

Circuit Court for Baltimore County  
Case No.: 03-C-17-008812

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 284

September Term, 2019

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A. JENNY BRADLEY, ET AL.

v.

SWEET AIR LIQUORS, INC.

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Fader, C.J.,  
Beachley,  
Battaglia, Lynne, A.  
(Senior Judge, Specially Assigned),

JJ.

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Opinion by Battaglia, J.

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Filed: May 26, 2020

\*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

Sarabjit Grewal, Appellee, applied for a Class A beer, wine and liquor license on behalf of Sweet Air Liquors, Inc., in order to operate a retail store in the Manor Shopping Center on Jarrettsville Pike in Baltimore County. The Board of Liquor License Commissioners for Baltimore County held a hearing on the application, at which A. Jenny Bradley and the Bradfam Corporation, doing business as Bradley Wine & Spirits, Appellants herein, opposed the license application.

The Board approved the issuance of the liquor license to Ms. Grewal, after which Appellants filed a Petition for Judicial Review in the Circuit Court for Baltimore County; Judge Vicki Ballou-Watts, after entertaining briefs and hearing arguments, affirmed the decision of the Board. Before us, in seeking further review of the Board's decision, the Appellants present the following questions for our review:

1. Did the Liquor Board's decision lack substantial evidence to support it?
2. Did the Liquor Board commit legal error by failing to conclude that it was legally bound to deny the application?

For the reasons that follow, we shall hold that substantial evidence supported the decision of the Board to issue the liquor license and, thus, shall affirm.

### **STATUTORY FRAMEWORK**

Section 4-210(a) of the Alcoholic Beverages Article enumerates the factors a local licensing board must evaluate when considering whether to approve an application for a liquor license and provides:

- (a) *Factors in deciding whether to approve license application.* – Before deciding whether to approve an application and issue a license, a local licensing board shall consider:
- (1) the public need and desire for the license;

- (2) the number and location of existing license holders;
- (3) the potential effect on existing license holders of the license for which application is made;
- (4) the potential commonality or uniqueness of the services and products to be offered by the business of the applicant;
- (5) the impact of the license for which application is made on the health, safety, and welfare of the community, including issues relating to crime, traffic, parking, or convenience; and
- (6) any other factors that the local licensing board considers necessary.

Subsection (b) provides that a local licensing board shall deny a liquor license application when certain conditions are met:

- (b) *Grounds for denial of license application.* – The local licensing board shall deny a license application:
- (1) if the local licensing board determines that:
    - (i) the granting of the license is not necessary to accommodate the public;
    - (ii) the applicant is not a fit person to receive the license;
    - (iii) the applicant has made a material false statement in the application;
    - (iv) the applicant has acted fraudulently in connection with the application;or
  - (v) if the license is issued, the operation authorized by the license would unduly disturb the peace of the residents of the neighborhood of the location described in the application; or
- (2) for other reasons that the local licensing board considers sufficient.

Subsection (c) provides, in the absence of grounds for denial under subsection (b) that an application “shall be approved” and the license “shall issue”:

- (c) *Approval of license application.* – Subject to subsection (a) of this section, if a local licensing board does not find grounds listed under subsection (b) of this section to deny a license application, the application shall be approved and the local licensing board shall issue the license for which application is made on payment of the fee required to the local collecting agent.

Maryland Code (1957, 2016 Repl. Vol.).<sup>1</sup>

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<sup>1</sup> All subsequent statutory references, unless otherwise indicated, shall be to the Alcoholic Beverages Article of the Maryland Code (1957, 2016 Repl. Vol.), which reflects the version of the relevant statutes in effect at the time of the hearing.

### **FACTS AND PROCEDURAL HISTORY**

The Board of Liquor License Commissioners for Baltimore County (the “Board”) heard testimony and received evidence regarding a Class A beer, wine, and liquor license application that Sarabjit Grewal, owner of Sweet Air Liquors, LLC (“Sweet Air”), submitted in order to open and operate a 4,500-square foot liquor store located at 3427 Sweet Air Road in Phoenix, Maryland, an area also referred to as “Four Corners.” Prior to the hearing, Appellants, who owned Bradley Wine & Spirits which is located a short distance across the street from Sweet Air, filed a protest to the license application and offered opposing testimony and evidence at the hearing.

Ms. Grewal, the license applicant, testified that she had been in “the liquor store business” for about eleven years, having previously held a liquor license in Harford County where she owned and operated a liquor store. Ms. Grewal further testified that the premises at which she intended to operate Sweet Air had previously been a liquor store. She provided the Board with a petition containing 181 signatures in favor of the license, those of which included various owners of the businesses located in the Manor Shopping Center. Ms. Grewal indicated that, although Sweet Air would sell many of the same products already available at Bradley Wine & Spirits, she would also sell “some Indian food” and “Indian beers.”

Patricia Farley, whose family owns the Manor Shopping Center, also testified in support of the license application. She testified that, in 1982, shortly after the construction of the shopping center, a liquor store opened at the location and successfully conducted business there until 2014 when the then-owner had to close the business due to financial

difficulties. Ms. Farley also testified that Bradley’s Wine & Spirits opened in 1987 and that the two liquor stores had harmoniously coexisted between 1987 and 2014. She stated that her family wanted a tenant who was experienced and, that “would care” and complement the local-tone of the shopping center, which prompted them to seek out Ms. Grewal. She explained that Sweet Air “would be a good fit” for the Manor Shopping Center, noting that the area experienced a lot of customers, who frequently inquired about a new liquor store, as the premises still bore signage from the previous owner.<sup>2</sup>

Dr. Gerald Patnode, Jr., testified on Ms. Grewal’s behalf as an expert in estimating the need and public convenience offered by a new Class A license in Jacksonville. Dr. Patnode prepared a report in which he analyzed the supply and demand for alcohol within a five-mile radius of the proposed liquor store. In the report, he opined “that the market and citizens of Baltimore County [would] best [be] served by granting” the subject license, explaining:

Jacksonville is a major shopping center for norther [sic] Baltimore County and the southeastern portion of Harford County. The area has two shopping centers, both with grocery stores, pharmacy, specialty stores, and restaurants in both fast food and sit-down dining. The area has numerous medical offices which have a wide grouping of medical specialties that draw from a large geographic area. Jacksonville also has one of the largest animal hospitals and clinics in Baltimore County. All these factors are attracting large number of visitors each day.

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<sup>2</sup> Patrick Russell and Randolph Shelley also testified on behalf of Ms. Grewal. Mr. Russell, the owner of Kooper’s Jacksonville, a restaurant in Manor Shopping Center, stated that the addition of Sweet Air would benefit the businesses operating in the shopping center and foster healthy competition. Mr. Shelley, a contractor who has regularly performed work in the shopping center for the past several years, testified that patrons of the shopping center frequently ask him whether the liquor store, which was vacant, would be resuming business.

The area has only one Class “A” outlet which is part of one of two shopping centers with both food stores and a pharmacy. The addition of an additional license would add to the convenience factor for those shopping at Safeway or the other shops in the center.

In my opinion the addition of this store would capture more than \$1 million dollars in excess demand available for this area. In consideration of the economic impact on Bradley’s Wine, it will have some impact but the excess demand should minimize this impact. The most likely scenario is that people who shop at the grocery and pharmacy stores in both centers will continue this same pattern including the purchase of alcohol within those centers. Bradley’s will most likely lose out on the convenience factor of current customers who would not travel the addition [sic] quarter mile

Jenny Bradley, owner of Bradley Wine & Spirits, testified in opposition to the application. She indicated that her business experienced a significant increase in revenue after the liquor store in Manor Shopping Center had closed in 2014. Ms. Bradley stated that it was her belief that, if the license issued, her business would be negatively impacted and she would not be able to “donate as much money as we do to the community to help out,” as well as inhibit her ability to “hire more people.” She acknowledged, however, that her liquor store successfully financially coexisted with the previous liquor store which operated in the shopping center for decades. Ms. Bradley also presented a petition in opposition to the license application, which had been signed by 908 of her customers.<sup>3</sup> She further posited that Sweet Air would not provide different, “unique” products from those

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<sup>3</sup> The petition proffered by Ms. Bradley asked people to sign if they did not think “we need 3 liquor stores[.]” Ms. Bradley testified that the three liquor stores referenced by the petition included Bradley Wine & Spirits, Sweet Air, and Casey’s, a restaurant “about seven, eight miles” from Bradley’s that recently obtained a Class B license to sell package goods. Casey’s, at the time of the hearing, had not yet opened.

sold at her store, and that, if her customers were to request “Indian beer,” she would order some.<sup>4</sup>

At the conclusion of the hearing, the Board, in a split 2–1 decision, approved Ms. Grewal’s liquor license application, ruling:

Okay. We have a split decision with the Board. The Board is subject to the checklist, a copy of which I have here. The Board is going to approve the new license.

The Board did hear testimony about public need and desire. Not only the 181 people who signed the petition ask – saying that they’d like to have the liquor store, but as well we had letters from the other tenants in the shopping center.

You’re correct that we – we considered but did not find anything unique about the new location. However, we certainly considered it. We heard no evidence about any negative impact on the health, community, welfare, crime, safety, nothing like that.

So, we are – we are approving the license. The most convincing part for the need and desire for this Board was the fact that there was a license there since 1980 and through financial issues that the old – the old owner had the business isn’t there, that should not lock in—should not lock in the monopoly for the only other class A liquor store within three miles forever, at least according to the two of us.

The dissenting commissioner, who voted to deny the application, opined that the evidence presented failed to satisfy the factors enumerated in Section 4-210(a) of the Alcoholic Beverages Article, such that the license, as a matter of law, should not issue.<sup>5</sup>

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<sup>4</sup> Glen Thomas and Casey Brooks also testified in opposition to the license application. Mr. Thomas, President of the Greater Jacksonville Association, testified that he knew Ms. Bradley for over twenty-five years and, as a citizen, did not believe that an additional liquor store in the “Four Corners” area was necessary. Mr. Brooks, the holder of the recently issued Class B license for Casey’s, testified that his business planned to sell some package goods and would, therefore, be a competitor of Bradley’s, such that a license for Sweet Air might saturate the local market.

<sup>5</sup> The commissioner who voted to deny the license application reasoned:  
(continued . . .)

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I don't feel that anyone is right or wrong. I look at the statute and that's what I look at. I really don't care whether the application is granted or not granted. I don't have a personal preference. I look at the statute and the evidence.

And the main factor in 4-210(a)(1) before us is Dr. Patnote's [sic] testimony. That's the main emphasis. And I certainly have nothing against Dr. Patnote [sic]. I've known him a long time, but his testimony is fraught with problems.

For example, he says the market area is five miles and there's 11 class A licenses within the five miles. But then he says I'm not sure what the five miles is. And maybe you're confused as to what the five mile radius is and so am I.

He talks about population and population that is flat. Maybe 2 percent. Okay? Then he talks about the reasons – the factors he's looked at insofar as his conclusion about 4-210(a)(1). That's that there's medical offices in Jacksonville. Medical offices, what kind of medical office are in Jacksonville? What's so special about these medical offices? He couldn't tell me. He couldn't tell me. He just said medical offices.

He says there's an animal hospital there. Well, okay. There's a lot of animal hospitals all around Baltimore County. But there's no testimony, there's no evidence as to what the effect of that animal hospital is in bringing people to Jacksonville.

He talks about traffic, but he's testified many times before to this Board that he's not a traffic expert. He's not qualified. He's not an expert to testify before this Board on traffic matters.

So, when you look at the factors that would go into 4-201(a)(1) it's not me that says this shouldn't be granted, it's the evidence in the case. Dr. Patnote's [sic] testimony. He says I didn't count the Ds and Bs that could fill off sale. Well, why not? I didn't count the licenses in southeastern Harford County, but that's part of the market area that brings people here which means that there's a public need. Why not?

None of these factors were met. So, how can anyone say that – that Dr. Patnote's [sic] testimony – and I believe he believes what he says, but, you know, the lack of specificity in his testimony and so forth makes no sense insofar as trying to find out what the public need and desire for the license is. Eleven class As in the five mile market area that he's using to define need and public accommodation. It's just not there.

The number and location of existing license holders. There's at least 11 class As in his market study, in his market area, not including the ones in southeastern Harford County. So, there's a disparate [sic] effect there.

(continued . . .)



The Appellants then filed a petition for judicial review in the Circuit Court for Baltimore County, contending that the Board erred in issuing a liquor license to Ms. Grewal and positing the same questions presented before us. In a written order, after briefing and argument, Judge Vicki Ballou-Watts found that substantial evidence in the record supported the Board's decision to grant the Class A liquor license and explained:

[T]he Board addressed the various factors [listed in Section 4-201(a) of the Alcoholic Beverages Article], at least informally. . . . [I]t received testimony concerning the public need and desire for the license, including but not limited to the testimony of expert witness Dr. Gerald Patnode. There were 181 signatures from those desiring the liquor store and letters of support from other tenants in the shopping center. There was also evidence regarding years of co-existence between Petitioners' liquor store and the previous

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(continued . . .)

The third, the effect on the existing license holders, well, I understand that there's a bad effect on Bradley's. So there is a potential effect on an existing license holder. That wasn't dispute by the Applicant in any manner, shape, or form. So, there's factor number three.

Factor number four, the potential commonality or uniqueness. The Applicant herself indicated that there is no uniqueness. Oh, we're going to sell some Indian beers. Well, we've had that in cases before when the Beverage Dealer's Association have come in here to fight a license and they say everybody's selling the same thing. They all have access to the same thing. There's nothing unique about this. And in this case the Applicant admits there's nothing unique. Not me, I didn't say it. The Applicant said it.

And then, when you look at the fifth one where – the testimony by a gentleman, Mr. Thomas from the community, about how the traffic is flowing through Jacksonville when we know that Dr. Patnote [sic] is not an expert on what that traffic pattern means and there was ample testimony to show that it's not bringing people to Jacksonville.

Unfortunately, you have to look at the testimony and tie it to the five factors plus the sixth, which you can bring in anything else but I'm not pertaining to that – I'm not talking about that. You have to look at the five factors. I think the record is deplete of satisfying the burden of proof on those five factors and that's what this Board has to consider, the legislature said so and that's why I voted no.

liquor store (at the Applicant’s same proposed location). The Board also considered the uniqueness of the location.

Judge Ballou-Watts also found Appellants’ argument that the Board was required to deny the application because the license was not “necessary for the accommodation of the public failed,” because, based on her review of the record, “the Board considered, *inter alia*, the ‘public need and desire’ in reaching its decision to grant the application.” The Appellants then requested further review by this Court.

### DISCUSSION

Section 4-905 of the Alcoholic Beverages Article provides the scope of review in our evaluation of a decision of a local licensing board, such as a grant or denial of a license application, and, in pertinent part, provides:

- (a) *Presumption.* – On the hearing of a petition under this subtitle, the court shall presume that the action of the local licensing board was proper and best served the public interest.
- (b) *Burden of proof.* – A petitioner has the burden of proof to show that the decision of the local licensing board being reviewed was:
  - (1) against the public interest; and
  - (2)(i) not honestly and fairly arrived at;
  - (ii) arbitrary;
  - (iii) procured by fraud;
  - (iv) unsupported by substantial evidence;
  - (v) unreasonable;
  - (vi) beyond the powers of the board; or
  - (vii) illegal.

“Judicial review of a decision by a liquor board ‘is similar to review of decisions by most other administrative agencies.’” *Dakrish, LLC v. Raich*, 209 Md. App. 119, 141 (2012), *cert. denied*, 431 Md. 221 (2013) (quoting *Blackburn v. Bd. of Liquor License Comm’rs for Balt. City*, 130 Md. App. 614, 623 (2000)). The Court of Appeals recently,

in *Motor Vehicle Administrative v. Barrett*, 467 Md. 61 (2020), summarized appellate review of an administrative agency’s decision:

This Court reviews “an administrative agency’s decision under the same statutory standards as the Circuit Court.” *Gigeous v. E. Corr. Inst.*, 363 Md. 481, 495, 769 A.2d 912 (2001). It is not this Court’s role to “substitute its judgment for the expertise of those persons who constitute the administrative agency[.]” *United Parcel Serv., Inc. v. People’s Counsel for Balt. Cty.*, 336 Md. 569, 576–77, 650 A.3d 226 (1994). “Therefore, ordinarily the court reviewing a final decision of an administrative agency shall determine (1) the legality of the decision and (2) whether there was substantial evidence from the record as a whole to support the decision.” *Gigeous*, 363 Md. at 496, 769 A.3d 912 (internal quotations omitted). Substantial evidence is defined as “such relevant evidence as a reasonable mind might accept as adequate to support such a conclusion.” *Id.* at 497, 769 A.2d 912 (internal quotations omitted).

*Id.* at 68–69. *See, e.g., Balt. Cnty. Licensed Beverage Ass’n v. Kwon*, 135 Md. App. 178 (2000) (reversing altogether the Board’s decision to deny an application for transfer of liquor license as not supported by substantial evidence because the record, contrary to the Board’s findings, reflected that the transfer would be “convenient, useful, appropriate, suitable, proper, or conducive” to the public, and thus, within “necessary” to accommodate the public).

A local licensing board, however, is not required to “set forth specific findings of fact and conclusions of law” when deciding whether to grant or deny an application for a liquor license. *Dakrish*, 209 Md. App. at 144 (quoting *Blackburn*, 130 Md. App. at 624). Although the Board is not required to “address seriatim the factors that it must consider under the statute[.]” it must address them, “at least informally” so that “meaningful review” may be conducted. *Id.* (citation omitted).

Appellants contend that the Board’s decision to grant Ms. Grewal’s application for a Class A liquor license is not supported by substantial evidence as the testimony adduced at the hearing indicated that, pursuant to the factors enumerated in Section 4-210(a), no “public need and desire” existed for the license; the local market’s supply already exceeded the need as eleven other Class A license holders already existed within a five-mile radius of the proposed liquor store; the issuance of the license would detrimentally affect Bradley’s and the Class B license recently issued to Mr. Brooks; and Sweet Air would not offer products “unique” to those available at Bradley’s. The Appellants also posit that the Board was statutorily bound to deny the application pursuant to Section 4-201(b)(1)(i), because the record demonstrated that the “license is not necessary to accommodate the public[.]” They argue that the Board impermissibly informed its decision “by the sense that one store’s going out of business ‘should not lock in a monopoly for the only other class A liquor store within three miles forever[.]’” We disagree.

In *Dakrish, LLC v. Raich*, *supra*, 209 Md. App. 119, we determined that the standard of review of the denial of an application for a liquor license was “whether there is substantial evidence in the record as a whole to support the Board’s conclusion.” *Id.* at 144–45. In that case, the Board of Liquor License Commissioners for Baltimore County denied Mr. Raich’s application for the issuance of a new Class A liquor license, after having considered “all the facts” and “the totality of the testimony” adduced at a hearing on the matter. *Id.* at 121, 145. Mr. Raich then petitioned for judicial review and the circuit court judge reversed the Board’s decision and ordered that it approve the application, ruling that “the Board’s decision was flawed because it failed to balance appropriate factors to be

considered by the Board” pursuant to Section 10-202(a)(2)(1) of Art. 2B, Maryland Code (1957, 2011 Repl. Vol.), the predecessor of Section 4-210(a), “and gave undue weight to the potential for impact on existing licenses.” *Id.* On further judicial review, we reversed the circuit court’s decision and affirmed the Board’s denial of the application because the record indicated that the Board had properly considered the “record as a whole” and did not solely rest its decision on only one of the statutory factors. *Id.* at 145.

In the present case, the Board observed *Dakrish*, examined each of the statutory factors in Section 4-210(a) in reaching its decision to issue the Class A license and made specific findings, which are supported by the record. During the hearing, the Board had before it evidence regarding the public need and desire for the license, including the 181-signature petition, letters in support from local businesses, Ms. Farley’s testimony, as well as Dr. Patnode’s testimony and report; the number and location of existing licenses and the potential effect on existing licenses, including the testimony of Ms. Farley, Dr. Patnode, as well as Ms. Bradley and her supporters; the potential commonality or uniqueness of the services and products to be offered by Sweet Air, including testimony from Ms. Grewal and Ms. Bradley<sup>6</sup>; and the impact on the health, safety, and welfare of the community, including testimony from Dr. Patnode. There was substantial evidence in the record to support the Board’s decision.

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<sup>6</sup> As noted above, the Board “certainly considered,” but “did not find anything unique about” the products or services that would be offered by Sweet Air, as required by Section 4-210(a).

Further, unlike what Appellants have asserted, there was substantial evidence on the record showing that there was a need for another Class A license holder, as the Board relied on the 181 signatures on the petition favorable to Ms. Grewal and the testimony from the landlord and co-tenants, which also supported a public need. As a result, the Board, in the absence of any findings to support a denial of the license application pursuant to Section 4-210(b), acted legally pursuant to Section 4-210(c).

In short, the decision of the Board of Liquor License Commissioners for Baltimore County is affirmed.

**JUDGMENT OF THE CIRCUIT COURT  
FOR BALTIMORE COUNTY AFFIRMED.  
COSTS TO BE PAID BY APPELLANT.**