Commonwealth of Massachusetts
Alcoholic Beverages Control Commission
95 Fourth Street, Suite 3
Chelsea, Massachusetts 02150-2358

Jean M. Lorizio, Esq.
Chairman

DECISION

DEAN COLLEGE
99 MAIN STREET
FRANKLIN, MA 02038
LICENSE#: NEW
HEARD: 11/04/2020

This is an appeal from the action of the Town of Franklin (the "Local Board" or "Franklin") in denying the M.G.L. c. 138, § 12 all alcoholic beverages license application of Dean College ("Applicant"), to be exercised at 99 Main Street[1], Franklin, Massachusetts. The Applicant timely appealed the Local Board's action to the Alcoholic Beverages Control Commission (the "Commission" or "ABCC"), and a hearing was held on Wednesday, November 4, 2020.

The following documents are in evidence:

1. Dean College's c. 138, § 12 License Application, 3/11/2020;
2. Minutes of Local Board Meeting, 4/15/2020;
3. Letter from Applicant's Counsel to Town of Franklin, 4/29/2020;
4. Minutes of Local Board Meeting, 5/6/2020;
5. Local Board's Statement of Reasons, 5/12/2020.

There is one (1) audio recording of this hearing, and five (5) witnesses testified.

FINDINGS OF FACT

The Commission makes the following findings of fact:

1. Dean College is a private college and registered Massachusetts corporation with a business address of 99 Main Street, Franklin, Massachusetts. Dean College is a not for profit corporation founded more than 150 years ago. (Testimony, Exhibit 1)

2. For approximately four (4) years, the Town of Franklin has issued to Dean College, pursuant to M.G.L. c. 138, § 14, numerous one-day special licenses for events with alcohol service on campus at the Campus Center. (Testimony, Exhibits 1, 2)

[1] The business address of Dean College is 99 Main Street, Franklin, Massachusetts. The actual address of the Campus Center, where the proposed license would be exercised, is 135 Emmons Street, Franklin, Massachusetts.

3. M.G.L. c. 138, § 14 states, "In a city or town wherein the granting of licenses to sell all alcoholic beverages or wines and malt beverages only is authorized under this chapter, special licenses for the sale of wines and malt beverages only, or either of them, may be issued by the local licensing authorities, to the responsible manager of any indoor or outdoor activity or enterprise; provided, however, in any city or town wherein the granting of licenses to sell all alcoholic beverages is authorized under this chapter, special licenses for the sale of all alcoholic beverages or wine and malt beverages only, or any of them, may be issued by the local licensing authorities to the responsible manager of any nonprofit organization conducting any indoor or outdoor activity or enterprise. Special licenses for the dispensing of wines and malt beverages in dining halls maintained by incorporated educational institutions authorized to grant degrees may be granted by the local licensing authorities in such a city or town to such institutions; provided, that such beverages shall be served only to persons over twenty-one years of age....A license under this section shall not be granted to any person while his application for a license under section twelve is pending before the licensing authorities." M.G.L. c. 138, § 14

4. 204 CMR 7.04 states in part "No special license, other than a special license for a dining hall maintained by an incorporated educational institution authorized to grant degrees, shall permit sales on more than 30 days, nor may any person be granted special licenses permitting sales on an aggregate of more than 30 days in any calendar year, except as authorized by 204 CMR 7.04." 204 CMR 7.04

5. On March 11, 2020, following discussions with the Town of Franklin, the Applicant submitted to the Local Board an application for a M.G.L. c. 138, § 12 all alcoholic beverages license and the approval of an Alcoholic Beverages Management Services Agreement with Sodexo Management, Inc. ("Sodexo"). The license would be exercised at the Campus Center located at 135 Emmons Street, Franklin, Massachusetts. The Campus Center is a multi-use facility, comprised of a multitude of venues wherein the applicant would hold events. (Testimony, Exhibits 1, 2, 4)

6. Dining Services, including food and non-alcoholic beverages, are currently managed for Dean College by Sodexo. In addition, Sodexo has catered the events licensed by the one-day licenses at Dean College. With an annual license, Sodexo would manage, store, and purchase the alcohol. Sodexo provides facilities management and food services to schools, universities, hospitals, senior living communities, venues, and other industries across the United States. (Testimony, Exhibits 1, 2)

7. Kenneth Corkran as the proposed manager of record would ultimately be responsible. Mr. Corkran has been employed by the Applicant since 1996 and serves as the Director of Law Enforcement Services & Risk Management. He has worked closely with Sodexo in their work catering events licensed by the one-day licenses. Id.

8. Dean College would operate with an annual license as it had over the last several years when obtaining special one-day licenses for events. Id.

9. Events held on the licensed premise would not be open to the public but rather limited to Dean students, guests, alumni, or other affiliates of Dean College. (Testimony, Exhibits 2, 3, 4)

10. The Bylaws of the Town of Franklin were recently amended, by a unanimous vote of Town Counsel, with said amendment allowing Dean College, among other venues in Franklin, to obtain a § 12 license. (Testimony, Exhibit 2)

11. Mr. Corkran is the Dean College employee who has been working with Franklin in regularly obtaining one-day licenses. Several years ago, he was advised by Town officials to consider doing something differently as he was spending a great deal of time in securing the one-day licenses. In addition, given 204 CMR 7.04, the Applicant was limited to no more than 30 one-day licenses per year. Mr. Corkran was advised an annual license may be a better option as Dean College was consistently applying for one-day licenses and going through the administrative process, sometimes at the last minute when events were not planned far in advance. Id.

12. There have been no disciplinary incidents associated with any of the one-day licenses issued by the Local Board to the Applicant. Id.

13. The Local Board held a hearing on April 15, 2020, regarding Dean College's application for a § 12 all-alcoholic beverages license. Concerns were raised regarding the number of under-age students at Dean College, the safety of students, the number of existing alcoholic beverages licenses in downtown Franklin and the economic impact on town and local businesses. Id.

14. At the April 15, 2020 Town Council meeting:

    Council Member Matthew Kelly "said his fear is that this could take money from the community and small business owners. For instance, people may go to the bar at Dean and not go to Teddy Gallagher's in the downtown."

    Mr. Jamie Hellen, Franklin Town Administrator, responded to Mr. Kelly and "stated that any part of the license could be conditioned. He confirmed that anything on Dean's campus is not open to the general public; it is limited to Dean students, guests, alumni, or other affiliates of Dean College. This will not be another bar."

    Council Member Deborah Pellegri "agreed with Mr. Kelly and stated that she does not want business to be taken away from the downtown area."

    Council Member Andrew Bissanti also "agreed with Mr. Kelly. He expressed concern for the merchants and small businesses in Town. He wants to be assured the bar at Dean will only be open for students. He recommended an agreement be formed so this will not hurt businesses in Town and he recommended this license transaction be continued." (Exhibit 2)

15. The April 15, 2020 hearing was continued, and the Local Board directed the Applicant to work with Town Administrator Hellen, and Town Attorney, Mark G. Cerel, on proposed conditions to address concerns raised at the public hearing. (Testimony, Exhibit 2)

16. Dean College collaborated with Messrs. Hellen and Cerel and formulated three (3) proposed conditions to satisfy concerns raised at the April 15, 2020 hearing. Mr. Hellen believed the proposed conditions would address said concerns. (Testimony, Exhibit 3)

17. On April 29, 2020, the Applicant, through its counsel, submitted a letter to the Local Board with three (3) proposed conditions to address the concerns raised at the public hearing of April 15, 2020. The conditions are as follows:

    i. Sale/Service of alcoholic beverages only to Dean College faculty, staff, alumni, students and their guests and other authorized individuals;

    ii. Sale/Service of alcoholic beverages limited to the following areas: Boomers, Golder Room, Guidrey Center, Atrium, Dining Center, Mainstage, and the Campus Center Concourse[2];

    iii. Sale/Service of alcoholic beverages at no more than three (3) events at the same time. Id.

18. The Local Board held a second hearing on May 6, 2020 to consider Dean College's application and the proposed conditions. (Testimony, Exhibit 4)

19. At the May 6, 2020 hearing:

    Town Council Member Bissanti "stated he had mixed feelings as this is going to be a bar, and it is going to go up against another bar in the downtown area. He stated Dean College already enjoys the privileges of bars and restaurants in the downtown area, so they do not really have a need."

    Town Attorney Cerel "stated the applicant could take the position that they be opened to the public, but they have agreed otherwise. While the licensing authority has discretion to approve or deny an application for a license, increased economic competition is not a valid consideration."

    Mr. Bissanti "stated his point is that on a campus where there is only 25 percent of the students of drinking age, and they are surrounded by other bars and businesses, this is not needed..." (Exhibit 4)

20. The Board voted on the approval of the application which resulted in a 4-4 tie, with one member absent. Therefore, the Local Board denied Dean College's application. (Testimony, Exhibit 4)

21. On May 12, 2020, the Local Board provided Dean College with its statement of reasons which outlined comments from the four members of the Town Council who voted in the negative as to approving Dean's application. The comments included:

    *Members expressed concern about alcohol being served on a college campus, where the majority of students are underage.

    *Members expressed concern regarding student safety, notably at the crosswalk on West Central Street near the dorms, in the event a student was inebriated.

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[2] The listed areas are all located within the Campus Center.

*Members expressed concern of Dean's oversight through its in-house security when actual operation would be by college's outside food service contractor Sodexo.

*Members expressed opinions that there are already an adequate number of existing alcoholic licenses in downtown Franklin and surrounding areas.

*Members expressed concern for the impact on small businesses, notably restaurants, in downtown Franklin that this license may contribute to increased difficult times, with less business from the Dean College community; members also expressed concern this would have a negative impact on the town from less local meals tax. (Exhibit 5)

22. The Applicant timely filed an Appeal with the Alcoholic Beverages Control Commission.

DISCUSSION

Licenses to sell alcoholic beverages are a special privilege subject to public regulation and control for which states have especially wide latitude pursuant to the Twenty-First Amendment to the United States Constitution. Connolly v. Alcoholic Beverages Control Comm'n, 334 Mass. 613, 619 (1956); Opinion of the Justices, 368 Mass. 857, 861 (1975). The procedure for the issuance of licenses to sell alcoholic beverages is set out in M.G.L. c. 138. Licenses must be approved by both the local licensing authorities and the Commission. M.G.L. c. 138, §§ 12, 67; see Beacon Hill Civic Ass'n v. Ristorante Toscano, Inc., 422 Mass. 318, 321 (1996).

The statutory language is clear that there is no right to a liquor license of the type specified in M.G.L. c. 138, § 12. As Section 23 provides in pertinent part,

> [t]he provisions for the issue of licenses and permits [under c. 138] imply no intention to create rights generally for persons to engage or continue in the transaction of the business authorized by the licenses or permits respectively, but are enacted with a view only to serve the public need and in such a manner as to protect the common good and, to that end, to provide, in the opinion of the licensing authorities, an adequate number of places at which the public may obtain, in the manner and for the kind of use indicated, the different sorts of beverages for the sale of which provision is made.

M.G.L. c. 138, § 23.

A local licensing authority has discretion to determine public convenience, public need, and public good, with respect to whether to grant a license to sell alcoholic beverages. See Donovan v. City of Woburn, 65 Mass. App. Ct. 375, 378-379 (2006); Ballarin, Inc. v. Licensing Bd. of Boston, 49 Mass. App. Ct. 506, 510-511 (2000). A local board exercises very broad judgment about public convenience and public good with respect to whether to issue a license to sell alcoholic beverages. Donovan, 65 Mass. App. Ct. at 379.

It is well-settled that the test for public need includes an assessment of public want and the appropriateness of a liquor license at a particular location. Ballarin, 49 Mass. App. Ct. at 511. In Ballarin, the Appeals Court held that "Need in the literal sense of the requirement is not what the statute is about. Rather the test includes an assessment of public want and the appropriateness of a liquor license at a particular location." Ballarin, 49 Mass. App. Ct. at 511, 512.

In Ballarin, the Court identified factors to be considered when determining public need:

> Consideration of the number of existing licenses in the area and the views of the inhabitants in the area can be taken into account when making a determination, as well as taking into account a wide range of factors-such as traffic, noise, size, the sort of operation that carries the license and the reputation of the applicant.

Ballarin, 49 Mass. App. Ct. at 511.

In reviewing the decision of a denial by a local licensing authority, the Commission gives "reasonable deference to the discretion of the local authorities" and determines whether "the reasons given by the local authorities are based on an error of law or are reflective of arbitrary or capricious action." Great Atlantic & Pacific Tea Co., Inc. v. Board of License Comm'rs of Springfield, 387 Mass. 833, 837, 838 (1983); see Ballarin, Inc. v. Licensing Bd. of Boston, 49 Mass. App. Ct. 506, 512 (2000) (when reviewing the local licensing authority's authority, court does not assess the evidence but rather "examine[s] the record for errors of law or abuse of discretion that add up to arbitrary and capricious decision-making"). However, while this discretion of the local licensing authority is broad, "it is not untrammeled." Ballarin, 49 Mass. App. Ct. at 511. In Donovan, the Appeals Court held "Neither the [local board's] broad discretion nor the limitations on judicial review, however, mean that the [local board] can do whatever it pleases whenever it chooses to do so." Donovan v. City of Woburn, 65 Mass. App. Ct. 375, 379 (2006). "Instead, '[w]here the factual premises on which [the board] purports to exercise discretion is not supported by the record, its action is arbitrary and capricious and based upon error of law, and cannot stand." Id. (quoting Ruci v. Client's Sec. Bd., 53 Mass. App. Ct. 737, 740 (2002)).

A Board must state the reasons for its decision whether or not to issue the liquor license. M.G.L. c. 138, § 23. "Adjudicatory findings must be 'adequate to enable [a court] to determine (a) whether the . . . order and conclusions were warranted by appropriate subsidiary findings, and (b) whether such subsidiary findings were supported by substantial evidence." Charlesbank Rest. Inc. v. Alcoholic Beverages Control Comm'n, 12 Mass. App. Ct. 879, 880 (1981) (quoting Westborough v. Dep't of Pub. Util., 358 Mass. 716, 717-718 (1971)). General findings are insufficient, and if the licensing board does not make sufficient findings, "it remain[s] the Commission's obligation to articulate the findings of fact, which were the basis of the conclusions it drew," and not merely adopt the findings of the board. Charlesbank Rest. Inc., 12 Mass. App. Ct. at 880.

In issuing its decision, the Local Board made specific and particularized findings, which the Commission determined are not fully supported by the record of the proceedings before the Local Board.

The Local Board for the last approximately four (4) years has issued one-day special licenses to Dean College on a regular basis. Several years ago, Dean College and Town officials began discussions about Dean obtaining an annual § 12 All Alcoholic Beverages License. The Applicant's obtaining an annual license would alleviate the administrative burden involved with one-day special licenses and was viewed as a benefit to both Dean College and the Local Board. In fact, Dean College was encouraged to apply for a § 12 license by the Town. (Exhibits 2, 4)

The operation at Dean College would not significantly change if granted an annual § 12 license. The Applicant would continue to host a similar number of events of the same type as it has hosted utilizing one-day special licenses. Id.

Dean College collaborated with the Town of Franklin in formulating conditions to be placed on the license to address concerns voiced by Town Council. At all times during the process, Dean College worked hand in hand with Town officials in applying for and formulating conditions for the license, a license under which Dean College would operate in the same manner it has for several years utilizing one-day special licenses. (Exhibits 2, 3, 4)

The Local Board's findings as to an adequate number of existing licenses in downtown Franklin and surrounding areas, and the impact a license at Dean College would have on small businesses seems to be based on a mistaken belief that Dean College would operate as a bar and be open to the public. That is not the case. In fact, an annual license at Dean College would be exercised only for events in designated areas within the Campus Center. Dean has been obtaining special one-day licenses for such events for years. Said special licenses having been issued by the Local Board without question. Id.

The Local Board's remaining concerns included student safety, the use of a management services company to assist with operating events and the fact that most Dean College students are under the age of 21. While these concerns are certainly legitimate, the evidence here illustrates Dean College has a proven track record of successfully dealing with said issues as they have been serving alcohol under special one-day licenses without incident for years. Id.

The Commission finds the denial by the Local Board is arbitrary and capricious and not supported by the record.

CONCLUSION

Based on the evidence, the Alcoholic Beverages Control Commission **DISAPPROVES** the action of the Local Board in denying the M.G.L. c. 138, § 12 all-alcoholic beverages application of Dean College d/b/a Dean College Campus Center. The Commission remands this matter to the Local Board with the recommendation that the Local Board grant the application for a § 12 all alcoholic beverages license and submit it to this Commission for its consideration of approval in the usual administrative course.

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Jean M. Lorizio, Chairman

Crystal Matthews, Commissioner

Deborah A. Baglio, Commissioner

Dated: June 30, 2021

You have the right to appeal this decision to the Superior Courts under the provisions of Chapter 30A of the Massachusetts General Laws within thirty (30) days of receipt of this decision.

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cc: Trish Farnsworth, Esq.
Louis Cassis, Esq.
Frederick G. Mahony, Chief Investigator
Local Licensing Board
Administration, File