

**JTD, Inc. d/b/a General Country Store and
Nicholas Izzi,
Appellants**

**The Town Council of Scituate sitting as the
Beverage Licensing Board,
Appellee**

Chopmist Hill Liquors, LLC
Intervenor

DBR No. 25LQ001

I. INTRODUCTION

This matter arose from an appeal and motion for a stay filed on March 19, 2025 by JTD, Inc. d/b/a General Country Store and Nicholas Izzi (for convenience, “Appellant”) with the Department of Business Regulation (“Department”) pursuant to R.I. Gen. Laws § 3-7-21 regarding the decision taken on March 13, 2025 by the Town Council of Scituate sitting as the Beverage Licensing Board (“Board”) to deny the Appellant’s application for a Class A liquor license. Chopmist Hill Liquors, LLC (“Intervenor”) was allowed to intervene. A hearing on the stay motion was heard on April 4, 2025 before the undersigned who was delegated to hear liquor appeals by the Department director. By order dated April 9, 2005, the Department stayed the Board’s denial of the Appellant’s application for a Class A liquor license and stayed the grant of the Intervenor’s Class A liquor license application and remanded the matter to the Board for further consideration.

On May 29, 2025, the Board found the Appellant abandoned the Class A liquor license pursuant to R.I. Gen. Laws § 3-5-16.1 After the Board's decision, the Appellant continued its appeal, and a full hearing was held on July 22, 2025 with the parties represented by counsel. Briefs were timely filed by September 15, 2025.¹

II. JURISDICTION

The Department has jurisdiction over this matter pursuant to R.I. Gen. Laws § 3-7-1 *et seq.*, R.I. Gen. Laws § 42-14-1 *et seq.*, and R.I. Gen. Laws § 42-35-1 *et seq.*

III. ISSUE

Whether to uphold or overturn the Board's finding the Appellant's Class A liquor license was abandoned. If said license was not abandoned, there is the issue of the Appellant's renewal application for said license filed for 10 Hope Furnace Road. If said license was abandoned, there is the issue of the Board's denial of the Appellant's new application for a Class A liquor license at 8 Hope Furnace Road, and the Board's granting of the Class A liquor license to the Intervenor.

IV. MATERIAL FACTS AND TESTIMONY

Pursuant to R.I. Gen. Laws § 3-5-16, the Town of Scituate is permitted two (2) Class A liquor licenses. There is already another licensed Class A establishment in the Town of Scituate. Thus, the license at issue here would be the only available Class A liquor license in Scituate.

It is noted that this Class A liquor license at issue was located at 10 Hope Furnace Road which is part of larger commercial building that includes 8 Hope Furnace Road which is next door.

The Board's certified record included the Appellant's 2016 through 2025 renewal applications for its Class A liquor license, and its new application for a Class A liquor license dated January 3, 2025. While that application stated it was for renewal, it is a new application for unit

¹ All parties filed briefs with the Intervenor and Board also filing reply briefs.

#8 submitted by the Appellant. The certified record also included the minutes from the meetings about the Appellant's liquor license from 2016 to present as well as video recording links to the Board's February 13, March 13, and May 29, 2025 meetings. It included the June 10, 2025 written decision for the Board's May 29, 2025 hearing decision after remand finding the Appellant's Class A liquor license had been abandoned pursuant to R.I. Gen. Laws § 3-5-16.1. See certified record.

At the Department hearing, Nicholas Izzi ("Izzi") testified on behalf of the Appellant. He testified he owns JTD, Inc and has owned it since October, 2005. He testified he obtained a Class A liquor license in 2005 and never has been disciplined for any liquor infractions. He testified the building caught fire on April 18, 2016, and he had to tear down part of it to rebuild. He testified from the date of the fire through the Department hearing, he has not reopened his doors at 10 Hope Furnace Road. He testified it took the insurance company a year to settle and when Covid19 started, he could not do any work on the building, and he was in the midst of divorce so was unable to touch the money. He testified the insurance proceeds were about \$900,000 and prior to the start of the divorce proceedings, he and his ex-wife lived on the proceeds because they both worked at the store. He testified he used some of the money for the mortgage on the whole building.

Izzi testified he started reconstruction in 2018 but had to stop because of the divorce. He testified he installed the foundation but then Covid19 began. He testified once the divorce was finalized, he was able to start rebuilding. He testified he got the first and second floor up but there was a windstorm in December, 2023 that knocked the second floor down. He testified there is still the electrical, plumbing, and inside walls to finish. He testified he stopped working on the building in November, 2024 because he does not know where the liquor license stands so he will not set up as a liquor store without obtaining a liquor license. Izzi testified that as he did not have a certificate of occupancy for #10, he evicted his tenant from unit #8 so he could transfer the liquor license

there. He testified he submitted a 2025 renewal for the liquor license at #10 but when the Board did not vote on it, he applied for a new liquor license for #8. He testified #8 is now completely empty, and it would take about 30 days to open it up as a liquor store. He also testified that he was a member of the Town Council in 2017 and 2018.

On cross-examination, Izzi testified the 2016 fire completely destroyed #10. He testified it took about a year to receive the insurance money. He testified that he and his wife lived off the insurance proceeds instead of using the money to build because he had to get everything designed. He testified that took about two (2) years, but he had the old building taken down and demolished. He testified that after the December, 2023 wind event, he got some trusses back up, and it now just needs electrical, plumbing, and inside walls.

On cross-examination, Izzi testified he received the bulk of the insurance proceeds about a year after the fire and the divorce was filed on April 5, 2018 so for one (1) year, they had the insurance proceeds before the divorce. He testified the building had to be demolished. He testified he had a full-time job in 2017, 2018, and 2019 and rented out the other units in the plaza. He testified he was under a Family Court order to detail what the \$900,000 insurance proceeds was spent on. Intervenor's Exhibit One (1) (July 16, 2019).

At the November 14, 2024 Board meeting,² the Board did not deny or approve the Appellant's renewal application. It tabled the renewal application. It was said on the record that no decision was made either to approve or deny the application, and it was indicated that a Class A liquor license would be available for anyone to apply. It also indicated that at the next meeting, the Board would decide if there should be a moratorium on issuing Class A licenses for three (3) months. No vote was taken on the tabling motion.

² The video recording for this meeting and other Board meetings can be accessed via <https://clerkshq.com/scituate-ri>.

At the December 12, 2024 meeting, the Board did not approve a three (3) month moratorium on the issuance of Class A liquor licenses. It was indicated on the record that the moratorium was being considered specifically for the Appellant. A councilor indicated the Board had given the Appellant many chances, but time was running out.

In January, 2025, the Appellant filed a new application for a Class A liquor license for unit #8. The Appellant's new application and the Intervenor's application for a Class A liquor license were considered by the Board at the February 13, 2025 meeting. At that meeting, the Appellant represented that #10 would be able to open soon so his plan was to become licensed at #8 and then transfer the license to #10 when it could be opened. The Appellant represented it would re-open the general store. On questioning by the Board, Izzi stated he intended to sell groceries along with liquor. He stated that unit #8 would just be selling liquor. He stated nothing needed to be done to sell liquor in unit #8. He was asked how he would operate with the Pawtuxet River Authority ("PRA") which were tenants at unit #8, and he stated he guessed they would coexist as he would just be putting a couple of shelves in as it would be a temporary location. He stated he could evict them as they were on a 30 day agreement, but he would not want to do that. The Appellant represented that putting the license in #8 was a temporary solution so the Appellant could open a liquor store while unit #10 was completed and opened. At that time, the Board tabled both applications and moved to continue consideration of them to the March 13, 2025 meeting.

At the March 13, 2025 meeting, the Appellant's new application was denied, and the Intervenor's application was granted. At the May 29, 2025 Board hearing, the Board moved to find the Appellant's Class A liquor license had been abandoned as it had failed to be available for use for eight (8) years. See meeting and June 10, 2025 letter.

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 Supreme Court has also established that it will not interpret legislative enactments in a manner that renders them nugatory or that would produce an unreasonable result. See *Defenders of Animals v. DEM*, 553 A.2d 541 (R.I. 1989) (citation omitted). In cases where a statute may contain ambiguous language, the Supreme Court has consistently held that the legislative intent must be considered. *Providence Journal Co. v. Rodgers*, 711 A.2d 1131 (R.I. 1998). The statutory provisions must be examined in their entirety and the meaning most consistent with the policies and purposes of the legislature must be effectuated. *Id.*

B. The Appeal Before the Department

After the end of prohibition of liquor within the United States, Rhode Island implemented a new system of statewide control of liquor coupled with local authority to grant certain licenses. See P.L. 1933 ch. 2013. The intent of the new system was to eliminate the old unsupervised system of local regulation that resulted in a lack of uniformity and grave abuses that seriously affected the public welfare and instead vested broad powers of control and supervision in a state system. *Baginski v. Alcoholic Beverage Commission*, 4 A.2d 265 (R.I. 1939).

In keeping with the Department’s statewide oversight and mandate to “establish a uniformity of administration of the law for purpose of promoting temperance throughout the state,”

the Department has broad statutory authority to review liquor appeals. *Baginski*, at 268. See *Tedford et al. v. Reynolds*, 141 A.2d 264 (R.I. 1958). *Baginski* held that since the Department³ is a “superlicensing board,” it has the discretion to hear cases “*de novo* either in whole or in part.” *Baginski*, at 268. Thus, an appeal may hear new testimony in part and/or may rely on the hearing before the local licensing authority. However, as the review is *de novo* the parties start afresh during the appeal but the Department has the discretion to review the local authority partially *de novo* and partially appellate as seen fit. *Hallene v. Smith*, 201 A.2d 921 (R.I. 1964). Since the Department is charged with ensuring statewide uniformity, it follows that the statutory scheme grants the Department the authority to revise or alter decisions of local boards. *Id.* Further, 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. *Id.* *Cesaroni v. Smith*, 202 A.2d 292 (R.I. 1964).

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 before her and determine whether that evidence justifies said decisions.

An appeal proceeding held pursuant to R.I. Gen. Laws § 3-7-21 is considered a civil proceeding. *Board of License Commissioners of Tiverton v. Pastore*, 463 A.2d 161 (R.I. 1983). In civil proceedings, unless otherwise specified, the burden of proof generally needed for moving parties to prevail is a fair preponderance of the evidence. *Jackson Furniture Co. v. Lieberman*, 14 A.2d 27 (R.I. 1940). See *Parenti v. McConaghy*, 2006 WL 1314255 (R.I. Super.); and *Manny’s*

³ At that time the alcoholic beverage commission.

Café, Inc. v. Tiverton Board of Commissioners, DBR LCA TI-97-16 (11/10/97) (Department decision discusses burden of proof for proceedings held pursuant to R.I. Gen. Laws § 3-7-21).

C. Relevant Statute

R.I. Gen. Laws § 3-5-16.1 provides as follows:

Revocation of abandoned Class A licenses. Whenever it comes to the attention of any local licensing authority as defined in § 3-5-15 that the holder of a Class A license has abandoned the premises from which the licensee has been conducting his or her business or has ceased to operate under the license for a period of ninety (90) days or more then after hearing with due notice to the licensee the local licensing authority shall cancel the license; provided, that the authority may grant a reasonable period of time, not to exceed one year, to the licensee within which to reestablish the business where the abandonment or cessation of operating was due to illness, death, condemnation of business premises, fire or other casualty.

D. Arguments

Specific arguments are addressed in the discussion below.

E. Whether the License was Abandoned Pursuant to R.I. Gen. Laws § 3-5-16.1

The Appellant argued that it had no intent to abandon its License. It argued it was uncontested that it made efforts to complete the construction but was delayed due to the divorce, Covid19, and the 2023 windstorm. It argued that Izzi testified that he stopped construction in November, 2024 when the Board refused to act on the Appellant's application so the Board cannot now use that delay to justify finding abandonment because Izzi could have completed the building in November, 2024. It argued it had not ceased operations because it has maintained an inventory pursuant to *The Wine and Liquor Company, Inc. v. DBR*, 2023 WL 185515 (R.I. Super.).

The Intervenor argued the Board correctly found the Appellant abandoned its license and ceased to operate. It argued there was no evidence that the Appellant kept liquor and it would be impossible to keep liquor on the premises as the premises were destroyed by fire. The Intervenor rejected the Appellant's reliance on *Wine and Liquor* as misplaced due to the different facts since that case was about a transfer of a license to new premise being built and the delay was only two

(2) years. It argued the fact that Izzi lived off the insurance proceeds rather than reconstruct the building supports a finding of abandonment.

The Board argued it correctly found the License was abandoned. The Board argued the Appellant failed to rebuild the License's premises after nine (9) years. It argued that Izzi lived off insurance proceeds rather than rebuild the building. It argued the foundation was not started until 2018 and the framing was not started until 2023 and the remaining work to complete the building is extensive. It argued there is no evidence the Appellant continued to keep alcoholic beverages at the subject premises. The Board argued it was undisputed the Appellant ceased to operate the business and to neither keep nor sell liquor at the premises for 90 days so that the Board properly found after hearing that the license was abandoned.

The Appellant cited to *Wine and Liquor* to support its argument that its Class A license was not abandoned. *Wine and Liquor* addressed the issue of a Class A liquor licensee that did not open within one (1) year as required by § 1.4.14 of 230-RICR-30-10-1, *Liquor Control Administration* regulation. That rule related to the time an applicant must open after a liquor license had been granted but not issued. The Court found that said rule had been promulgated beyond the Department's scope of authority.⁴ The Court found the rule's timeline was "markedly different" (p. 8) from the abandonment statute. This matter involves the abandonment statute and has no relation to that challenged regulation.

⁴ That now deleted rule provided as follows:

Granted License (Not Issued) -Retail

A retail alcoholic beverage license may be granted but not issued pending full compliance with conditions and criteria necessary for the issuance of said license. All such "grants" of alcoholic beverage licenses shall be in writing. The license shall particularly describe the place or premises where the rights under the license are to be exercised. The applicant shall have no more than one (1) year after the original granting of the license to meet all conditions and criteria set forth in the granting order. If the applicant does not meet all the conditions and criteria within one (1) year, the license shall become null and void without further hearing by the local licensing authority; provided, however, said time period shall not be calculated when the license at issue is involved in litigation, from the date of commencement of the action to final disposition.

The Court in *Wine and Liquor* found “[s]ection 3-5-16.1 provides for granting a reasonable amount of time, not to exceed one year, for a licensee to reestablish their liquor retail business to prevent revocation due to abandonment.” The Court discussed the difference between the abandonment statute and the challenged regulation regarding the time allowed to open or reopen.

Wine and Liquor spoke of the challenged rule’s requirement to meet conditions of licensing placed on the granting of license. In contrast, the abandonment statute speaks of the local licensing authority ascertaining that a Class A liquor licensee has either abandoned the premises **or** ceased to operate under the license for a period of ninety (90) days. For the abandonment statute, the local licensing authority must hold a hearing on the matter. The statute provides that if the abandonment **or** cessation of operations were due to fire, the authority may grant a reasonable period of time not to exceed one (1) year to reestablish the business. The statute clearly provides that once it comes to the local licensing authority attention that a Class A liquor license has been abandoned **or** ceased operations, the authority shall cancel the license after hearing unless there are grounds to grant a reasonable extension of up to one (1) year.

The Appellant relied on the use of discretion as discussed in *Wine and Liquor*. But that discussion by the Court was about a municipality in relation to the opening of a liquor store under the challenged regulation. The abandonment statute clearly provides there may only be an extension of up to one (1) year from the 90 day period of abandonment **or** cessation of operations. The statute does not provide that the one (1) year period is an annual discretionary decision but rather it is a finite period of one (1) year. Indeed, *Wine and Liquor* discussed how that one (1) year period in the abandonment statute was different from the time period in the challenged regulation.

As the Court found in *Green Point v. McConaghy*, 2004 WL 2075572 (R.I. Super.), allowing the transfer and prolonged non-use of liquor licenses contravenes public policy in that it

promotes private market speculation of licenses that are otherwise difficult to obtain through proper application to a licensing authority. As also found in *Marty's Liquors v. Warwick Board of Commissioners*, 1985 WL 663587 (R.I. Super.), the General Assembly enacted legislation specifically providing to reduce the number of Class A liquor licenses so that Class A licenses cannot be kept “alive” for improper purposes.^{5 6}

There is no dispute the Appellant’s store burned in April, 2016. It is not disputed that it is still not open nor operable. Sometime in July, 2016 – 90 days after the fire - the Appellant had no premise from which it could operate so it had abandoned the premises and/or ceased to operate under the license for 90 days. At that time, the Board could have granted a period of time after hearing, not to exceed one (1) year, because of the fire for the Appellant to reestablish the business.

The statute clearly provides there is an abandonment of a Class A liquor license if a licensee has abandoned the premises **or** ceased to operate for a period of 90 days. The requirement is not that both are needed to find the license has been abandoned.

The Appellant argued there must be a finding that a licensee intentionally abandoned the license. Presumably the Appellant was referencing the following discussion in *Marty's Liquors*:

The license must be cancelled where the licensee has abandoned *the premises* from which he has been conducting his business. The abandonment referred to in this clause obviously must be intentional and deliberate and accompanied by an absence of any intention to continue to use the premises for the purpose of conducting business under the license. It is obvious that any “abandonment” of the premises will of necessity

⁵ The Department has consistently ensured that new life is not breathed into licenses that have been revoked, expired, abandoned, or are null and void. *Baker v. DBR*, 2007 WL 1156116 (R.I. Super.) (cannot transfer a Class B liquor license that was not issued to a *bona fide* tavern keeper or victualer). See also *Wines and More, Inc. v. City of Cranston, Board of Licenses*, DBR No.: 19LQ009 (8/2/19) (Class AE liquor could not be split by locality in order to transfer Class A license); *City of Cranston and A. Jeffrey Bucci d/b/a Plainfield Pike Liquors*, DBR No. 01-L-0050 (8/10/01) (over statutory cap for new Class A license and cannot transfer expired Class A license); and *Newport Paragon Group d/b/a Wellington Square Liquors & Newport County Package Store Association v. Newport Board of License Commissioners*, LCA-NE-98-09 (12/18/98) (Class A license cannot be transferred as it was abandoned).

⁶ If a store is not operating to be patronized, the local authority shall cancel the Class A license. The statute specifically targets Class A licenseholders because of the statutory cap for Class A licenses. This ensures that licenses are not held in abeyance for various reasons.

include a ceasing to operate under the license, because the licensee may not lawfully operate on any other premises.

The license must also be cancelled when the licensee has *ceased to operate* under such license for a period of ninety (90) days or more, whether or not the premises have been abandoned, and irrespective of the licensee's intention to resume operation or transfer the license. The two conditions are relatively simple fact questions to resolve, the second easier than the first, because abandonment implies intent, whereas ceasing to operate does not. In this case, it is undisputed that whether or not the licensee has abandoned the premises at 1117 Warwick Avenue, Warwick, it has not operated under the license in question since July 1982. *Id.* at 4-5.

The Court in *Marty's Liquors* speaks of some kind of intent requirement for abandonment.

But in discussing intent, it is not some kind of *mens rea* requirement, but just did one do the act.

If one does the act, one intended to do the act. There does not need to be an intent to violate the law. Izzi did not intend for a fire to destroy the building, but did he fail to re-open the premise once the abandonment occurred? Did he fail to re-open after the one (1) year period that could have been granted? A failure to reopen after a hearing and the granting of the one (1) year extension demonstrates an intent to abandon as there was "an absence of any intention to continue to use the premises for the purpose of conducting business under the license." *Id.*

The statute requires that if it is deemed that a Class A liquor licensee has abandoned its premises or ceased to operate for 90 days, the license shall be canceled after hearing unless an extension of up to one (1) year is granted to reestablish the business due to fire or death (etc.). The language is plain and unambiguous.

Indeed, the one (1) year period extension that may be granted may be for "illness, death, condemnation of business premises, fire or other casualty." Those types of circumstances are not those that arise out of an intentional act to abandon the license. In other words, an extension will be granted when there are acts outside of the licensee's actions that precipitated the abandonment. To allow an abandoned license to exist past the one (1) year statutory extension provision because a licensee claims not to have intended to abandon the license would allow licenses to stay "alive"

and not be used for their statutory purpose in direct contravention of the reason for the abandonment statute: to ensure licenses are used. *Marty Liquor's* was clear that licenses could not be kept alive for improper purposes. Clearly, any intent requirement is limited to the actual act by the licenseholder which is about the licenseholder's ability to reopen in the time frame allowed by law. This is consistent with the statute and *Marty's Liquors*. As *Marty's Liquors* held-

It is clear that in 1969 the general assembly intended to reduce the number of outstanding Class A licenses in the more populous cities and towns through a process of attrition. In accordance with that intent it provided for a process of cancellation of licenses under § 3-5-16.1, in addition to the revocation procedures set out in various other sections for misconduct by the holders. The provisions of § 3-5-16.1 could not be set out in a more strict mandatory fashion. The discretion of the local board is extremely limited to a few well-defined and time-limited exceptions. The general assembly clearly did not want Class A licenses to be held in limbo in over-licensed cities and towns. The board was urged on October 12, 1983 to keep this license "alive" for an improper purpose, to protect the interests of creditors of the licensee. The general assembly has prescribed the public interest: the reduction of Class A licenses through a process of attrition. *Id.* at 5.

A license is canceled after hearing if the premises are abandoned or ceased operations, and one (1) year may be granted due to certain circumstances. The hearing allowed by the statute allows the licensee to explain why there has been no abandonment or cessation of operations or why if there has been whether more time up to a year is needed to reestablish the business. Indeed, the statute is concerned with what happened rather than a licensee's hopes. If the abandonment or cessation of operations occurred due to fire (etc.), a period not to exceed one (1) year is allowed to reestablish the business. The statute is clear and unambiguous. The provisions of that statute, indeed, were described by *Marty Liquors* as a "mandatory." *Id.*

Said license was renewed in 2016, 2017, and 2018 without reference to the lack of the building.⁷ However, Izzi was a member of the Board in those years.⁸ He recused himself on the

⁷ See renewal hearings and minutes. See certified record for minutes and <https://clerkshq.com/scituate-ri> for audio links for those meetings.

⁸ See minutes for those meetings and his testimony.

relevant votes. See certified record. It stretches credibility the Board members would not know their fellow Board member, Izzi, no longer had a premise for his liquor store because it burned down. Scituate is a small town with only two (2) Class A liquor licenses so it can also be inferred the Board members would be aware of such a fire even without Izzi being on the Board. Finally, at the November 19, 2019 meeting, a councilor raised the issue of the Appellant's lack of premises due to the fire. At that hearing, the Appellant's lawyer represented that Izzi intended to rebuild but was involved in domestic litigation.⁹

By the renewal hearing for 2016, the Board should have been and were aware that said license's premises had been abandoned **or** ceased operating for 90 days. At that time, a hearing should have been scheduled and held, and the Board may have decided to grant an extension up to one (1) year for the Appellant to reestablish its business. The Board considered the renewal of liquor licenses at its November 10, 2016 meeting so a hearing could have been scheduled presumably for December, 2016. Being generous, a one (1) year extension would have brought the Appellant to December, 2017. The business was not reestablished by December, 2017. Indeed, if the Board had noticed the matter for abandonment in 2019 for a December, 2019 hearing (after discussion of the lack of premises at the November, 2019 meeting), the business was not reestablished by the end of December, 2020 which would have been one (1) year from a hearing.

The Board was aware over the years the Appellant had no premise. Rather than have a hearing on abandonment or the cessation of operations, the Board kept renewing said license in violation of the statute.¹⁰ A licensing authority cannot delay the one (1) year period by ignoring

⁹ November 19, 2019 meeting. See certified record for minutes. See <https://clerkshq.com/scituate-ri> for audio link.

¹⁰ At the May 29, 2025 Board hearing, the Appellant argued the Board's granting of renewals over the year somehow negated what had happened at the property. This is not a question of past discipline and what is considered discipline and/or violations by a liquor licensee when determining progressive discipline. Rather this is a question of abandonment under a specific statute.

an abandoned premise or the cessation of operations. It may be a licensing authority might not realize within 90 days that a premise has been abandoned or ceased operations but ignoring the abandonment or cessation of operations for three (3) years contravenes the statute. Nonetheless, no matter how one measures the one (1) year statutory allowable period, said liquor license was abandoned and ceased operating. Indeed, by the time the Board determined the license had been abandoned pursuant to said statute, it was over nine (9) years from the fire, and the Appellant had never reopened in its location or tried to move location prior to 2025.

The Appellant argued it has not ceased operations because it still has some inventory. The Appellant based this argument on a discussion in *Wine and Liquor* regarding said statute. However, that case was about a Class A licensee that transferred its license from its old premise to a new premise that was being built so was moving its inventory from an old premise to a new premise.¹¹ There was no evidence the Appellant had any inventory at its premise.

R.I. Gen. Laws § 3-7-1 provides in part as follows:

Class A license — Towns and cities of less than 10,000. In cities and towns having a population of less than ten thousand (10,000) inhabitants, a retailer's Class A license authorizes the holder to keep for sale and to sell at the place described beverages at retail and to deliver the beverages in a sealed package or container, which package or container shall not be opened nor its contents consumed on the premises where sold. The sale of any quantity of beverages to a nonlicense holder constitutes a sale at retail.

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

Class A license — Towns and cities of 10,000 or more. (a) In cities and towns having a population of ten thousand (10,000) or more inhabitants, a retailer's Class A license authorizes the holder to keep for sale and to sell, at the place described,

¹¹ The discussion cited to in *Wine and Liquor* in part is as follows:

Crucially, DBR overlooked that a Class A liquor license permits the license holder to “keep” and “sell” alcoholic beverages. Therefore, operating under a Class A liquor license also includes keeping alcoholic beverages. Section 3-7-3. Although the record in this case is clear that W&L ceased *selling* alcoholic beverages, the record is not at all clear that W&L had ceased *keeping* alcoholic beverages. Reading the statutes in concert with one another and according to their plain meanings, a liquor licensing authority may not revoke a Class A liquor license due to abandonment without finding that the licensee ceased to *both* keep *and* sell alcoholic beverages at the subject premises. *Id.* at 7.

beverages at retail and to deliver the beverages in a sealed package or container, which package or container shall not be opened nor its contents consumed on the premises where sold. The holder of a Class A license, if other than a person entitled to retail, compound, and dispense medicines and poisons, shall not on the licensed premises engage in any other business, keep for sale or sell any goods, wares, merchandise or any other article or thing except the beverages authorized under this license and nonalcoholic beverages. This provision shall not apply to the sale or selling of cigarettes, newspapers, cigars, cigarette lighters, gift bags, prepackaged peanuts, pretzels, chips, olives, onions, cherries, hot stuffed cherry peppers, Slim Jims and similar pre-packaged dried meat products, pickled eggs, popcorn, pre-packaged candy, styrofoam cooler, lemons, limes, and ice, nor to home bar accessories such as pourers, glasses, cork screws, stirrers, flasks, jiggers, wine racks, ice crushers, bottle openers, can openers and any other items of like nature which may, by suitable regulation of the director of business regulation, be authorized to be sold. *** No Class A license is granted for any premises unless the premises constitute a separate store, the entrance or entrances to which shall be exclusively from the street or streets or arcade. ***

(b) The premises shall have opaque walls which shall completely partition and sever the premises from any adjoining market, concession or business. ***

Both definitions of a Class A liquor license provide that a licensee is to keep liquor for sale – “to keep for sale and to sell” – rather than just keep liquor. There would be no point in giving a class A liquor license to someone who was just keeping liquor. The purpose of a Class A liquor license is to sell the liquor. Indeed, for towns with a population of over 10,000, a Class A liquor licensee is limited to what it can sell in addition to liquor.

Wine and Liquor concluded that to find that a licensee ceased operations, one had to find the licensee was not keeping and selling liquor at the premises. It is clear the Appellant is not keeping liquor to sell as defined by statute. It cannot have any liquor on its premises because the premises burned down. The statute defines the keeping of liquor as being for the purpose of selling. If a liquor licensee closed its shop with its inventory in place and left the state never to be seen again, that licensee would have abandoned its premise (the premises are no longer being used as a liquor store) and ceased operating as a liquor store (not keeping liquor for the sale of liquor because the store is no longer open). But the statute does not require abandonment **and** the cessation of

operations. Rather, as stated above, it is an “or,” clause. Either finding will lead to a revocation of license for abandonment if the licensee does not qualify for the one (1) year period to reestablish the business, and if the licensee does qualify and is granted the one (1) year period, the license is abandoned if it does not reestablish the business in that time period.

However, *Marty's Liquors* found there was no need to find any kind of intent for a finding of cessation of operations. In that matter, it found the licensee had ceased operations because it had not operated under its license for over the statutory time period. *Id.* at 5. The same is true here. The Appellant is not keeping liquor for sale. It is not keeping liquor at its premises. It is not operating as a Class A liquor license. It has ceased operating. The Appellant has not operated under its license for over nine (9) years despite the purported renewals.

Marty's Liquors stated, “[i]t is obvious that any “abandonment” of the premises will of necessity include a ceasing to operate under the license, because the licensee may not lawfully operate on any other premises.” *Supra*. And that makes sense as an abandoned license has also ceased to operate. However, the statute provides that either finding leads to a Class A liquor license being considered abandoned and revoked, if the licenseholder has not reestablished the business after hearing and any time allowed up to one (1) year.

Even allowing for the one (1) year period due to fire that may be granted after the 90 day period a hearing, the liquor license was abandoned and ceased operations many years prior to 2024.

Based on the foregoing, the Appellant’s Class A liquor license was both abandoned and ceased to operate for 90 days and failed to reestablish itself as a business within one (1) year after the 90 day period. The Board afforded the Appellant a hearing under the statute and found said license to be abandoned.¹² Based on the foregoing, there are no grounds to overturn the Board’s

¹² The one (1) year period is discretionary so need not be granted; though, in this matter too much time had elapsed for the one (1) year period to be applicable by the time of the Board’s abandonment hearing.

finding of abandonment and revocation of the Appellant's Class A liquor license pursuant to R.I. Gen. Laws § 3-5-16.1.

F. Expiration of License

The Board did not act on the Appellant's 2024 renewal application for its Class A liquor license. The Board argued the Board did not renew said license so it expired. However, if said license had not already been abandoned, the Board's failure to decide on the renewal application would not have resulted in the said license expiring at the expiration date.

R.I. Gen. Laws § 42-35-14(b)¹³ provides that a license does not expire until a final decision is made after a timely renewal. *Chernov Enterprises, Inc. v. Sarkas*, 284 A.2d 61 (R.I. 1971) discussed this statute as if the Board was an "agency" as defined by the Administrative Procedures Act, R.I. Gen. Laws § 42-35-1 *et seq.* In *Giraud v. Pastore*, 1984 WL 559294 (R.I. Super.), the Superior Court cited to *Chernov*, to apply R.I. Gen. Laws § 42-35-14(b) to a liquor license renewal. That decision found that since the local licensing authority never made a final determination to deny the renewal of a liquor license after the timely renewal application was filed, the license still existed after its expiration date.¹⁴ However, as this liquor license had already been abandoned, there was no license to renew so the Board's failure to act did not result in the continuation of said license. The Board could not renew said license as there was no license to renew.

¹³ R.I. Gen. Laws § 42-35-14(b) provides as follows:

(b) Whenever a licensee has made timely and sufficient application for the renewal of a license or a new license with reference to any activity of a continuing nature, the existing license does not expire until the application has been finally determined by the agency, and, in case the application is denied or the terms of the new license limited, until the last day for seeking review of the agency order or a later date fixed by order of the reviewing court.

¹⁴ This is a logical conclusion because if the applicant wanted its license to expire, it would not file a renewal application so that action must be taken on the renewal application, and if there is a denial, there is then a final decision that can be appealed (as opposed to letting a license expire without a final decision through nonaction on a renewal).

G. The Appellant's New Application

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). 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. With said license being abandoned, the Board was able to accept applications for its one (1) available Class A liquor license. Therefore, the issue is whether there was competent evidence to support the Board's discretionary decision to deny the Appellant's application for a new Class A liquor license.

The Appellant argued that its application for a new Class A liquor license for unit #8 should have been granted by the Board. It argued there were no grounds to deny the new application because there was no finding that it was unfit to operate as a Class A license. It argued it has held a Class A liquor license since 2005 and the new location would be next to the old location. It argued the fact the Board was frustrated with the Appellant's slowness of reconstruction was not grounds to deny its new application. It argued its application was filed first and should have been granted without consideration for the Intervenor, so the license granted to the Intervenor is void.

The Board argued the new application was denied because of credibility issues since Izzi represented unit #8 was ready for occupancy when it had a tenant, and the Appellant proposed to share the space with the PRA. It argued that at that February, 2025 meeting, Izzi conceded he would evict the PRA, if need be, but also planned to sell groceries and liquor together in contravention of R.I.

Gen. Laws § 3-7-3. It argued it was undisputed the Appellant has not rebuilt the premises for nine (9) years and rather than use the insurance proceeds to rebuild, Izzi testified he lived off of the proceeds.

The local licensing authority has discretion in granting a Class A license. Here, the Appellant has had more than nine (9) years to reestablish its original business. The Appellant cited to his divorce and Covid19 and a windstorm for the delay in rebuilding, but the Board found Izzi lacked credibility as he did not seek to rebuild right away, and the divorce was filed a year after he received the insurance proceeds in 2017. The Board found the Appellant constantly sought renewal of the license but failed to rebuild despite professing that unit #10 was near completion. In addition, the Appellant proposed to open a liquor store in a unit that already had a tenant and to co-exist with the tenant in contravention of the conditions of licensing for Class A liquor licenses pursuant to R.I. Gen. Laws § 3-7-3 (*supra*).¹⁵ While the Appellant had previously held a Class A license, that does not preclude the Board from deciding based on the facts in the record to deny the Appellant's application. There is evidence in the record to support that Board's decision to deny the Appellant's application for unit #8 as it found the Appellant was not suitable to be licensed.

H. Intervenor's Application

If the Appellant held a Class A liquor license, it would have had a right to appeal the grant of the Class A liquor license to the Intervenor pursuant to R.I. Gen. Laws § 3-7-21 (*supra*) and R.I. Gen. Laws § 3-5-19.¹⁶ The Appellant does not hold a Class A liquor license as it was abandoned

¹⁵ As an application for a new Class A license, the Appellant is subject to the provisions of R.I. Gen. Law § 3-7-3 for populations over 10,000.

¹⁶ R.I. Gen. Laws § 3-5-19 provides in part as follows:

Transfer or relocation of license. (a) The board, body or official which has issued any license under this title may permit the license to be used at any other place within the limits of the town or city where the license was granted, or, in their discretion, permit the license to be transferred to another person, but in all cases of change of licensed place or of transfer of license, the issuing body shall, before permitting the change or transfer, give notice of the application for the change or transfer in the same manner as is provided in this chapter in the case of original application for the license, and a new bond shall be given upon the issuance of the license provided, that notice by mail need not be made in the case of a transfer of a license without relocation. *** The holders of any retail Class A license within the city

and revoked. Therefore, the Appellant has no right to appeal the grant of the Class A liquor license to the Intervenor. Based on the foregoing, there is no appeal of the Board's grant of a Class A liquor license to the Intervenor, and the stay of the grant of the Intervenor's application for a Class A liquor license shall be lifted.¹⁷

VI. FINDINGS OF FACT

1. On March 13, 2025, the Board denied the Appellant's application for a Class A liquor license.

2. On March 13, 2025, the Board granted a Class A liquor license to the Intervenor.

3. Pursuant to R.I. Gen. Laws § 3-7-21, the Appellant appealed the Board's decision to the Director of the Department.

4. The Intervenor was allowed to intervene.

5. By order dated April 9, 2005, the Department stayed the Board's denial of the Appellant's application for a Class A liquor license and stayed the grant of the Intervenor's Class A liquor license application and remanded the matter to the Board for further consideration.

6. On May 29, 2025, the Board found the Appellant abandoned the Class A liquor license pursuant to R.I. Gen. Laws § 3-5-16.1.

7. As a result, the Appellant continued its appeal, and a *de novo* hearing was held on July 22, 2025 with the parties represented by counsel. Briefs were timely filed by September 15, 2025.

or town issuing or transferring a Class A license have standing to be heard before the board, body, or official granting or transferring the license.

¹⁷ Appeals are also allowed for those within the 200 foot radius of an applicant (R.I. Gen. Laws § 3-7-21 and R.I. Gen. Laws § 3-5-17). However, the undersigned takes administrative notice the Appellant is not located within 200 feet of the Intervenor. There was no evidence the Appellant owns any property within 200 feet of the Intervenor.

8. The Appellant's Class A liquor license premises burned down on April 18, 2016. As of 2024 and 2025, it never completed rebuilding and never reopened the premise.

9. The Appellant did not keep any liquor on its subject premise which had burned down.

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. § 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.*

2. The Appellant's Class A liquor license at issue was abandoned pursuant to R.I. Gen. § 3-5-16.1 before 2024.

3. The Appellant's Class A liquor license at issue ceased to operate pursuant to R.I. Gen. § 3-5-16.1 before 2024.

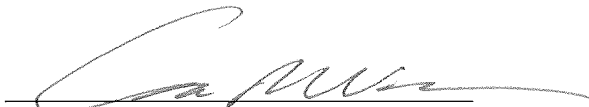
4. There was competent evidence in the record to support the Board's decision to deny the Appellant's application for a new Class A liquor license.

5. As the Appellant does not hold a Class A liquor license, it could not appeal the grant by the Board to the Intervenor of a Class A liquor license.

VIII. RECOMMENDATION

Based on the foregoing, the Hearing Officer recommends the Board's decision to find the Appellant's Class A liquor license to be abandoned and revoked shall be upheld. Further, the Board's decision to deny the Appellant's application for a new Class A liquor license shall be upheld. The Appellant has no statutory right to appeal the granting of said Class A liquor license to the Intervenor so that the stay of the grant of the Intervenor's application for a Class A license shall be lifted.

Dated: October 9, 2025


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:

 X ADOPT
 REJECT
 MODIFY

Dated: October 15, 2025


Elizabeth Kelleher Dwyer, Esquire
Director

NOTICE OF APPELLATE RIGHTS

THIS DECISION CONSTITUTES A FINAL DECISION 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 15th day of October, 2025 that a copy of the within Decision and Notice of Appellate Rights was sent by first class mail, postage prepaid and by electronic delivery to the following: Nicholas Hemond, Esquire, and Kelley Morris Salvatore, Esquire, DarrowEverett, LLP, 1 Turks Head Place, Suite 1200, Providence, R.I. 02903, Timothy F. Kane, Esquire, 627 Putnam Pike, Greenville, R.I. 02828, Robert E. Craven Esquire, 7405 Post Road, North Kingstown, R.I. 02852, Wyatt A. Brochu, Esquire, Ruggiero Brochu & Petrarca, 1130 Ten Rod Road, Suite D102, North Kingstown, RI 02852, and David R. Petrarca, Jr., Esquire, Town Solicitor – Town of Scituate, 195 Danielson Pike, Scituate, R.I. 02857 and by electronic delivery to Pamela Toro, Esquire, Department of Business Regulation, Pastore Complex, 1511 Pontiac Avenue, Cranston, R.I. 02920.


Megan Mihara