

II. JURISDICTION

The Department has jurisdiction over this matter pursuant R.I. Gen. Laws § 3-7-21 and R.I. Gen. Laws § 42-35-1 *et seq.*

III. ISSUES

Whether to uphold or overturn the Board's decision to deny the request to transfer the License from its current location to the Proposed Location.

IV. MATERIAL FACTS AND TESTIMONY

The Proposed Location is at 529 Atwells Avenue, Providence, RI on the corner of Atwells Avenue and Harris Avenue. See Appellant's Exhibit Two (2) (200 foot radius map from Proposed Location). The parties agreed that the Proposed Location is zoned M-1. See Appellant's Exhibit Ten (10) (explanation of City's zoning uses). The parties agreed the proposed use for the Proposed Location is allowed under the City of Providence's Use Code.

At the hearing, the Board did not present any evidence. The Board stated it would rely on the hearing before the Board on November 19, 2007 at which time the Board voted 5-0 to deny the transfer application. See Board's Exhibit One (1) (November 20, 2007 letter from Board memorializing the denial of transfer). The Board did not enter into evidence a transcript of the Board hearing. However, the Board indicated that at the Board's November 19, 2007 meeting, City Councilor Josephine DiRuzzo expressed concerns that the Proposed Location was not what was trying to be accomplished in that particular neighborhood.

Nancy Langlais ("Langlais") testified on behalf of Appellant. She testified that she holds the License. She testified that she has held the License for fifteen (15) years. See Appellant's Exhibit One (1) (License renewal for the years 2007 to 2008). She

testified that Appellant was located in downtown Providence for 25 years and her husband worked there for five (5) years before they bought it fifteen (15) years ago. She testified that they needed to find another premises for the bar because the current location is being renovated. She testified her husband conducted most of the search for a new location and she thought the Proposed Location would be very nice for the bar. She testified that her husband confirmed the Proposed Location was zoned for a bar. She testified that they plan to run the place like a bar with pub food and they already have a full food license and are up to code. See Appellant's Exhibit Nine (9) (food business license). She testified that the bar would be located only on the first floor of the building and not the two (2) floors above the first floor. She testified that she and her husband had started to perform the renovations on the building prior to the denial of the transfer.

Langlais testified that there is a sports bar on Atwells Avenue and a bar called Fantasies on Harris Avenue. She testified that the sports bar is within the 200 foot radius. See Appellant's Exhibit Three (3) (200 foot radius abutters' list). See also Appellant's Exhibits Four (4) Five (5), Six (6), Seven (7), and Eight (8) (photographs of Proposed Location and nearby streets). She testified that she and her husband have never had any problems with the Board regarding any discipline.

On cross-examination, Langlais testified that she and her husband began the renovations before the obtaining approval of the transfer of License because they did not think there would be any problems obtaining the approval. She testified that they believed they would receive approval for the Proposed Location because the License is in good standing and the area was properly zoned. She testified there is probably five (5) or six (6) bars in the area in addition to the sports bar and Club Fantasies. She testified that she supposed pretty much all of Atwells Avenue serves alcohol. She testified that they

considered other locations but mostly rejected them for being too expensive. She testified that they chose the Proposed Location because it was affordable and a good location. She testified that she believes that area is a good place for another liquor establishment because with five (5) or or seven (7) bars in the area people patronize such establishments. She testified she is familiar with the nearby Eagle Square area where there is an effort to make the neighborhood nicer.

On redirect examination, Langlais testified that she and her husband chose the Proposed Location on the basis of price and location.

On recross examination, Langlais testified there is available on-street parking on Atwells Avenue and Harris Avenue for the Proposed Location but there is no parking lot for the premises. She testified she believes the Proposed Location's capacity is approximately fifty (50) people.

The Appellant also submitted prior inspections of the Proposed Location from 1987 and 2004 that indicate that the Proposed Location was previously used as a restaurant and residential dwellings. See Appellant's Exhibit Eleven (11).

In closing, the Board's attorney argued that his understanding was that Councilor DiRuzza happened to be at the Board on the day of the hearing and objected to the application to transfer the License from its current location to the Proposed Location. The Board argued that while the Proposed Location is properly zoned for the requested usage, the primary concern is the location and the number of drinking establishments in the area and the available parking is on the street. Furthermore, the Board argued that Appellant chose the Proposed Location because it was affordable and not because the License is compatible with the area. The Board acknowledged that the License holder had a good record with the Board.

In closing, the Appellant argued that it has held the License for fifteen (15) years without any problems. Appellant argued that the Proposed Location was chosen both for location and price. Appellant argued that while supposedly a City Councilor made statements at the Board hearing, said Councilor did not appear at the Department hearing. Appellant argued that except for said Councilor there were no other objections at the Board hearing and none at the Department hearing. The Appellant argued that there is no evidence that parking would be an issue. The Appellant argued that it is not proposing to put a bar in a residential neighborhood but rather the neighborhood is mixed use.

V. DISCUSSION

It is a matter of law that local licensing boards have broad discretion in deciding whether or not to grant a liquor license application. “The granting or denying of such licenses is in no sense an exercise of the judicial process. On the contrary it is purely administrative. In performing that function the board act (sic) 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 (1975). The Department has the same broad discretion in the granting or denying of liquor licenses. *Id.*, at 177. See also *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 Commissioners*, LCA–CU-98-02 (8/26/98).

R.I. Gen. Laws § 3-5-19 governs the transfer or relocation of a liquor license. The transfer of a liquor license pursuant to R.I. Gen. Laws § 5-3-19 is treated the same as a new application. *Ramsay v. Sarkas*, 110 R.I. 590 (1972). See also *Island Beverages v. Town of Jamestown*, DBR No. 03-L-0007 (3/13/03); *BDR v. City of Providence, Board of Licenses*,

LCA-PR-00-07 (9/18/00). The application to transfer the License to the Proposed Location is to be treated as a new application for a Class B liquor license.

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.

The Board presented no evidence regarding why the transfer of the License to the Proposed Location should not be granted. In *BDR*, the applicant failed to meet its stiff burden of demonstrating why the local board's decision to deny the transfer of a liquor license was an abuse of the local board's discretion. The record in that *de novo* hearing supported the conclusion that the liquor license could have a negative impact on the neighborhood. See *BDR*, at 15. The same conclusion was reached in *Gallucci* and *Kinninburgh*. See *Gallucci* and *Kinninburgh*. In those three (3) cases, there was significant community opposition to the proposed liquor licenses. In those three (3) cases, testimony was presented from a variety of people including local residents, local councilors, and the police who all testified against the granting of the liquor licenses.

In this matter, the Board has not presented any testimony from any residents, local councilors, or police against the transfer of the License to indicate why such a transfer would have a negative impact on the neighborhood. The Board has not introduced the record from the Board hearing at which a councilor expressed opposition to the transfer of the License to the Proposed Location. There was no testimony presented that Langlais

would not be suitable Class B liquor licenseholder. In fact, Langlais has many years experience as a Class B liquor licenseholder and the Board acknowledged that Appellant has been a good licenseholder.

The Board did not present any testimony or evidence indicating that the proposed opening and closing times or any other issues associated with a liquor license presented any type of problem to the City, neighborhood, the residents, or the safety of the area. The Board did not present any testimony or evidence indicating that the Proposed Location of the License presented any type of problem to the City, neighborhood, the residents, or the safety of the area. The Board argued that parking could be an issue but there was no evidence from anyone that on street parking would not be sufficient for Appellant's patrons. *See Island Beverages.*

Based on the above, it is impossible to find that the Board acted within its discretion in denying the transfer of the location of the License. The Board's decision was not supported by any evidence on record and was therefore arbitrary and capricious.

VI. FINDINGS OF FACT

1. On or about November 19, 2007, the Board denied a request by Appellant to transfer its License from its current location to the Proposed Location.

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

3. A *de novo* hearing was held on December 20, 2007 before the undersigned sitting as a designee of the Director.

4. The facts contained in Section IV and V are reincorporated by reference herein.

VII. CONCLUSIONS OF LAW

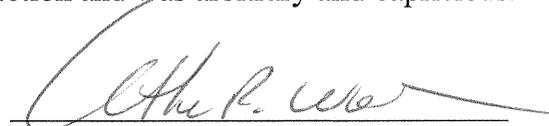
Based on the testimony and facts presented:

1. The Department has jurisdiction over this matter pursuant to R.I. Gen. § 3-5-1 *et seq.*, R.I. Gen. Laws § 42-14-1 *et seq.*, and R.I. Gen. Laws § 42-35-1 *et seq.*
2. In this *de novo* hearing, no showing was made by the Board to support the Board's decision to deny the transfer of the location of the License from its current location to the Proposed Location. The Board's decision was arbitrary and capricious and not supported by any evidence on record.

VIII. RECOMMENDATION

Based on the above analysis, the Hearing Officer recommends that the decision of the Board denying the transfer of the location of the License be overturned due to the fact that such a decision was an abuse of the Board's discretion and was arbitrary and capricious.

Dated: January 8, 2008

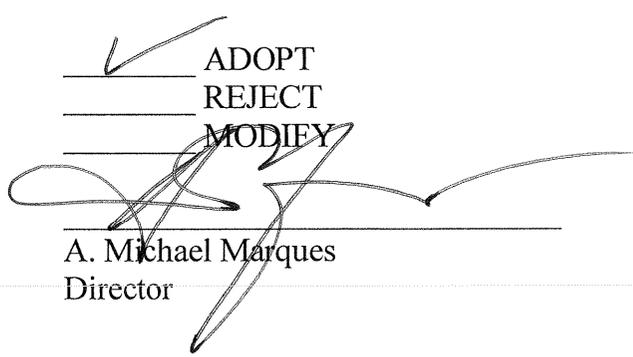

Catherine R. Warren
Hearing Officer

ORDER

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

ADOPT
 REJECT
 MODIFY

Dated: 1-09-2008


A. Michael Marques
Director

NOTICE OF APPELLATE RIGHTS

THIS DECISION CONSTITUTES A FINAL ORDER OF THE DEPARTMENT OF BUSINESS REGULATION PURSUANT TO R.I. GEN. LAWS § 42-35-12. PURSUANT TO R.I. GEN. LAWS § 42-35-15, THIS ORDER MAY BE APPEALED TO THE SUPERIOR COURT SITTING IN AND FOR THE COUNTY OF PROVIDENCE WITHIN THIRTY (30) DAYS OF THE MAILING DATE OF THIS DECISION. SUCH APPEAL, IF TAKEN, MUST BE COMPLETED BY FILING A PETITION FOR REVIEW IN SUPERIOR COURT. THE FILING OF THE COMPLAINT DOES NOT ITSELF STAY ENFORCEMENT OF THIS ORDER. THE AGENCY MAY GRANT, OR THE REVIEWING COURT MAY ORDER, A STAY UPON THE APPROPRIATE TERMS.

CERTIFICATION

I hereby certify on this 10th day of January, 2008 that a copy of the within Decision was sent by first class mail, postage prepaid, to

Steven Catalano, Esquire
City of Providence Law Department
275 Westminster Street
Providence, RI 02903

Elizabeth Noonan, Esquire
David Gilligan, Esquire
28 Garfield Avenue
Cranston, RI 02920

and by hand delivery to Maria D'Alessandra, Associate Director, Department of Business Regulation, 233 Richmond Street, Providence, RI 02903.