

Circuit Court for Anne Arundel County
Case No.: C-02-CV-17-003691

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 685

September Term, 2018

424 ASSOCIATES, INC., ET AL.,

v.

BOARD OF LICENSE COMMISSIONERS
FOR ANNE ARUNDEL COUNTY, ET AL.

Meredith,
Graeff,
Battaglia, Lynne, A.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Battaglia, J.

Filed: September 17, 2019

*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.

Nelson Sabatini, an appellee in the instant case, applied for an alcoholic beverage license¹ on behalf of A&A Wine & Spirits, LLC (“A&A”), in order to operate a package goods store in Waugh Chapel Towne Centre in Gambrills, Maryland, adjacent to a Wegmans Food Market. The Board of License Commissioners for Anne Arundel County (the “Board”), also an appellee in the instant matter, held a hearing on the application, during which five individuals, all holders of other alcoholic beverage licenses, and the business entities on whose behalf they held such licenses, collectively Appellants, participated either in person or by counsel in opposition to the license application.² The Board approved the issuance of the beer, wine and liquor license to Mr. Sabatini, after which Appellants filed a Petition for Judicial Review in the Circuit Court for Anne Arundel County, which affirmed the decision of the Board. Before us, in seeking further judicial review of the Board’s decision, the Appellants present the following question for our review:

Did the Circuit Court commit reversible error when it affirmed the decision of the Board of License Commissioners for Anne Arundel County to approve a liquor license for use “in conjunction with” or “on the premises of” a supermarket or chain store in violation of the express prohibitions set forth in Ann. Code of Maryland, Alcoholic Beverages Article, Section 4-205?

¹ Specifically, Mr. Sabatini applied for a Class A license which permits its holder to “sell beer, wine, and liquor for off-premises consumption on Monday through Saturday from 7 a.m. to 2 a.m. the following day.” Md. Code (2016), § 9-2004(a) of the Alcoholic Beverages Article. Mr. Sabatini also applied for “Special Sunday” and “Special Beer/Wine Tasting” licenses. *See* Rules and Regulations of the Board of License Commissioners for Anne Arundel County (Jan. 1, 2017).

² Appellants include 424 Wine & Spirits located in Crofton, Maryland; Waugh Chapel Wine and Spirits located in Gambrills, Maryland; Hops & Vines located in Odenton, Maryland; Crofton Liquors located in Crofton, Maryland; and R & V Liquors located in Crofton, Maryland.

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.

STANDARD OF REVIEW

Section 4-905 of the Alcoholic Beverages Article provides the scope of review in our evaluation of a decision of a local licensing board, 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.

Maryland Code (2016).

“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) (quoting *Blackburn v. Bd. of Liquor License Comm’rs for Baltimore City*, 130 Md. App. 614, 623 (2000)). The Court of Appeals recently, in *Commissioner of Labor and Industry v. Whiting-Turner Contracting Company*, 462 Md. 479 (2019), summarized appellate review of an administrative agency’s decision:

“We review an administrative agency’s decision under the same statutory standards as the [c]ircuit [c]ourt. Therefore, we reevaluate the decision of

the agency, not the decision of the lower court.” *Gigeous v. E. Corr. Inst.*, 363 Md. 481, 495–96, 769 A.2d 912, 921 (2001) (footnote omitted). We, however, “may always determine whether the administrative agency made an error of law. 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.” *Baltimore Lutheran High Sch., v. Employment Sec. Admin.*, 302 Md. 649, 662, 490 A.2d 701, 708 (1985). Substantial evidence is defined as “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion[.]” *Bulluck v. Pelham Wood Apartments*, 283 Md. 505, 512, 390 A.2d 1119, 1123 (1978). Additionally, purely legal questions are reviewed *de novo* with considerable “weight [afforded] to an agency’s experience in interpretation of a statute that it administers[.]” *Schwartz v. Md. Dep’t of Nat. Res.*, 385 Md. 534, 554, 870 A.2d 168, 180 (2005).

Id. at 490.

FACTS AND PROCEDURAL HISTORY

The Board of License Commissioners for Anne Arundel County heard testimony and received evidence regarding a Class A, Beer/Wine Tasting and Sunday license application Nelson Sabatini, owner of A&A Wine & Spirits, LLC (“A&A”), submitted for the purpose of opening and operating a liquor store at a 8,000 square-foot space located at 1415 South Main Chapel Way, Gambrills, Maryland, which he intended to sublease from Wegmans Food Markets, LLC.³ Prior to the hearing, Appellants filed a protest to the license application and offered opposing testimony and evidence at its hearing.

At the hearing, Mr. Sabatini presented two expert witnesses and a petition signed by approximately 684 individuals to demonstrate that the public need would be served by

³ Wegmans leased the space for its grocery store and the planned-liquor store from Greenberg Gibbons Commercial, who in turn, planned to sublease it to Mr. Sabatini if the license issued.

the approval of his application. Dr. Gerald Patnode, Jr., relying on a statistical analysis of the retail market's growth in the area, testified that the demand for liquor stores in the community exceeded the current supply, necessitating the issuance of additional licenses. The protesting-license holders, in turn, offered expert testimony which noted contradictions and inconsistencies in the testimony of Mr. Sabatini's experts, which the Board later found to be inconsequential.⁴

Matt Mittenthal, the Vice President of asset management at Greenberg Gibbons Commercial ("Greenberg"), the corporation that owned and managed Waugh Chapel Towne Centre at the time, also testified regarding the growth in residential developments in the area, thereby increasing the public need for additional liquor stores within the community. He testified further that it had always been the intent of Greenberg that a liquor store be located next to the Wegmans grocery store.

Mr. Sabatini also testified, and was subject to cross examination, stating that he filed the application on behalf of A&A, a limited liability company that he formed in 2013. He testified regarding how he planned to utilize the space to be subleased from Wegmans, explaining that 5,700 square feet would be used for retail space and that the remaining 2,300 square feet would be used for storage, so that he "can take advantage of any large bulk purchasing that might become available that will allow [him] to pass on the best value possible to [his] customers." He noted that there would be no physical interconnection, no

⁴ Appellants, before us, do not contend that the Board erred in determining a public need for the subject license, although the issue was raised before the Circuit Court.

doorway, between Wegmans and A&A; patrons would have to leave one store to enter the other, an assertion further supported by the introduction into evidence of the blueprints of the space.

Mr. Sabatini also stated that, although he spends about three and a half months of the year in Hawaii, and the other months at his home in Anne Arundel County, he planned to remotely manage the liquor store's operations, after the initial set up, as he had successfully done in his role as the Chairman of the Maryland Health Services Cost Review Commission for the past two years.⁵ Mr. Sabatini explained, however, that he would return from Hawaii "at a moment's notice" if the operation of the liquor store necessitated that response. He further testified that any design regarding the build-out of the store's interior, under the terms of the letter of intent he had entered with Wegmans, would require agreement between himself and the grocery store, the construction of which would be funded by Wegmans. Mr. Sabatini informed the Board that consummation of the sublease would follow upon issuance of the license, but when asked what he would do if no lease with Wegmans ensued, he testified that he would seek transfer of the liquor license to a different location.

At the Board hearing, when asked how he developed the idea to open and operate a liquor store, Mr. Sabatini replied:

⁵ Mr. Sabatini had testified that his prior "consulting activity," which required a greater deal of his time and effort, had "diminished significantly." He also noted that he had been serving as the Director of Holistic Industries, a company which has received a license from Maryland to process and distribute medical marijuana, as well as a director of a "Medicare health insurance company, HMO."

Now, I have for some time been looking for a retail enterprise. The idea of a liquor store I found very, very appealing because I have a longstanding interest in fine wines, especially looking for high-quality moderately priced wines. And I wanted to prove that I could manage and run an[] enterprise that would be value to a community as well as provided high-quality courteous service. I had heard that Wegmans was interested in having a liquor store at this location. I talked to someone I know had done some legal work for Wegmans in the past and they suggested that I get in touch with them and talk to them about the possibility. I did so and, you know, we went from there.

Mr. Sabatini explained that he jumped at the opportunity to sublease space from Wegmans, because he has “a great deal of confidence and trust in Wegmans. It is a store with impeccable corporate ethics.” When asked why he had not yet entered a formal lease with Wegmans, he stated that he had not because he “was not going to get a lease and obligate [himself] to a lease when [he] didn’t have a license,” as he was concerned about the cost of a lease “that would not yield anything” in return. In addressing concerns raised about A&A’s relationship with Wegmans, he concluded his testimony by stating that no financial partnership existed between him and Wegmans as he “will be holding all the risk of that business . . . I will be financing it and it will be my store.”

Counsel for the protestants, of consequence to this appeal, averred that Mr. Sabatini’s application ran afoul of Section 4-205(b) of the Alcoholic Beverages Article, which provides:

Issuance prohibited. – A local licensing board may not issue a Class A, Class B, or Class D beer license, beer and wine license, or beer, wine, and liquor license for use in conjunction with or on the premises of:

- (1) a chain store;
- (2) a supermarket; or
- (3) a discount house.

Maryland Code (2016). Pursuant to the language of the statute, counsel for the Appellants posited that it would violate the law for Wegmans to sublease the space to Mr. Sabatini to operate a liquor store, requiring a denial of the application.⁶

The Board, however, in its written memorandum and opinion wherein the license issued,⁷ disagreed with the protestants' argument that the application violated Section 4-

⁶ Counsel for the protestants also argued that the “change of mind rule,” a rule which prohibits an administrative agency from reversing its prior decision, absent a change in fact or law, prohibited the subject application because it had been heard and denied by the Board in 2014. *See Montgomery Cty. v. Supervisor of Assessments of Montgomery Cty.*, 275 Md. 58, 61 (1975).

The Board, however, ultimately rejected this argument, citing several differences between Mr. Sabatini's 2014 application and his 2017 application, stating that the evidence offered in connection with the 2017 application “is in fact statistical based, upon which the Board believes that a sufficient public need has been demonstrated,” unlike the previous application which “relied upon generalities.” This issue, also, is not before us.

⁷ The Board ultimately approved the application and issued the requested license, concluding that Mr. Sabatini's application satisfied the requirements of Section 4-210 of the Alcoholic Beverages Article, Maryland Code (2016), a conclusion which is not a part of the subject matter of this appeal, 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.

(b) *Grounds for denial of license application.* – The local licensing board

(continued . . .)

205(b), because Mr. Sabatini, as the license holder, not Wegmans, would stand to benefit from the profits of A&A's sale of alcoholic beverages:

The Board agrees that Wegmans may benefit by having more people come to the Shopping Center to purchase products sold by Wegmans, but such benefit is not different from the synergy experienced by all retailers in any shopping center. From the testimony provided by the Applicant, the Board finds that the Applicant is the sole beneficiary with regard to the proceeds of sale of alcoholic beverages.

The Applicant, Mr. Sabatini, acknowledges that the premises will be sublet from Wegmans, that the Applicant only has a non-binding Letter of intent to lease the premises and that he anticipates that he will spend a considerable amount of time in Hawaii, as is his current custom. However, he fully believes that the lease will be executed and he will devote as much time as required to oversee construction, stocking and opening of the premises, together with supervision of qualified personnel having managerial responsibilities for the day to day operation of the premises. He denies that the Application and License, if issued, will be owned or operated by Wegmans, and he expects to operate the business himself, and it will be up to him to make the store a success.

(continued . . .)

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.

(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.

The Board concluded that a grocery store could sublease a property interest to a liquor store as long as there was no “physical interconnection” or Wegmans having “control or ownership” of the liquor store:

The Board finds that the concerns expressed about the Application allegedly being in behalf of and for the benefit of Wegmans, do not, as a matter of fact, demonstrate that Wegmans is the real Applicant. The Board finds nothing inherently wrong or in violation of Code provisions from the testimony before the Board. By way of example, there is nothing to prevent the Landlord from leasing, or any other adjacent tenant in the Shopping Center subleasing adjacent space to Wegmans for a package goods store. Likewise, there [is] no reason to preclude Wegmans from doing the same thing, provided that there is no physical interconnection between the adjacent package goods store and Wegmans. What would be a prohibitive act is Wegmans having control or ownership of an adjacent or any other premises licensed for the sale of packaged goods. Mr. Sabitini testified under oath that he will be the owner and will run and supervise the packaged goods store, and spend as much time as it takes to make the store a success and fulfill the public need for a package goods store. Until such time that it can be proven that Wegmans is an owner or controller of an adjacent package goods store, or by subterfuge obtains unusual financial benefit, such as receiving above market rent or other extraordinary financial consideration, or controlling purchasing of products, there is nothing [] inappropriate for Wegmans to sublease a portion of its leased premises to an independently owned and operated packaged goods store. The Board cannot assume that the law will be broken by the otherwise justifiable approval and legal issuance of the License. However, if after issuance it should come to the attention of the Board that the real or *de facto* owner of a license is someone and the entity other than the person to whom the License[] was issued, the Board will not hesitate to rescind the license, after the statutory required notice and opportunity to be heard legal requirements have been fulfilled.

The Appellants filed a petition for judicial review in the Circuit Court for Anne Arundel County, contending that the Board erred in issuing a liquor license to Mr. Sabatini. After hearing arguments, in a written order, Judge Ronald Silkworth, affirmed the Board’s decision, finding there to be “substantial evidence to support the decision and there was no[] abuse of discretion,” noting that:

While this Court shares the Petitioner’s concern that “this case will serve as a blue-print for every Safeway or [] Giant supermarket to become a threat to every ‘mom and pop’ small retail liquor store,” it finds that the Board was correct when it stated that in making the decision whether or not to grant a license, it “cannot assume that the law will be broken by the otherwise justifiable approval and legal issuance of the License.”

Appellants then filed this timely appeal.

DISCUSSION

Appellants before us take issue only with the Board’s conclusion that Section 4-205(b), which prohibits the issuance of a liquor license where it will be used “in conjunction with” or “on the premises” of a grocery store, does not bar the issuance of the liquor license in the instant case. Appellants contend that the Board failed to “make a finding that the license either is or is not for use in conjunction with or on the premises of Wegmans supermarket.” Appellants posit that, although it is lawful for a liquor store to operate adjacent to a grocery store, the Code is violated where a grocery store subleases space to be used as a liquor store, albeit without citation of any authority.

Appellees, on the other hand, aver that the Board expressly rejected the arguments that the license would be used “in conjunction with” or “on the premises of” a “chain store” or “supermarket,” as it found that there was no physical inter-connectedness between Wegmans and the liquor store, and that Mr. Sabatini, as the owner of A&A, was the license’s true applicant, thereby dismissing Appellants’ contention that Wegmans collaborated with Mr. Sabatini to apply for the license to its benefit, thus, circumventing Section 4-205(b)’s prohibition.

Although the Alcoholic Beverages Article does not define the terms “in conjunction with” or “on the premises of” within the context of issuing a liquor license, the Board construed those terms as prohibiting the issuance of a license where the supermarket controls or owns the liquor store or where there is “physical interconnection between the adjacent package foods store” and the supermarket.

To discern the definition of a term or phrase used in a statute, where the General Assembly has not provided an express one, we look to the plain meaning of the words and ascribe to them their ordinary meaning. *Medex v. McCabe*, 372 Md. 28, 37–38 (2002). In seeking the plain and ordinary meaning of a particular term or phrase, it is proper for us to consult a dictionary. *Ali v. CIT Technology Financing Services, Inc.*, 416 Md. 249, 262 (2010) (citing *Chow v. State*, 393 Md. 431, 445 (2006)). We may also look to prior case law to determine how the words and phrases have previously been construed. *Reier v. State Dep’t of Assessments and Taxation*, 397 Md. 2, 27 (2007).

With respect to the phrase “in conjunction with,” the Court of Appeals has held that a restrictive covenant term requiring that land “shall be undeveloped, except for educational facilities *in conjunction with* the Anne Arundel County Board of Education” was satisfied when a private college developed the land with the agreement that the Board of Education be permitted to utilize the facilities built thereon. *SDC 214, LLC v. London Towne Property Owners Ass’n, Inc.*, 395 Md. 424, 426, 429 (2006) (emphasis added). The Court’s application of the term is consistent with the definition provided by the Merriam-Webster dictionary, which defines the idiom as “in combination with” or “together with.” *In conjunction with*, Merriam-Webster, <https://www.merriam->

webster.com/dictionary/in%20conjunction%20with [archived at <https://perma.cc/N7DW-M7NL>].⁸ In the present case, the Board interpreted “in conjunction with” to require collaboration between Wegmans and Mr. Sabatini which was not proven, an interpretation which is consistent with ours.

⁸ In a letter Jeffrey A. Kelly, Director of the Field Enforcement Division, Comptroller of Maryland, sent to the “Boards of License Commissioners for all Maryland Counties, Baltimore City, and City of Annapolis,” dated October 14, 2011, in interpreting the predecessor statute to Section 4-205(b), he stated that:

A grocery chain store with liquor licenses in other states has proposed to conduct operations in Maryland through a management agreement relationship. Under the relationship a nominal third party obtains a license on store premises. The third party then enters into a management agreement with the grocery chain store. Under the management agreement the grocery store would perform duties normally associated with the operation of a liquor store, which may include one or more of the following – providing employees, maintaining account records, buying and selling product, setting prices and controlling inventory, and generally dealing with the public and licensed distributors.

It is the Comptroller’s position that operation of a retail license in any manner by a grocery store chain violates [the predecessor statute to Section 4-205(b)], because a Class A, B, or D license is being used “in conjunction” with a grocery chain store.

A management arrangement between a grocery chain store and a Class A, B, or D license constitutes “for use in conjunction with” and is therefore prohibited by [the predecessor statute of Section 4-205(b)]. In order to comply with this provision, the grocery chain store and the retail licensee must be completely independent, separate, and autonomous.

Although not of controlling nature in the instant case, Mr. Kelly’s interpretation is consistent with our interpretation.

Our cases have utilized the phrase “on the premises of” in a number of contexts, including, primarily, premises liability. In those cases, the term has been used to refer to a physical place, such as an apartment, a nightclub or a store. *See Matthews v. Amberwood Associates Ltd. Partnership, Inc.*, 351 Md. 544 (1998)⁹; *Troxel v. Iguana Cantina, LLC*, 201 Md. App. 476 (2011); *Tennant v. Shoppers Food Warehouse Md. Corp.*, 115 Md. App. 381 (1997). The case law embodiment is consistent with the definition of “premises,” as provided by Black Law’s Dictionary: a “house or building, along with its grounds; esp., the building and land that a shop, restaurant, company, etc. uses <smoking is not allowed on these premises>.” *Premises*, Black’s Law Dictionary (10th ed. 2014). The Board construed the premises of Wegmans and the proposed liquor store as separate entities based upon the lack of physical interconnectedness between the two stores. The Board’s interpretation of “on the premises of” is consistent with our jurisprudence construing the term as well as the dictionary’s definition.

The final issue before us is whether there is substantial evidence to support the Board’s decision to grant the license. There is.

⁹ Appellants rely on *Matthews v. Amberwood Associates Ltd. Partnership, Inc.*, 351 Md. 544 (1998) and *Brooks v. Lewin Realty III, Inc.*, 378 Md. 70 (2003) for the notion that “property remains the premises of an owner notwithstanding the execution of a lease and the right of another to occupy the space.” Accordingly, Appellants posit that a grocery store retains ownership of any premises it leases to another entity, responsibility for which extends beyond that of premises liability. This argument, however, is without merit, because those cases involved the liability of a landlord for injuries sustained on residential property, not whether a sub-landlord involved in a commercial lease is in fact the true owner of the sub-lessee’s business.

Evidence supported the lack of economic interdependence between Wegmans and A&A. Wegmans was not going to control or manage the liquor store. Mr. Sabatini testified that, as the liquor store's sole financier, he would bear all of its financial risks and be the beneficiary of its profits, and, as its owner, would exercise sole control and management of its operations.

Evidence also supported that the only way to enter the liquor store was through a separate door, so that there was no physical interconnection between the two stores. The liquor store retained its own premises.

In short, the decision of the Board of License Commissioners for Anne Arundel County is affirmed.

**JUDGMENT OF THE CIRCUIT COURT
FOR ANNE ARUNDEL COUNTY
AFFIRMED. COSTS TO BE PAID BY
APPELLANTS.**