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

Myles Standish Associates LP,	:	
LMT Realty, LLC,	:	
MJJ Realty Association LLC,	:	
221 Waterman St, Realty,	:	
Waterman 219, LLC,	:	
Waterman Realty, LLC,	:	
Waysquare Associates, LP,	:	
Jennifer Qun Liang,	:	
Stephen Lewinstein,	:	**DBR No.: 23LQ009**
Bromley Real Estate Corp.,	:	
River Company, LLC,	:	
Eagle Island Investment Group, Inc.,	:	
Charles Smith III,	:	
144 Wayland, LCC,	:	
Appellants,	:	
	:	
v.	:	
	:	
City of Providence, Board of Licenses,	:	
Appellee.	:	
	:	
and George Potsidis d/b/a Estiatorio Fili, Inc.,	:	
Intervenor	:	
	:	

ORDER: RE SECOND MOTION FOR STAY

I. INTRODUCTION

This matter arose from an appeal and first motion for a stay filed on October 20, 2023 by the above captioned appellants ("Appellants") with the Department of Business Regulation ("Department") pursuant to R.I. Gen. Laws § 3-7-21 regarding the decision taken on October 11, 2023 by the City of Providence, Board of Licenses ("Board") to grant a Class BV liquor license

("License") to George Potsidis d/b/a Estiatorio Fili, Inc. ("Intervenor").[1] A hearing on the Appellants' first motion for stay was held October 30, 2023 before the undersigned. On November 1, 2023, the Department remanded this matter to the Board for reconsideration of its grant of the License. On December 14, 2023, the Board affirmed its grant of the License.[2] On December 20, 2023, the Appellants informed the undersigned and the parties that they were continuing their appeal. A stay hearing was held on February 2, 2024 in relation to the December 14, 2023 affirmation by the Board of the grant of the License. All parties were represented by counsel.

II. JURISDICTION

The Department has jurisdiction over this matter pursuant to R.I. Gen. Laws § 3-2-1 *et seq*., R.I. Gen. Laws § 3-5-1 *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. STANDARD FOR ISSUANCE OF A STAY

Under *Narragansett Electric Company v. William W. Harsch et al.*, 367 A.2d 195, 197 (1976), a stay will not be issued unless the party seeking the stay makes a "'strong showing'" that "(1) it will prevail on the merits of its appeal; (2) it will suffer irreparable harm if the stay is not granted; (3) no substantial harm will come to other interested parties; and (4) a stay will not harm the public interest." Despite the ruling in *Harsch*, the Supreme Court in *Department of Corrections v. Rhode Island State Labor Relations Board*, 658 A.2d 509 (R.I. 1995) found that *Harsch* was not necessarily applicable in all agency actions and the Court could maintain the *status*

[1] The Intervenor was allowed to intervene by order dated October 25, 2023.
[2] The undersigned listened to the Board's discussion and its decision on remand. Those recordings can be found at - https://providenceri.iqm2.com/Citizens/SplitView.aspx?Mode=Video&MeetingID=14144&Format=Minutes (November 29, 2023); https://providenceri.iqm2.com/Citizens/SplitView.aspx?Mode=Video&MeetingID=14147&Format=Minutes (December 7, 2023); and https://providenceri.iqm2.com/Citizens/SplitView.aspx?Mode=Video&MeetingID=14149&Format=Minutes (December 14, 2023).

quo in its discretion when reviewing an administrative decision pursuant to R.I. Gen. Laws § 42-35-15(c). The issue before the undersigned is a motion to stay a Decision which is subject to a *de novo* appeal and does not fall under R.I. Gen. Laws § 42-35-15(c). Nonetheless, it is instructive to note that the *Department of Corrections* found it a matter of discretion to hold matters in *status quo* pending review of an agency decision on its merits.

IV. ARGUMENTS

The proposed location is on Waterman Street, between a professional building on the corner of Waterman Street and Wayland Avenue and an apartment building, and the location, is itself, a residential apartment building. Currently there are nine (9) Class BV liquor licensees in Wayland Square on Wayland Avenue and Angell Street but none between Wayland Avenue and Thayer Street. The proposed location is the second building in on Waterman Street from the intersection of Waterman Street and Wayland Avenue.

The Appellants argued that on remand, the Board failed to make any findings of facts regarding the Intervenor's impact on the neighborhood nor on their expert's testimony regarding said impact. They argued that the Board failed to make any findings of fact regarding the fitness of the applicant. They argued that the Board's decision was not supported by the evidence. The Appellants argued that contrary to the Board's assertions, it had not inquired into the fitness of the applicant to run a liquor license establishment. They argued that their expert's testimony was uncontradicted as to the negative impact that a liquor license would have on the area outside the currently licensed area. They argued that they could suffer irreparable harm in terms of loss of sleep and or loss of tenants as landlords due to the Intervenor.

The Intervenor argued that on remand the Board exercised its discretion to grant the License and discussed the remand decision in relation the initial hearing. It argued that the Board

considered the fitness of the applicant in that the Board received a business plan and information about the running of the proposed restaurant. It argued that the Intervenor owns the apartment building in which the proposed location is situated and lives in the building himself so will be on-site. It argued that the Appellants' expert witness testified about zoning and tried to opine on the impact a bar would have on the neighborhood, and the Board was free to discount this testimony. It argued there was community support expressed on social media but also from the local neighborhood association for the granting of the License. It argued there is competent evidence to support the Board's decision, and there was no showing by the Appellants that they would suffer irreparable harm if the Intervenor opened. It argued there could be no rational inference that the Appellants would suffer loss of sleep or loss of tenants based on the evidence at hearing.

The Board and City argued that on remand the Board continued its decision twice so that the Board members had a chance to review initial hearing and that discussion in order to make the decision on remand. They argued that the Board always considers fitness of an applicant which in this situation was based on a review of the business plan. They argued there was no showing of irreparable harm by the Appellants.

V. REVIEWING THE GRANT OF A LIQUOR LICENSE

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,

> 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).

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 *Corina Street Café v. City of Providence, Board of Licenses*, LCA-PR-96-20 (11/25/96), the Department upheld the denial of the application for a liquor license. Said decision found that the applicant wanted to change the character of its business (from a deli to a bar/restaurant), but the majority of neighbors opposed the application regardless of the applicant's responsibility and good faith intentions. The decision found that the City had a specific policy to eliminate liquor licenses in the area by not issuing new licenses and not replacing those licenses that had been eliminated because of the area's history of problems with liquor licensees and alcohol consumption. That decision pointed out that community opinion is not sacrosanct but in that matter community opposition, previous issues associated with liquor licensing in that area and the city's resulting licensing policy as well as the applicant's inexperience supported the denial of the application because the license would not be in the best interests of the neighborhood.

In *DeCredico v. City of Providence, Board of License Commissioners*, DBR No. LCA-PR94-27 (1/20/95) ("*DeCredico I"*), the applicant's liquor license application was rejected because neighbors were concerned about the growing number of liquor-serving facilities in the vicinity and that the establishment would be "almost identical" to a past problematic bar at the proposed location. The Department[3] found that at night the proposed establishment would attract a crowd similar to the previously problematic bar. The Department found that the applicant was a proven restaurant operator but did not have the requisite experience of managing a late-night, full-bar drinking establishment to be able to handle the potential problems that had plagued the area in the past.

Conversely, in *DeCredico v. City of Providence, Board of License Commissioners*, DBR No. LCA-PR94-26 (1/23/95) ("*DeCredico II*") upheld by *DeCredico v. City of Providence Board of Licenses*, 1996 WL 936872 (R.I. Super.), the applicants presented a well-financed project to open an

[3] At the time of *DeCredico I*, the Liquor Control Administrator adjudicated said appeal. The position of Liquor Control Administrator was abolished by P.L. 1996, ch. 100 art. 36 § 4 with the Department assuming those functions.

upscale jazz club. Many neighbors objected to the application because of past problems with liquor licensees in the neighborhood. The decision found that the proposed club was likely to attract a different clientele from the patrons of the establishments that created problems for the neighborhood in the past. Thus, the liquor license application was approved despite objections from the neighbors. The decision found that a licensing authority can move a neighborhood forward without duplicating past errors by denying application requests to those that are poorly planned or whose plan and locus are similar or identical to past problem spots.

In *Crazy 8's* and *DeCredico I,* neither applicant had the requisite experience to run their proposed new establishments differently than the prior licensees. In *DeCredico II,* the applicants had the experience and a plan. The Department has previously upheld the rejection of a liquor license based on location and an unacceptable business plan.

The Department's decision, *Douglas, Inc. and Derby Liquors, Inc. v. Pawtucket Board of License Commissioners* (3/14/83), found "[w]e are of the opinion that in the proper circumstances, community sentiment, not just the fitness of the applicant, may properly be heard and should be given thoughtful consideration with regard to a transfer of an alcoholic beverage license." *Id*., at 4-5. Similarly in *Vel-Vil, Inc. v. Pastore***,** WL 732870 (R.I.Super.1986), the Department[4] overturned the local granting of a license finding that the applicant had not sustained its burden that there was an additional need to serve alcohol in the proposed location's neighborhood and that another liquor license might threaten the areas's ongoing revitalization and there were three (3) liquor establishments in the immediate vicinity and twenty (20) within fifteen (15) blocks.

The Department reviews whether a local licensing authority has abused its discretion by failing to have relevant material evidence in support of its decision. If a local licensing authority

[4] The undersigned relies on the Superior Court case to summarize the Department's findings.

finds there is no community need, it must articulate what is meant by community need; otherwise, the term is too vague. *Douglas* also spoke of the need to carefully consider community sentiment. The Department has continuously considered community sentiment but ensures that such sentiment is based on evidence and not just speculation.

In reviewing the many cases that have come before the Department over the years since *Douglas* and *Vel-Vil* that address "community sentiment," the Department has not sought proof by a local licensing authority when it grants a license that the applicant is providing a needed service of selling liquor. Nor has the Department reviewed a denial of a license and upheld the denial if there is no proof that the applicant is needed to provide liquor sales. Instead, the Department will uphold denials when a local authority has found based on the evidence that a community does not need another license because of past problems, traffic, etc. The concept of community need must be based on a specified reason why the license would not benefit the area. As discussed, the local authorities have broad discretion in making such determinations.

VI. THE BOARD'S DECISION

This matter was remanded because the Board used a narrower standard than required in deciding to grant the License. The Board has broad discretion and can review a variety of factors before deciding whether to grant a class BV license. The matter was remanded to ensure that all relevant evidence was considered by the Board when reconsidering its initial decision. Thus, the matter was remanded to ensure the Board considered its decision within its broad discretion. On remand, the Board gave itself time to review the initial hearing and its decision before discussing the matter again. Its affirmation of the grant of the License was based on the initial hearing and what was heard and discussed at that hearing. While it may be preferable for a licensing authority to summarize its findings, there was not a violation by the Board for failing to make findings of

fact in relation to the fitness of the applicant or the impact of the neighborhood on remand. Furthermore, since the liquor appeal hearing is a *de novo* hearing rather than an appellate review of what occurred at the municipal level, any alleged error of law or fact committed by the municipal agency is of no consequence. *Hallene v. Smith*, 201 A.2d 921 (R.I. 1964); 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). Thus, even if the Board made an error on remand by failing to make findings of fact, on appeal, the error would be of no consequence.

There was no evidence or testimony that the Intervenor's location was a problematic location for which the Board would try to ensure that there would not be a repeat of past problems. There was no evidence or testimony that the Intervenor was involved with prior liquor establishments with violations over the years. There was no evidence that the Intervenor is not familiar with liquor licensing laws or that the establishment itself is not compliant with liquor licensing laws (e.g. it has a kitchen). There was evidence that the Intervenor submitted a business plan explaining its plan to be a restaurant and the staff that it will employ including a manager. There was evidence that the Board reviewed this plan because it then imposed conditions on the License in relation to opening times, entertainment, and outside seating. The parties disputed the impact that the Intervenor's Class BV license would have on the neighborhood. There was support by neighbors for both the grant (on social media; letters in support) and denial (by testimony) of the application for License. However, the objections are speculative especially as the proposed location is one (1) building removed from Wayland Avenue and is essentially across the street from two (2) liquor licensed establishments. The licensed location will be inside a residential apartment building owned by the Intervenor which weighs toward the Intervenor ensuring that it

is not loud or annoying because otherwise there could be a problem renting the apartments. In addition, the Board imposed conditions on the License to avoid outside and late-night noise.

At the Board's August, 2023 meeting when it initially discussed the application, the Appellants presented an expert witness on zoning. It is undisputed that the zoning for the proposed location allows a restaurant. The Appellants' expert testified that Wayland Avenue was a commercial corridor and Waterman Street was more residential with professional buildings. He characterized the Intervenor's application as an application for a bar and testified that a bar could turn Waterman Street into more of a commercial corridor. However, the application is for a Class BV license which is a restaurant. The Board's counsel indicated that the expert was testifying as to his opinion that the Intervenor would become a bar which was beyond the scope of his expertise. A Class BV licensee must serve food from a kitchen, and it cannot just serve snack food. Under a recent law, a liquor licensee may obtain permission from the Board to stop serving food after 10:00 p.m., but that is not the situation in this matter.[5] Thus, at the initial hearing, the Board rejected the expert's characterization of this application being for a bar.

Also at the August, 2023, Board meeting, the Appellants presented an expert witness as to the type of hood on the stove that would be used in the Intervenor's kitchen and what may or may not be cooked with that type of hood on the stove. It was established that the type of food that could be cooked included pasta and other types of food. There was no evidence that the Intervenor would be limited to only serving snack food. There was no evidence that the Intervenor did not have a kitchen as required under the liquor licensing laws for a Class BV license.

[5] A December 1, 2022, amendment to the Class B licensing statute, R.I. Gen. Laws § 3-7-7, allows the Board to give permission to a liquor licensee to stop the service of food after 10:00 p.m. R.I. Gen. Laws § 3-7-7(c). But it must be by permission of the Board. Otherwise, by statute and the Department's liquor licensing regulation, § 1.4.5 of 230-RICR-30-10-1, *Liquor Control Administration* food must be served when liquor is being served.

On appeal of a grant or denial of a liquor license, the Department reviews the record for competent evidence to support the licensing authority's decision. The Board has broad discretion in deciding whether to grant or to deny a license. The Appellants have not made a strong showing that they will prevail on the merits of its appeal. There is competent evidence to support the Board's decision in terms of the fitness of the applicant and the impact on the neighborhood. Nor have the Appellants established that they will suffer irreparable harm if the Board's decision is not stayed. There was only speculation regarding the Intervenor's impact on the neighborhood, and the Board granted the License with conditions to ensure that establishment did not become a late-night noisy establishment. The denial of the stay will not harm the public interest in that there are no safety issues, and there has not been a showing that the Appellants have a strong likelihood of success on the merits. This is not a request for a stay of the imposition of sanctions such as a suspension so that if a stay was not granted, the licensee would not have a chance for a meaningful appeal. As the Appellants have not shown a strong likelihood that they will prevail after a full hearing nor have they shown they will suffer irreparable harm if the stay is not granted, there is no reason to grant a stay.

VII. RECOMMENDATION

Based on the foregoing, the undersigned recommends that the Appellant's motion for a stay of the grant of the License applicant be denied.

Dated: February 5, 2024

Catherine R. Warren

Catherine R. Warren
Hearing Officer

INTERIM ORDER

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

___X___ ADOPT
_____ REJECT
_____ MODIFY

Dated: 2/6/24

Elizabeth Kelleher Dwyer, Esquire
Director

A hearing will be scheduled on a mutually convenient date to be determined by the parties.[6]

NOTICE OF APPELLATE RIGHTS

THIS ORDER CONSTITUTES AN INTERLOCUTORY ORDER OF THE DEPARTMENT OF BUSINESS REGULATION PURSUANT TO R.I. GEN. LAWS § 42-35-15. 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 6th day of February, 2024 that a copy of the within Order and Notice of Appellate Rights were sent by email and first class mail, postage prepaid, to the following: Mario Martone, Esquire, City of Providence Law Department, 444 Westminster Street, Suite 220, Providence, R.I. 02903, Andrew M. Teitz, Esquire, Ursillo, Teitz & Ritch, Ltd., 2 Williams Street, Providence, R.I. 02903, Joseph A. Keough Jr., Esquire, 41 Mendon Avenue, Pawtucket, R.I. 02861, Jeffrey Padwa, Esq. (#5130) Padwa Law LLC, One Park Row, 5th Floor, Providence, R.I. 02903, and Louis A. DeSimone, Jr., Esquire, 1554 Cranston Street, Cranston, R.I. 02920 and by electronic delivery to Pamela Toro, Esquire, Department of Business Regulation, Pastore Complex, 1511 Pontiac Avenue, Cranston, R.I. 02920.

Dated: 2/6/24

Print Name: Meredith Cotta

[6] Pursuant to R.I. Gen. Laws § 3-7-21, the Appellants are responsible for the stenographer.