

not object to the motion to intervene, and the Appellant withdrew its objection to said motion. All parties were represented by counsel. The Intervenors' motion to intervene is granted.

II. JURISDICTION

The Appellant has filed an appeal with the Department pursuant to R.I. Gen. Laws § 3-7-21 and R.I. Gen. Laws § 3-2-2.

III. DISCUSSION

The substantive issue in this appeal is the Board's finding that due to a legal remonstrance pursuant to R.I. Gen. Laws § 3-7-19,² it did not have jurisdiction to issue the License so that the application was denied. The Board's certified record showed that an engineer had determined the 200 foot radius was 212,320 square feet³ and that the Intervenors own over 50% of the land so that the Board found a legal remonstrance was established. The record included a list of the abutters, but the list did not include square footage for all the abutting property owners. At the Board hearing,⁴ the Appellant indicated that the radius map was inaccurate and included footage under the building. The Intervenors indicated that it was appropriate to include the square footage under the building, and that square footage under the Appellant was included in the calculations.

² R.I. Gen. Laws § 3-7-19 provides in part as follows:

Objection by adjoining property owners — Proximity to schools and churches. (a) Retailers' Class B, C, N and I licenses, and any license provided for in § 3-7-16.8, shall not be issued to authorize the sale of beverages in any building where the owner of the greater part of the land within two hundred feet (200') of any point of the building files with the body or official having jurisdiction to grant licenses his or her objection to the granting of the license, nor in any building within two hundred feet (200') of the premises of any public, private, or parochial school or a place of public worship. In the city of East Providence, retailer's Class A licenses shall not be issued to authorize the sale of beverages in any building within five hundred feet (500') of the premises of any public, private, or parochial school, or a place of public worship.

³ The undersigned indicated that this seemed a high since the 200 foot radius means that the area of the circle would be 200 squared multiplied by pi (3.14) which works out to 125,600 square feet.

⁴ The undersigned listened to the Board's hearing which can be found at <https://www.youtube.com/watch?v=MqXaU9AcNog>.

Before holding a hearing, it is necessary to determine whether the appeal was timely filed since if it was not, the Department would not have jurisdiction to hear the appeal. R.I. Gen. Laws § 3-7-21 states in part as follows:

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

It was undisputed that at the Board’s hearing on August 21, 2023, the Board orally voted to deny the Appellant’s application and all parties were there for said denial. A written letter dated August 25, 2023 memorializing the denial was issued by the Board to the Appellant’s owner. See Appellant’s motion for two protective orders. The Appellant filed its appeal with the Department on September 7, 2023. Ten (10) days from August 21, 2023 was August 31, 2023.

a. Arguments

The Appellant’s attorney argued that the Board’s notice was not given within 24 hours of its decision so that proper notice was not given to the Appellant. The Appellant argued that the denial letter stated that there was an appeal right to the Department but did not give the time frame. The Appellant argued that the ten (10) day appeal does not apply because of the Board’s defective notice. The Board and Intervenors argued that the appeal was untimely.

b. Timeliness of Appeal

The Department has previously ruled that an oral notice of a decision following a hearing is sufficient notice pursuant to R.I. Gen. Laws § 3-7-21. *Certain Property Owners and the Door v.*

Pawtucket Board of License Commissioners, LCA-PA-99-12 (5/11/00) upheld by the Superior Court in *Certain Prop. Owners v. Pawtucket Bd. of License Comm'rs*, 2002 R.I. Super. LEXIS 116. In upholding that Department decision, the Court found that “the filing of an appeal application from a decision by a liquor-licensing Board to the Director is jurisdictional. Accordingly, the Director lacks jurisdiction to review de novo a Board's decision if an appeal to the Director is filed too late.” *Id.* at *7. Furthermore, the Court found that there was no requirement within the statute that a decision of a liquor licensing board must be written to be effective or to start the running of time within which an appeal to the Director must be filed. See also *Jacques, Ltd. v. City of Providence, Board of Licenses*, DBR No.: 18LQ007 (4/16/18); and *Garry Crum d/b/a Club Litt v. City of Providence, Board of Licenses*, DBR No.: 14LQ054 (11/6/14) (both dismissing an appeal filed pursuant to R.I. Gen. Laws § 3-7-21 for failing to file the appeal within the ten (10) day period).

The Appellant argued that the Board did not notify it within 24 hours of its decision. However, the Board orally notified the Appellant the day of its decision which was August 21, 2023. The Appellant argued that the Board’s notice did not indicate the statutory time to file an appeal. There is no requirement that such notice is given. The Appeal was filed after ten (10) days from the date of the decision. Thus, the appeal was untimely.⁵

c. Sua Sponte Authority

The Department has broad and comprehensive control over the traffic in intoxicating liquors. Indeed, the Department’s power of review is so broad that it has been referred to as a “state superlicensing board.” *Baginski v. Alcoholic Beverage Comm'n.*, 4 A.2d 265, 267 (R.I.

⁵ Even if the ten (10) day period ran from the date of the letter, the appeal still would be out of time. Ten (10) days from August 25, 2023 fell on September, 4, 2023 which was Labor Day. Since the appeal period fell on the legal holiday, the appeal period ran to the next day, September 5, 2023. Such a finding is supported by *McAninch v. Department of Labor and Training*, 64 A.3d 84 (R.I. 2013) which applied the Super. R. Civ. P 6 to the time of filing of administrative appeals with Superior Court. Similarly, the appeal period in this appeal would fall on the day after the legal holiday which was September 5, 2023.

1939). Because of this broad authority to enforce Title 3, the Department may review matters on appeal pursuant to its authority under R.I. Gen. Laws § 3-2-2⁶ rather than R.I. Gen. Laws § 3-7-21.

The Department exercises its authority under R.I. Gen. Laws § 3-2-2 when the matter rises to a level that impacts its broad authority over statewide licensing. For example, the Superior Court in *City of Providence Bd. of Licenses v. State Department of Business Regulation*, 2006 WL 1073419 (R.I. Super.), upheld the Department’s authority to hear a matter on appeal pursuant to the Department’s *sua sponte* authority under R.I. Gen. Laws § 3-2-2. In that matter, the *Providence Journal* appealed to the Department and argued that the Providence Board of Licenses (“Providence Board”) had not followed Rule 27 of a predecessor version of 230-RICR-30-10-10-1 *Liquor Control Administration* (“Liquor Regulation”) when it had granted an expansion of a liquor license to a licensee without a public hearing as required by Rule 27.⁷ The Superior Court found as follows:

Rule 27 is promulgated through the above statutory provisions and enforceable statewide. Rule 27 would be revoked by implication if the Department cannot enforce it against a local board that does not appropriately apply it. *See El Marocco Club, Inc. v. Richardson*, 746 A.2d 1228, 1231 (R.I.2000) (concluding that where the implication of a municipality's authorization to attach conditions to the issuance of a liquor license was not read into § 3-5-21, “the power to revoke or suspend licenses becomes a nullity since there is no basis upon which [said power] can be exercised []”) (quoting *Thompson v. East Greenwich*, 512 A.2d 837, 841 (R.I.1986) (citing *Gott v. Norberg*,

⁶ R.I. Gen. Laws § 3-2-2 provides as follows:

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

(b) The department may lease a warehouse for the purpose of efficiently exercising its powers and duties of inspection and may upon reasonable charges store beverages for license holders in the warehouse. No lease shall be for a longer period than five (5) years and every lease shall contain the provision that if it becomes unlawful to manufacture, keep for sale, and to sell beverages in this state it shall become void.

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

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

⁷ Subsequent to this case, the statute was amended to preclude the requirement for a hearing on a seasonal expansion.

417 A.2d 1352, 1356-57 (R.I.1980))). Therefore, by precluding the application of the rule, the Journal and others similarly situated are stripped of their right to a meaningful opportunity to challenge any license expansion when the Board, on its own, deems the rule inapplicable. This was clearly not the intent of the General Assembly when it created the Department.

The Court has long recognized the Department's statewide authority in the regulation of alcoholic beverages, deeming it a "state superlicensing board." *Baginski*, 62 R.I. at 182, 4 A.2d at 265. Vested with such authority, the Department, on its own motion, has the power and jurisdiction to revoke such licenses that have been acquired in disregard of its rules and regulations. See *Belconis v. Brewster*, 65 R.I. 279, 284, 14 A.2d 701, 703 (1940) (the liquor control administration may, of its own motion, revoke or suspend any license dealing with the distribution of alcoholic beverages).

In *City of Providence*, there was an issue of whether the *Providence Journal* had standing to bring the appeal to the Department. The Department found that whether or not the *Providence Journal's* appeal was timely, the Department as a "superlicensing" body had the general supervisory authority to take cases *sua sponte* to ensure compliance with Title 3. The Superior Court upheld this finding. Thus, in that matter, the Department exercised its authority pursuant to R.I. Gen. Laws § 3-2-2 to hear the *Providence Journal's* appeal as the issue before the Department hinged on whether the Providence Board had complied with a specific statewide rule. See also *James and Lauren D'Ambra v. Narragansett Town Council*, DBR No.: 14LQ058 (4/21/15) (Department had jurisdiction under R.I. Gen. Laws § 3-2-2 as the Department has jurisdiction to ensure compliance with the Title 3); and *Volare, Inc. d/b/a Barry's v. City of Warwick Board of Public Safety*, LCA-WA-95-01 (7/17/95) (finding that the Department also had jurisdiction under R.I. Gen. Laws § 3-2-2 as the Department has jurisdiction to ensure compliance with Title 3).

The Department also has exercised its authority under R.I. Gen. Laws § 3-2-2 to review sanctions to ensure statewide consistency of sanctions. See *Bourbon Street, Inc. d/b/a Senor Froggs/Sully's Sports Bar v. Newport Board of Licenses Commissioners*, 1999 WL 1335011 (R.I. Super.). See also *Green Point Liquors v. McConaghy*, 2004 WL 2075572 (R.I. Super) (discussion of *sua sponte* authority on part of Department to bring actions and to review local actions).

d. The Legal Remonstrance

Based on the Board's hearing, the radius map that was relied on by the Board for its decision did not comply with the statutory requirements. R.I. Gen. Laws § 3-7-19 calls for the measurement to be from "any point of the building." It is irrelevant when applying the statute who owns the land beneath the proposed licensed building as it is not included in the radius. Rather the 200 feet radius is measured from the building. The Intervenor Beachcomber might own abutting land and object but the land beneath the building is not part of the radius map. Indeed, the purpose of the statute is whether the neighbors (owners) object.

The legal remonstrance is measured 200 feet out from the building where the liquor license is to be located. Indeed, contrary to the Intervenor's position at the Board meeting, it is irrelevant what the licensed space is to be within the building as the measurement is not from the licensed premises but from the building where the license is to be located. *Aldo's Place, Inc. v. Town of New Shoreham*, DBR No.: 06-L-0260 (8/28/07). When applying the statute to the issue of whether the proposed liquor license is within 200 feet, the Liquor Regulation provides that for R.I. Gen. Laws § 3-7-19, the measurement is to be from the closest point of the building (of the proposed location) to the premises of the property owner entitled to object.⁸ Thus, if a place of worship or school premises is within 200 feet, there is a legal remonstrance, and the 200 feet does not have to go to the school or place of worship's building. Rather the measure is from the proposed liquor licensee's building (the closest point) to the premises of a place of worship or school. *Aldo's*.

⁸ Section 1.4.41 of the Liquor Regulation provides as follows:

Two Hundred Foot Rule – Retail The area within two-hundred feet (200') of a proposed licensed premise as referred to in R.I. Gen. Laws § 3-7-19 shall be measured from the closest point of the building constituting the proposed licensed premises to the premises of the property owner entitled to object, including the building or land or appurtenances. The licensed premise shall not be altered or expanded except with the written approval of the licensing authority issuing the license.

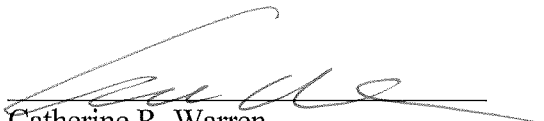
Similarly, any part of an abutter's land within the 200 feet radius from the building location may be included in an objection. It could be that a landowner owns 10,000 square feet and only 500 feet of his or her property falls within the 200 feet radius. Nonetheless, the 500 feet is included as part of the total square footage, and that property owner may or may not choose to object.

Perhaps after subtracting the square footage of the Appellant's building's footprint from the radius square footage, the amount of square footage for this matter will be more in line with the usual measurements for the square footage of 200. It is noted that it is unclear whether when calculating the Beachcomber's square footage that included the land under the proposed location's building. The radius cannot include that square footage under the building. The square footage under the building is not part of the radius map, and it does not factor in the property owner's calculation regardless of whoever owns it.

Like the *City of Providence*, the issue in this matter turns on the issue of compliance by a local authority with a statewide rule. In this situation, the Town was fully aware of the relevant statute, but the map used was not compliant with the statutory requirements. This matter could be remanded to the Town to reconsider the issue, or the Department could exercise its *sua sponte* authority to take the appeal as it turns on the applicability of a statewide statute. In the interest of efficiency and pursuant to its *sua sponte* authority, the Department will hear the appeal pursuant to its jurisdiction under R.I. Gen. Laws § 3-2-2 despite the appeal being untimely.⁹

A hearing will be scheduled at a mutually convenient time for all parties.

Dated: November 21, 2023


Catherine R. Warren
Hearing Officer

⁹ It is noted that the appeal only relates to the legal remonstrance. If it is found that there is no legal remonstrance, the matter will be remanded to the Board to consider the generic question of granting a liquor license. If it is found there is a legal remonstrance, then the application is denied as no liquor license can be granted.

CERTIFICATION

I hereby certify on this 21st day of November, 2023 that a copy of the within Order and Notice of Appellate Rights were sent by electronic delivery and first class mail, postage prepaid, to the following:

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