive in three (3) cars parked in the 1450 parking lot, drank nips, and then went to the Intervenor. Appellants' Exhibit KK. At that time, they were not patrons of the Intervenor. They had not left the Intervenor intoxicated and when they drank the nips, they were not patrons of the Intervenor and were not causing a nuisance as in *A.J.C. Enterprises*. There was one incidence of public urination in the 1478 parking lot. Obviously, such an issue that is ongoing would fall under *A.J.C. Enterprises*. But there was no evidence that it was more than once.

Colardo testified that parking issues in 2019 were very bad so that he had Vesey write a letter to the Intervenor (and others) dated November 8, 2019. Matteo testified that he took steps to monitor the parking after receipt of the letter and put up signs about parking. 2019 was before unit 105 opened. Indeed, parking issues lessened for part of 2020 due to Covid19, but Colardo testified that the problems increased in 2020 but recently have gotten better. Unit 105 opened in February, 2021.[18]

The issue here is the expansion into unit 105. The Appellants argue that the Town should not have granted the expansion and the Intervenor is unfit to hold a liquor license. Based on the Appellants, the parking issues started before the Intervenor's expansion into unit 105. Presumably the Appellants believe that due to the parking issues caused prior to the expansion by the Intervenor, the expansion should not have been granted.

The Appellants brought up the Departments decisions, *Pasha Lounge, Inc. d/b/a Pasha Hookah Bar v. City of Providence, Board of Licenses*, DBR No.: 15LQ022 (4/4/16) and *The Vault Lounge, LLC v. City of Providence, Board of Licenses*, DBR No.: 17LQ014 (7/12/18) and (4/19/18). Both decisions relied on *A.J.C. Enterprises*. In *Vault*, there was ongoing evidence of parking by the licensee's patrons in a private parking lot across the street from the licensee that was clearly marked as private. It was not an open adjoining lot to the licensed premises. There was evidence of said patrons being loud, listening to music, drinking, and of prostitution late at night so as to disturb the neighbors. In *Pasha*, the licensee was having unlicensed entertainment (which it stopped), and there were ongoing noise issues and continuing public urination (though not necessarily from the licensee).

A liquor appeal is partially a *de novo* appeal. The Appellants stopped paying for security in May, 2022. The evidence presented about the parking issues revolves around various days and

[18] In the May, 2022 decision, the parties agreed that the Intervenor opened shortly after the building permit issued (which was in October, 2020) but at hearing, Matteo testified that unit 105 actually opened in February, 2021. This was not disputed by the parties.

incidences in late 2019, 2020, 2021, and part of 2022. There was also evidence that the parking issues have recently improved. There was no evidence that in the past year, there have been parking issues between 1450 and 1478.

Unlike in *A.J.C. Enterprises*, in this matter, there was no evidence of noise, parking congestion, litter, public urination, or of patrons either screaming, being intoxicated, or pugnacious. There was no evidence that any of the parking infringements or other complained about behavior rose to the level of disorderly conduct in the context of the liquor licensing statute.[19]

ii. Unauthorized Expansion of Premises

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. See *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,

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[19] The parties argued over whether a fence should be erected between the two (2) parking lots. Matteo testified that he thought a fence would help. Colardo rejected a fence as he testified that one would not be feasible to be erected. The owner of 1478 apparently is willing to erect a fence and is desirous of erecting a permanent or semi-permanent structure to divide the parking lot between the two (2) buildings. Intervenor's Exhibit Nine (9) (affidavit of owner).

As the parking issues have not found to be disorderly conduct under the liquor licensing statute, the issue of allowing a liquor license with conditions does not arise. The undersigned does note; though, that while there are signs about parking in the back, there does not appear to be any signage in the center entrance pointing to the left for 1450 parking and to the right for 1478 parking.

> 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*. See *W&D Parkview Enterprise, Inc. d/b/a Parkview v. City of Providence, Board of Licenses*, DBR No.: 19LQ021 (12/12/19).

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 discretionary decision to grant the expansion of license on June 13, 2022.

The May, 2022 Decision found the Intervenor expanded into unit 105 without approval from the Town as required by § 1.4.27 of the Regulation.[20] The Town argued that no sanction can be imposed because it always gave permission for expansion when it had jurisdiction. The Town made an interesting argument that the Intervenor never operated in unit 105 without the Town's knowledge or consent. The Intervenor expanded its liquor service into unit 105 in February, 2021. It never got an official approval - at hearing, orally or in writing - for the expansion until the Town ruled on a motion to clarify on December 13, 2021. Thus, there was no documented approval by the Town on the record regarding the expansion until the Town granted the motion to clarify. Therefore, from February, 2021 to December, 2021, the Intervenor did not have the required regulatory approval from the Town to expand its premises.

The Town further argued that the Appellants' appeal changed the jurisdiction so that the new legal circumstance was that it was now up to the Department and its interpretation of the Regulation was now controlling. The undersigned is not exactly sure what this argument means as the Regulation applies to all local licensing authorities and clearly requires that any expansion requires a hearing. On December 9, 2021, the Department remanded the initial appeal to the Town and stated the Town should consider this matter in light of the Regulation. Appellants' Exhibit M-1. The Town did not

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[20] 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.

and granted the motion to clarify despite the fact that the motion did not comply with the Regulation. Matteo testified that he did not read any orders and did not understand he needed to file an application for expansion until the May, 2022 Decision.

Nonetheless, from December 13, 2021 to May 18, 2022, the Intervenor received documented – even if noncompliant with the Regulation – approval from the Town. The Intervenor complied with the Department's decision to cease service and storage of alcohol in unit 105 when the May, 2022 Decision was issued. It only resumed the service of alcohol after its expansion of license application was granted by the Town on June 13, 2022.

The Town argued that in the alternative, there is an exemption for nonconforming use due to Covid19 pursuant to R.I. Gen. Laws § 45-24-46.5.[21] This statute provides that municipal or zoning regulations cannot be enforced that would penalize food businesses that made alterations to comply with certain statutory emergency declarations (e.g. Covid19 emergency). However, this issue is not about a municipal ordinance. It is not about a zoning ordinance. It is not about a food business. It is not about food service. It is a statewide liquor licensing requirement for liquor licensing. The statute is not relevant to the issue before the undersigned.

[21] R.I. Gen. Laws § 45-24-46.5 provides as follows:

> Special provisions — Emergency declaration modifications. (a) A moratorium is hereby imposed on the enforcement of any municipal ordinance or zoning regulation that would penalize any food business or food service establishment, as defined in § 21-27-1, or bar as defined in § 23-20.10-2, for any alterations or modifications to its business made in order to comply with any directives, executive orders, or restrictions issued by the governor, principal executive officer of a political subdivision, or the director of the department of health based upon an emergency declaration issued pursuant to § 30-15-9 or § 30-15-13.
>
> (b) The moratorium imposed pursuant to this section shall continue throughout the emergency declaration and shall remain effective until April 1, 2023. During this period, all approved nonconforming uses adopted to comply with the emergency declaration shall be permitted to continue.

Despite the Town's attempt to rationalize its apparent indifference to the Regulation,[22] the issue is whether the Intervenor's noncompliance with the Regulation supports overturning the Town's grant of the expansion application. The Intervenor relied on counsel to file the motion to clarify that did not comply with the notice and hearing provisions of R.I. Gen. Laws § 3-5-17. Nonetheless, a liquor licensee is expected to know the controlling statutory and regulatory requirements. Indeed, the Intervenor initially obtained a liquor license from the Town and renewed it every year. It seems a bit surprising the Intervenor would think that obtaining a building permit is the same as receiving a liquor license especially as the Intervenor had previously gone through the process to obtain a liquor license. Nonetheless, at the end of the day, the issue is whether the Intervenor's initial failure to comply with the Regulation should result in its application for expansion being denied.

R.I. Gen. Laws § 3-7-21 grants the Department broad authority over liquor appeals and provides that the Department may "confirm or reverse the decision of the local board in whole or in part." *Supra.* In other words, the Department may uphold or overturn or modify a local board's decision. The May, 2022 Decision noted that "a liquor licensee certainly can be sanctioned for violating statutory and regulatory requirements," but at that 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." [footnote omitted]. Prior to the hearing, on March 22, 2023, the undersigned emailed the parties and reminded them of the issue at hearing and the authority of the Department to uphold or overturn the Town's decision or to impose conditions or to impose sanctions (etc.) pursuant to R.I. Gen. Laws § 3-7-21.[23]

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[22] See May, 2022 Decision. The purpose of the licensing statute is to ensure the control of liquor licenses. R.I. Gen. Laws § 3-1-5 (construe statute liberally to aid in its purpose of "promotion of temperance and for the reasonable control of the traffic in alcoholic beverages.").

[23] The undersigned's email of March 22, 2023.

The Intervenor is not causing disorderly conduct in the 1450 parking lot so that is not a basis to either deny or modify the Town's grant of the expansion application. However, the Intervenor expanded into unit 105 in violation of the Regulation from February to December, 2021. In December, 2021, the Town ostensibly gave permission for the expansion. Thus, the Intervenor expanded for 11 months without a hearing and without documented permission from the Town. However, this is not a situation where an unlicensed entity just served alcohol without obtaining a liquor license. In this situation, the Intervenor had a liquor license but just not for unit 105 which is connected to the original licensed premise. The Intervenor did not try to open a separate entity in the building or in another building that served alcohol and claim its liquor license covered both buildings.

Nonetheless, the Intervenor violated the Regulation. While unit 105 was open for 11 months without permission, the evidence is that it was only used about once a week. Thus, it was not used every day or even frequently. The Intervenor was unable to use unit 105 for almost one (1) month after the Decision. Thus, the time that unit 105 was unable to be used when it was subject to the cease and desist order in May and June, 2022 can serve as a penalty for the Intervenor's noncompliance with the Regulation. The Intervenor's noncompliance with the Regulation is a violation of R.I. Gen. § 3-5-21(2)[24] for which a suspension of license may be imposed under said statute.

iii. Alleged Criminal Activity

Right before hearing, Appellants brought up allegations of illegal activity occurring at the Intervenor. There was evidence that someone who was the target of a police investigation patronized

[24] 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
> ***
> (4) Breach of any provisions of this chapter.

the Intervenor (and other restaurants) and according to a police request for surveillance used the Intervenor (and other restaurants) to sell narcotics. Appellants' Exhibit BB. As noted above, pursuant to R.I. Gen. Laws § 3-5-23, a liquor licensee is accountable for violations of law that occur on its premises and outside. *Vitali*. E.g. *Tel Aviv, LLC d/b/a Tel Aviv v. City of Providence, Board of Licenses*, DBR No. DBR 16LQ015 (12/8/16) (bar manager was observed selling drugs inside licensee and when searched police found drugs on him). However, the evidence here was that the target of police surveillance may have sold narcotics in various public places including restaurants. Unlike in *Tel Aviv*, there were no arrests or convictions for drug dealing in relation to anyone working or patronizing the Intervenor. There was no evidence of narcotics trafficking within the Intervenor. There is no basis to deny the license expansion application on alleged criminal activity.

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. Subsequently, the Intervenor filed a motion with the Board to clarify its licensed premises which the Board granted on December 13, 2021.

3. 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.

4. The Board ostensibly granted permission to the Intervenor for the expansion of its License by approving the motion to clarify on December 13, 2021.

5. Those two (2) appeals were consolidated, and a decision was issued on May 18, 2022 remanding the matter back to the Board for it to hold a hearing on the Intervenor's application for expansion of license.

6. As found in the May, 2022 Decision, the Intervenor did not follow § 1.4.27 of the Regulation prior to expanding into unit 105 in February, 2021. It expanded into unit 105 without filing for or receiving approval from the Board pursuant to R.I. Gen. Laws § 3-5-17.

7. After the May, 2022 Decision, the Intervenor stopped serving alcohol in unit 105 and removed all alcohol from that unit. It then filed an application with the Town to expand its License.

8. On June 13, 2022, the Board granted the Intervenor's expansion of license application, and the Appellants appealed. It is this appeal that is before the undersigned.

9. A hearing was held on March 23 and 24, 2023 with written closings filed by May 12, 2023.

10. 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 § 3-7-21, R.I. Gen. Laws § 42-14-1 *et seq*., and R.I. Gen. Laws § 42-35-1 *et seq*.

2. The activities complained of by the Appellants vis a vis the parking lot at 1450 do not rise to disorderly conduct within the liquor licensing statute of R. I. Gen. Laws § 3-5-23.

3. The alleged criminal activities raised by the Appellants do not rise to a violation of R.I. Gen. Laws § 3-5-23 or R. I. Gen. Laws § 3-5-21.

4. As detailed in the May, 2022 Decision, 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. This is a violation of R.I. Gen. Laws § 3-5-21(2).

VIII. RECOMMENDATION

Based on the foregoing, the activities complained of by the Appellants vis a vis the parking lot at 1450 do not rise to disorderly conduct within the liquor licensing statute of R. I. Gen. Laws § 3-5-23. Neither do the allegations of the criminal activities raised by the Appellants. The only violation by the Intervenor is of § 1.4.27 of the Regulation. As detailed above, for that violation of R.I. Gen. Laws § 3-5-21(2), the time period of the cease and desist order against the Intervenor from using unit 105 as a licensed premises from May 18, 2022 to June 13, 2022 shall serve as a suspension of License pursuant to said statute. Based on the foregoing, there was no showing by the Appellants to overturn or modify the Town's grant of the Intervenor's application to expand license. Thus, the Town's grant of the expansion of License is upheld.

Dated: June 30, 2023

Catherine R. Warren
Hearing Officer

ORDER

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

__✓__ ADOPT
_____ REJECT
_____ MODIFY

Dated: June 30, 2023

Elizabeth Kelleher Dwyer, 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 30th day of June, 2023 that a copy of the within Decision was sent by first class mail, postage prepaid and electronic delivery to the following Stephen J. MacGillivray, Esquire, Pierce Atwood LLP, One Citizens Plaza, 10th Floor, Providence, R.I. 02903 smacgillivray@pierceatwood.com; James P. Marusak, Esquire, Gidley, Sarli & Marusak, LLP, One Turks Head Place, Suite 900, Providence, R.I. 02903 jpm@gsm-law.com; and 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.

Megan J Mihara