
Inn at Woodbridge v. Twp. of Woodbridge
Cite as 9 *N.J.A.R.* 286

INN AT WOODBRIDGE, INC.,
Appellant,
v.
MUNICIPAL COUNCIL OF THE
TOWNSHIP OF WOODBRIDGE,
Respondent.

Initial Decision: September 14, 1984

Final Agency Decision: December 24, 1984

Approved for Publication by the Director of the Division of Alcoholic Beverage Control, John F. Vassallo, Jr.: October 20, 1986

SYNOPSIS

The Township of Woodbridge denied appellant's application for a new plenary retail consumption license pursuant to *N.J.S.A.* 33:1-12.20, and appellant appealed from that denial.

The administrative law judge assigned to the case found that in 1978 appellant had applied for approval of a plan to build a multi-story office building and hotel complex. The plans also indicated that appellant would apply for a liquor license for the hotel. The Board of Adjustment denied variance and site plan requests, but the Township Council itself reversed those decisions and, in approving appellant's project, commented upon the need for such a project in the Township. In 1983 construction of the hotel portion of the building was completed at an expense of approximately 15 million dollars. Shortly before a scheduled opening in 1984, the Township advised petitioner (for the first time) that the Township had a "policy" requiring hotel license applicants to purchase an existing license instead of the Council's issuing a new license under the hotel/motel exception of the law.

The judge found that this "policy" had never been embodied in writing, nor had it been adopted or published. In addition, the judge found that the reasons to support this position were unfounded in either law or fact and that the Township had specifically found a need for the project in 1979 and had never reversed its position.

Accordingly, the administrative law judge concluded that the Township abused its discretion in denying the application for a license and ordered the issuance of the license.

Upon review, this initial decision was adopted by the Director of the Division of Alcoholic Beverage Control. The Director noted

Inn at Woodbridge v. Twp. of Woodbridge
Cite as 9 *N.J.A.R.* 286

that, while the issuance of a license under the hotel/motel exception of *N.J.S.A.* 33:1-12.20 is permissive, a local issuing authority must exercise its discretion reasonably. The complex met all the requirements of the statute and had been encouraged by Township officials; to require it to pay an inflated price for an existing license was found to be unreasonable and, under the facts of this case, the denial of the new license application violated the intent of the hotel/motel exception embodied in the law.

Richard M. Salsburg, Esq., for petitioner (Mandelbaum, Salsburg,
Gold & Lazris, attorneys)

Burton J. Jacowitz, Esq., for respondent

CLANCY, ALJ:

In this matter the respondent denied the petitioner's application pursuant to *N.J.S.A.* 33:1-12.20 for a plenary retail liquor consumption license. The petitioner appealed from that decision and the matter was transmitted to the Office of Administrative law for resolution as a "contested case."

Accordingly, hearings were held on August 1, 1984 and August 9, 1984, at which time the record was closed.

***PROCEDURAL BACKGROUND AND
UNCONTROVERTED FACTS***

In August 1978, the petitioner applied to the respondent's Board of Adjustment for variances and site plan approval concerning its plan to build a multi-story office building and hotel complex with related appurtenances, including a restaurant, bar, lounge, meeting rooms and guest rooms. The site plan approval request noted that a liquor license was to be applied for. Following hearings held in November and December of 1978, the Board of Adjustment denied the petitioner's applications on January 22, 1979. An appeal was then taken to the respondent, the Municipal Council of the Township of Woodbridge. This body reversed the Board of Adjustment's denials and approved the variances and the site plan sought by petitioner in June 1979. In so doing, the Council specifically found, among other things: (a) that "testimony overwhelmingly establishes the need for the proposed facility . . .," and (b) that the petitioner "presented evidence

of the need for this type of facility, not only in the general location where proposed, but also the need for such facility in the community as a whole." In 1983, appropriate permits and approvals were obtained from the respondent and the construction of the \$15 million, 100 room-plus hotel portion of the building was substantially completed.

On May 9, 1984, the Municipal Clerk of the Township of Woodbridge wrote a letter to the petitioner as follows:

The Municipal Council of the Township of Woodbridge has reviewed your request for a new liquor license and has determined that it is not in the best interests of the township. The Municipal Council unanimously felt that the purchase of an existing license is the appropriate course to follow. There were several licenses advertised for sale recently.

Similar requests for the hotel license were rejected in prior years and the council regrets that they must continue this policy.

About six weeks ago someone from your organization spoke to me about the above request and I advised that they proceed with haste in writing to the council, and further advised that the Municipal Council in all probability would reject this type of proposal.

Next, a public hearing was held on July 31, 1984, pursuant to proper notice and publication regarding the petitioner's application for a plenary retail liquor consumption license pursuant to *N.J.S.A.* 33:1-12.20. No written or verbal objections were made to the respondent Township Council concerning the petitioner's application, and on August 7, 1984, the Council adopted a Resolution denying said application. This appeal resulted therefrom.

STATEMENT OF ISSUE

Should the respondent Municipal Council of the Township of Woodbridge have issued a plenary retail liquor consumption license to the petitioner, pursuant to *N.J.S.A.* 33:1-12.20?

DISPOSITION

The immediate and initial focus of this case is *N.J.S.A.* 33:1-12.20, which reads as follows:

Nothing in this act shall prevent the issuance, in a municipality, of a new license to a person who operates a hotel or motel containing 100 guest sleeping rooms or who may hereafter construct and establish a new hotel or motel containing at least 100 guest sleeping rooms.

Inn at Woodbridge v. Twp. of Woodbridge
Cite as 9 *N.J.A.R.* 286

The petitioner has urged for acceptance of the notion that the statute mandates the issuance of the plenary retail liquor consumption license, since it has been stipulated that the hotel portion of the building herein contains more than 100 guest sleeping rooms. Simply stated, this assertion is untrue. It is well settled that "There is no inherent right to a liquor license. . . . Nor is a *bona fide* hotel which meets the minimal requirements of the State limitation law or a municipal ordinance *ipso jure* entitled to a license merely because it is such a hotel. There is no 'must' in the Control Act which provides that all hotels are entitled as of right to a liquor license. . . ." *Rauoly, Inc. v. Lakewood, A.B.C. Bulletin No. 1653*, Item No. 2 (Jan. 17, 1965). *See also, Emston Corporation v. City of Brigantine, A.B.C. Bulletin No. 2091*, Item No. 4 (March 13, 1973).

Accordingly, the underlying issue to be determined in this case is whether or not the respondent properly and reasonably exercised its discretion in denying the petitioner's application for a license. In this vein I FIND that the respondent supported its action (as required by *N.J.A.C.* 13:2-2.9) by stating the following reasons in the Resolution it adopted on August 7, 1984:

1. a local ordinance limits the number of plenary retail consumption licenses in Woodbridge Township to 70;
2. in June 1984, Woodbridge Township renewed 69 of the 70 authorized licenses;
3. the number of plenary retail consumption licenses should presently be about 30 for a Township the size of Woodbridge and the Township should be attempting to achieve this goal;
4. the existing licenses in Woodbridge Township are sufficient to meet the needs of its citizenry for the purchase of alcoholic beverages;
5. the Township Council was aware that *N.J.S.A.* 33:1-12.20 allowed it to issue a license to the petitioner;
6. there is at least one plenary retail consumption license available for purchase in Woodbridge Township to allow the petitioner to meet its needs; and
7. the issuance of an additional plenary retail consumption license would be detrimental to the desires of the citizenry of Woodbridge for temperance and good order.

In assessing the validity of the reasons advanced for the action taken, I am mindful of the guidelines contained in *Lyons Farms Tavern v. Newark*, 55 *N.J.* 292, 303 (1970):

The conclusion is inescapable that if the legislative purpose is to be effectuated, the Director and the courts must place much reliance upon local action. Once the municipal board has decided to grant or withhold approval of a premises-enlargement application of the type involved here, *its exercise of discretion ought to be accepted on review in the absence of a clear abuse or unreasonable or arbitrary exercise of its discretion.* Although the Director conducts a *de novo* hearing in the event of an appeal, the rule has long been established that he will not and should not substitute his judgment for that of the local board or reverse the ruling if reasonable support for it can be found in the record [emphasis supplied]

Nevertheless, with respect to the respondent's reasons for denial, *N.J.S.A.* 33:1-12.21 in effect declares that any consideration given to the number of licenses authorized for Woodbridge Township is irrelevant when application is made pursuant to the "hotel exemption" statute:

This act is *in addition to* and not in exclusion of municipal regulations limiting the number of licenses to sell alcoholic beverages at retail, duly adopted pursuant to the authority granted by section 33:1-40 of the Revised Statutes *N.J.S.A.* 33:1-12.21. emphasis supplied

It follows then that reasons number one and number two noted above do not constitute valid grounds for the action taken.

Regarding reason number three (which is really an acknowledgment by the Township that it should be reducing the number of authorized licenses pursuant to *N.J.S.A.* 33:1-12.14), while the Township's intent is laudatory, the statute enables the Township to reduce the number of licenses *only* "except as otherwise provided" by the Alcoholic Beverage Law; *N.J.S.A.* 33:1-12.20 provides otherwise. Therefore, reason number three falls by the wayside.

Concerning reasons number four and number seven, these are conclusionary statements not supported by factual data. In the first instance, the "sufficiency of existing licenses" to meet the needs of the citizenry is contradicted by the specific findings of the respondent Township Council in 1979 relative to a need for this type of unique facility in the community. No attempt was made to reconcile these two inapposite conclusions. Similarly, not one iota of evidence was considered vis-a-vis the desires of the citizens to promote temperance

and good order; in fact, not one member of the public objected to this application in writing or in person. In short, these two summary "findings" couched in conclusionary language are inadequate to sustain the action of the Woodbridge Township Council.

On its face, above noted "reason number five" is not really a reason at all. It is merely a statement with respect to one factor that the Township Council took into account in reaching its determination.

Finally, reason number six goes to the heart of this case. The net effect of requiring the petitioner to purchase one of the authorized licenses already in existence is to escalate the cost of such a license almost beyond comprehension. As testified to by Joseph Nedlin, a principal in the Inn at Woodbridge, Inc., extensive efforts to secure a license have been made since early 1984. Before that he had been under the impression that the grant of a license would be no problem since his corporation had complied with all Township directives since 1978, and it was always his understanding that the license was going to be issued; however, he acknowledged that no one associated with Woodbridge Township had ever represented to him that this would be so. In any event, he now finds himself faced with the purchase of a license in the \$200,000 to \$450,000 range, a price which his corporation cannot afford. Without the license, the Inn at Woodbridge cannot operate on a reasonable or profitable basis.

Thus, the policy of Woodbridge Township requiring the petitioner to purchase an existing license is seemingly at loggerheads with the ostensible purposes of the statute, *i.e.* to encourage hotel development and to foster the aims of a free enterprise system with respect thereto. Absent an explanation other than "the purchase of an existing license is the appropriate course to follow," to permit the subversion of statutory intent and purpose would be unconscionable. In short, the position of the Township is untenable with respect to reason number six.

In summary then, based on the foregoing, I **CONCLUDE** that all of the "reasons" stated for the Township's denial of the petitioner's license application translate into an arbitrary and unreasonable exercise of the Township Council's discretion. This becomes more readily apparent when one takes into account the following **FINDINGS OF FACT**:

- (a) that the Township has permitted and encouraged the construction of this office and hotel complex since 1979;
- (b) that more than \$15 million has been invested in this six-year building project to date;

- (c) that since 1978, the petitioner has been “above board” and “up front” with regard to the nature and extent of the facility’s proposed usages;
- (d) that the respondent Township Council has had actual knowledge of petitioner’s intentions to seek a liquor license for the facility since 1979;
- (e) that prior to May 1984, the petitioner was never informed of the Township “policy” requiring hotel license applicants to purchase an existing license;
- (f) that the Township’s policy requiring the purchase of an existing license has never been embodied in a writing, formally adopted, or published—so as to put the public at large “on notice”;
- (g) that the respondent Township Council specifically found a community need for this type of facility in 1979 and has never reversed the position it took then; and
- (h) that the full operation of the entire facility will benefit the citizens of both Woodbridge and New Jersey by providing tax revenues, jobs and economic intercourse.

In reaching the above **CONCLUSION**, the undersigned specifically rejects the petitioner’s argument to the effect that the respondent Township Council is estopped from denying the grant of the plenary retail consumption license. While “Equitable principles of estoppel will be applied against municipalities ‘where the interests of justice, morality, and common fairness clearly dictate that course’ ” *Palisades Properties v. Brunetti*, 44 *N.J.* 117, 131 (1965) the petitioner has failed to demonstrate that it justifiably relied on a misrepresentation by Woodbridge Township which resulted in detriment. According to the testimony of one of the petitioner’s principals, Mr. Joseph Nedlin, no one associated with Woodbridge Township ever represented that a liquor license would be issued at any point in time.

Simply put, on the strength of the evidence adduced, I am constrained to finally **CONCLUDE** that the Municipal Council of the Township of Woodbridge abused its discretion in the matter at hand by denying the petitioner’s application for a plenary retail liquor consumption license pursuant to *N.J.S.A.* 33:1-12.20. The implied attitude of the Township Council, *i.e.* “we will cooperate if you buy a license, but not if you apply as a matter of right pursuant to *N.J.S.A.* 33:1-12.20” should not be condoned.

Accordingly, I **ORDER** that the Director of the New Jersey Division of Alcoholic Beverage Control, John F. Vassallo, Jr., in the

Inn at Woodbridge v. Twp. of Woodbridge
Cite as 9 *N.J.A.R.* 286

conscientious exercise of his discretion, **GRANT** the issuance of a plenary retail consumption license to the petitioner pursuant to *N.J.S.A.* 33:1-12.20.

This recommended decision may be affirmed, modified or rejected by the **DIRECTOR OF THE DIVISION OF ALCOHOLIC BEVERAGE CONTROL, JOHN F. VASSALLO, JR.**, who by law is empowered to make a final decision in this matter.

FINAL DECISION BY THE DIRECTOR OF THE DIVISION OF ALCOHOLIC BEVERAGE CONTROL, JOHN F. VASSALLO, JR.:

Written exceptions to the initial decision were filed on behalf of the respondent and written answers were filed by the appellant pursuant to *N.J.A.C.* 13:2-17.14. In its exceptions respondent takes issue with the conclusions drawn by the administrative law judge in this case and argues that the decision is without factual basis. The respondent also submits that since the appellant was able to obtain another license and have same transferred to its premises, these proceedings are now moot. The appellant argues to the contrary and suggests that the denial of the requested transfer was arbitrary, capricious, and unreasonable and therefore was an abuse of the issuing authority's discretion. In light of same the appellant states that the initial decision should be adopted. The time limit for the Director's review and rendering of a final decision was extended from November 2, 1984 until December 24, 1984 by properly executed orders of extension.

For the reasons stated below I find that the exceptions are without merit and I shall reject them and adopt the basic factual and legal findings made by the administrative law judge in this case. In arriving at my determination, I believe that the facts leading up to the license issuance denial are of import to the proper resolution of this case and I shall hereafter summarize the operative facts as I view them. My findings with respect to these facts are based upon the transcripts provided concerning the hearings held before the local issuing authority as well as the hearing conducted by the administrative law judge and the documents of record submitted to me for my review.

Appellant appeals from the denial of its requested issuance of a license under the hotel/motel exception contained in *N.J.S.A.* 33:1-12.20. It appears that the concept concerning the hotel project was developed approximately ten years ago, although formalized plans were not presented to the town until 1978. Over \$15 million

dollars has been invested to date in the entire hotel and restaurant complex and without question same was always visualized by all parties as being licensed to serve alcohol on its premises. There can be little question that the Township felt there was a need for this facility and was keenly interested in its development and location in the town. Although the indications are that appellant, from the context of its dealings with various officials throughout the life of this project, believed the license would be issued under the hotel/motel exception provision (*N.J.S.A.* 33:1-12.20), the current members of the issuing authority (since there were changes occurring through the election process during the development and construction phase of this project) state that no such issuance was ever contemplated by them. Rather, the members of the issuing authority now suggest that the hotel should purchase an existing license instead of having a new license issued to it under the exception provision of the law.

Although it is true that the issuance of a license under this exception provision has been held to be permissive in nature, nevertheless in exercising its discretion, the local issuing authority must do so reasonably. See, *Emston Corp. v. Brigantine*, *A.B.C. Bulletin No. 2091*, Item No. 4 (March 13, 1973). Thereafter on appeal the Director must abide by the issuing authority's actions as long as its exercise of judgment and discretion was reasonable. *Fanwood v. Rocco*, 59 *N.J. Super.* 306 (App. Div. 1960), *aff'd*, 33 *N.J.* 404 (1960). In appeals the burden of proving that the action of the issuing authority was unreasonable rests on the appellant. *N.J.A.C.* 13:2-17.6.

Since I have also adopted the basic factual conclusions of the administrative law judge, I need not recount them herein. Nevertheless, I note that the licensee is fully qualified, the facility fully meets the conditions required by *N.J.S.A.* 33:1-12.20, there were no objections to the issuance of the license raised by objectors at the local hearing, and that the local issuing authority is not unwilling to license this facility, as long as it purchases an existing license rather than obtain one under the exemption.

The leading cases cited in the initial decision which would appear to support the denial of a license under *N.J.S.A.* 33:1-12.20 are *Rauoly v. Lakewood* *A.B.C. Bulletin No. 1653*, Item No. 2 (Jan. 17, 1966), and *Emston v. Brigantine*, *supra*. In *Rauoly* there were indications that numerous rooms in the previously existing facility were either unfit for use or violated municipal ordinances. In addition, the chief of police testified that the premises (even without a license) was the

subject of a number of police calls dealing with noise and other nuisance violations, and five objectors also appeared and personally testified against the issuance of this license. In *Emston* there was a dispute as to whether or not the previously existing facility contained a sufficient number of rooms to meet the statutory exception, and there were also numerous objectors to this issuance of the license, albeit on grounds that sufficient numbers of licenses already existed in the city. However, it also appears that there was testimony that the type of patrons using such facilities in Brigantine did not desire alcoholic beverages. Consequently, there was no need found for such licensure. Given the underlying facts of these cases, it was entirely reasonable to deny licensure to the two requested premises. In the present case the facts are completely opposite.

To summarize, in the case under consideration we have a facility which was newly constructed on the premise that it would be licensed and it without question meets the conditions for licensure under *N.J.S.A.* 33:1-12.20. The complex was welcomed and encouraged by Township officials who also believed it should be licensed, but they state now that the appellant should purchase an existing license. The basic reasons given for the denial of the issuance of this license are that the issuing authority did not wish to issue an additional alcoholic beverage license but in fact wished to reduce the licenses available to 30. As a result of the Township's determination, the purchase price of an existing license was increased from \$50,000 or \$60,000 to \$160,000 with other licensees asking \$200,000 to \$450,000. Given the history of the development of this hotel complex, I find it difficult to believe, had the appellant prior to construction said to the Town "before we locate here we would require the issuance of a license under *N.J.S.A.* 33:112.20," that the town would not have granted same. To allow the hotel to now be held hostage to the situation it finds itself in and to have to pay a present license holder an exorbitant amount for a license, would not only be unfair and unreasonable, but it would also violate the spirit and intent behind the passage of the hotel/motel exemption. See, e.g., *Hackensack Motel Corp. v. Little Ferry A.B.C. Bulletin No. 1648* Item No. 1 (Dec. 13, 1965).

Accordingly, it is on this 24th day of December, 1984,

ORDERED that the action of the issuing authority below be and the same is hereby reversed and the appeal therefrom be and is hereby dismissed; and it is further

Inn at Woodbridge v. Twp. of Woodbridge
Cite as 9 *N.J.A.R.* 286

ORDERED that the Township Council of the Township of Woodbridge be and the same is hereby directed to issue a new license to the appellant pursuant to *N.J.S.A.* 33:1-12.20, in accordance with the original application filed and fees paid by the said appellant.

You must check the New Jersey Citation Tracker in the companion loose-leaf volume to determine the history of this case in the New Jersey courts.