

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 2178

September Term, 2017

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IN THE MATTER OF  
JANIK PATEL, et al.

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Meredith,  
Arthur,  
Leahy,

JJ.

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Opinion by Meredith, J.

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Filed: August 17, 2020

After the Worcester County Board of Liquor License Commissioners (“Liquor Board”), appellee, granted a license to Kalpesh Patel (“Applicant”), also an appellee, to sell packaged liquor, wine and beer in Pocomoke, Maryland, Janik Patel and Kajal and Ananya, Inc. (collectively “Competing Licensee”), appellant, filed a petition for judicial review in the Circuit Court for Worcester County, complaining that the Liquor Board should not have issued the license to Applicant to sell liquor, wine and beer at the location that was in the same business complex as Competing Licensee’s store. In the circuit court, Competing Licensee asserted: (1) Applicant’s application forms were invalid because the supporting signatures of local citizens were all from people who indicated that they had just met Applicant; (2) the Liquor Board’s decision was not supported by substantial evidence; and (3) even if Applicant had proved public need for sales of liquor, there was inadequate evidence of need for an additional vendor of wine and beer. The circuit court rejected all three arguments made by Competing Licensee and affirmed the ruling of the Liquor Board. This appeal followed.

### **QUESTIONS PRESENTED**

1. Did the Worcester County Board of Liquor License Commissioners commit error in its decision to accept, and subsequently to approve, a liquor license application requiring at least 10 citizens to “**certify**” that the applicant was a suitable person to obtain the license applied for, among other things, when all of the persons so certifying indicated that they “**just met**” the applicant?
2. Did the Worcester County Board of Liquor License Commissioners commit error in its decision to approve the liquor license, when there was no substantial evidence addressing the six factors set forth in Alcoholic Beverages Article, Section 4-210(a)(1)-(6)?

3. Did the Worcester County Board of Liquor License Commissioners commit error in its decision to grant a Class A beer/wine/liquor license when Appellee Kalpesh Patel proffered evidence with respect to public need for liquor only, but not wine or beer?

For the reasons set forth herein, we shall affirm the judgment of the Circuit Court for Worcester County.

### **FACTS AND PROCEDURAL HISTORY**

In the past, Worcester County (“the County”) has conducted retail sales of wine and liquor. Pertinent to this case, in 2007, the County purchased commercial condominium Units 101 and 102 in the Newtowne Condominium, in the Newtowne Plaza, Pocomoke, Maryland, for the Worcester County Department of Liquor Control to conduct retail sales of liquor and wine in factory sealed containers. The County’s store in the Newtowne Plaza traded under the name “Shore Spirits Liquor Store.” It was the first establishment in Newtowne Plaza to sell alcoholic beverages of any kind.

In 2011, a second license was granted to a business in Newtowne Plaza; Lin’s Asian Cuisine was issued a Class “B” beer/wine license that permitted that licensee to sell beer and wine off-premises in factory sealed containers with food. Then, in 2012, Pocomoke Beer & Wine (the predecessor of appellant) opened in the Newtowne Plaza with a Class “A” beer and wine license that permitted only sales of beer and wine for off-premises consumption. In 2015, Ms. Janik Patel (also known as “Janki” Patel; no relation to Applicant) purchased Pocomoke Beer & Wine; she renamed the establishment

“Newtowne Market Beer & Wine,” and continued to conduct business in the Newtowne Plaza under the Class A beer and wine license.

In 2017, the County, wanting to sell the liquor store it was operating in Newtowne Plaza, solicited proposals from prospective purchasers. Applicant’s offer to purchase the real estate and inventory for \$1,175,441 was accepted. Competing Licensee’s brother and father had also submitted an offer to purchase the operation for \$775,640.

After Applicant’s bid was accepted by the County, conditioned upon him obtaining the necessary liquor license, he applied for a Class “A” license that would permit the sale of beer and wine in addition to packaged liquor. At that point in time, that class of license (covering all three products) was the only license offered by Worcester County that permitted the sale of packaged liquor at that location. *See* Maryland Code (2016, 2017 Supp.), Alcoholic Beverages Article (“Alc. Bev.”), § 33-901. That class of license had been recently approved by the General Assembly to facilitate Worcester County’s sale of its County-owned liquor stores.

On May 17, 2017, the Liquor Board held a public hearing on Applicant’s application. Competing Licensee opposed granting Applicant the license.

In support of the application, the Liquor Board heard testimony from Kelly Shannahan, Harold Cook, and Jon Bulkeley, as well as Kalpesh Patel. In opposition to granting Applicant’s application, the Board heard testimony from Janik Patel, Bruce Morrison, Jeremy Mason, Charles D. Hall, Thomas Brown, John Brittingham, and Cynthia Longwell.

Kelly Shannahan is the assistant chief administrative officer for Worcester County and a member of the Worcester County Department of Liquor Control Management Committee. He prepared the request for proposals to bid on the Shore Spirits store, and he was chair of the committee that reviewed the proposals. He had also presented the committee's recommendation that the County accept Applicant's bid to the County Commissioners for approval. Mr. Shannahan explained that Shore Spirits had been profitable. He testified that the unusually large size of the store and its large inventory is unique in the manner in which it serves the needs of the community. He proffered net income data from Fiscal Year 2012 to 2016, which reached a high of \$84,000 in FY '16. He testified that the store had gross sales of over \$1,000,000 for each of the previous two fiscal years, and, based upon this sales record, he was of the opinion that there is a public need and desire for a Class A beer, wine, and liquor license at this location. He pointed out that the two competing licensees in the Newtowne Plaza—Lin's Asian Cuisine and Newtowne Market Beer & Wine—had both coexisted with Shore Spirits for several years. Mr. Shannahan expressed the opinion that the health, safety, and general welfare of the community is best served by this location having a Class A beer, wine, and liquor license, and he supported Applicant's application.

Kalpesh Patel (the Applicant) testified that he has owned and operated a separate liquor store in Delaware since 2011. He has been trained to sell alcoholic beverages and has had no alcohol license violations. All of his employees at his Delaware store have been certified in sales of alcohol. Mr. Patel believes the location of Shore Spirits is

attractive because of other businesses in the area. He believes that all three stores selling alcohol in Newtowne Plaza can continue to survive as they did in the past. Mr. Patel also stated that he plans to focus on packaged liquor and wine, but had to apply for a license that also permits the sale of beer because that is the only license available in Worcester County that would allow him to sell liquor for off-premises consumption. He also testified that he was the person who collected the signatures of local citizens that were required for him to file his application.

Harold Cook is the investigator who conducted due diligence review of Applicant's application for the Liquor Board. Mr. Cook confirmed that, "[a]ccording to Julie Gray of the Delaware Office of the Alcoholic Beverage Control Commissioner, Mr. Patel held a package store license with Sunday sales and a tasting permit since August 3<sup>rd</sup>, 2011, . . . . [and] he has no violations." Mr. Cook reported that Mr. Patel's planned sales and inventory will be sixty-percent liquor, twenty-five-percent wine, and fifteen-percent beer. Mr. Patel agreed with that estimate.

Jon Bulkeley testified about the existence of some alcoholic beverages stores in Ocean City, noting that the Liquor Board had in the past approved licenses for liquor stores close to other liquor stores.

Bruce Morrison, Mayor of Pocomoke, testified in opposition to the application. He stated that he does not see how Newtowne Market Beer & Wine can survive if Shore Spirits's license is transferred to Applicant. Mr. Morrison suggested that, if Newtowne Market Beer & Wine is able to upgrade its license in the future, that would satisfy the

public need for liquor. He stated that, even if Newtowne Market Beer & Wine does not get its license upgraded, Pocomoke's need for liquor will be satisfied by Don's Seafood, a vendor which is 2.2 miles away from Newtowne Plaza. Mr. Morrison acknowledged that he had not opposed Shore Spirits selling liquor and wine at any point during its operation from 2007 to May 2017.

Representing the Competing Licensee, Ms. Janik Patel testified that she owns a Class A beer and wine license for Newtowne Market Beer & Wine, which, like Shore Spirits is located in the Newtowne Plaza. She expressed the view that Newtowne Market Beer & Wine fully satisfies the public need for beer in that plaza, and that, if Applicant is granted a license to sell beer, that would result in economic harm to her business. She intends to apply for a Class A beer, wine, and liquor license when she becomes eligible. She explained that her brother and father (TJ Patel and Yogi Patel) had bid on Shore Spirits as part of a plan to consolidate the two stores in Newtowne Plaza.

Ms. Patel stated that she had worked with Mayor Morrison to lobby the General Assembly to allow private citizens to be licensed to sell liquor in Worcester County.

Counsel for Applicant cross-examined Ms. Janik Patel as follows:

[COUNSEL FOR APPLICANT]: So your testimony is, while Don's [Seafood,] that sells all three[,] could meet the needs of the community for just liquor, more locations are needed for beer and wine; is that your testimony?

[MS. JANIK] PATEL: Yes, I would say one more in the location.

[COUNSEL FOR APPLICANT]: Yours.

[MS. JANIK] PATEL: Hope so.

[COUNSEL FOR APPLICANT]: Thank you. And, therefore, you're not against the Board issuing another Class "A" beer, wine, and liquor license in Pocomoke[;] you're against the Board issuing it to anybody other than you; is that your testimony? . . . Isn't that your testimony?

[MS. JANIK] PATEL: No.

[COUNSEL FOR APPLICANT]: That's not your testimony? So you're okay with them issuing a Class "A" beer, wine, and liquor license to somebody other than you?

[MS. JANIK] PATEL: That's why I'm here, I'm opposing it if it's . . . if they get it, it would not be profitable to me as a business.

[COUNSEL FOR APPLICANT]: But you would be okay, as you testified you are planning on applying for a Class "A" beer, wine, liquor 7-day license for yourself in July; correct?

[MS. JANIK] PATEL: Yes, that's what we intend to do.

[COUNSEL FOR APPLICANT]: Therefore, you believe there is a need for another Class "A" beer, wine, and liquor license in Pocomoke, which will be the basis for why you would request it; correct?

[MS. JANIK] PATEL: Yes.

[COUNSEL FOR APPLICANT]: So you're not against the Board issuing another Class "A" beer, wine, and liquor license in Pocomoke, you're against them issuing it to anybody other than you; isn't that correct?

You have to answer out loud, please.

[MS. JANIK] PATEL: Yes.

Jeremy Mason was the property manager for Newtowne Plaza. He testified that the new hours Applicant proposed for the store would be inconsistent with surrounding businesses. With regard to Applicant personally, Mr. Mason said: "I do not know this gentleman here, so it's nothing, it's certainly nothing personal or anything like that. I'm

simply trying to defend a good business [*i.e.*, Newtowne Market Beer & Wine] that's already been in good standing with our building . . . .”

David Greig owns the Domino's Pizza store in the Newtowne Plaza, and he expressed the view that two conflicting businesses cannot be successful so close to each other. He said that his issue with the new license is the fact that Applicant would be able to sell beer, and that would create a “conflict of interest between the two” businesses.

Charles D. Hall is a real estate agent who participated in the sale of the condominium unit in Newtowne Plaza to Competing Licensee. He testified that he was one of the signatories on the petition in support of Applicant's application for the license, but he said he did not realize at the time that Applicant's license would authorize sales of beer. He said that he spoke with Applicant briefly (“[f]or about a minute or so”) before signing the petition supporting the application. Despite signing Applicant's application, Mr. Hall testified that he no longer believes that there is a public need for a Class A beer, wine, and liquor license at that location.

Thomas Brown testified that he is satisfied with Newtowne Market Beer & Wine and its customer service, particularly with respect to selling different varieties of beer from all around the world. He agreed that he was there “to support [Competing Licensee's] opposition of this license.”

John Brittingham testified that he liked the customer service at Newtowne Market Beer & Wine, and he would like it if that vendor could also sell liquor.

Cynthia Longwell testified that she had worked for the County at Shore Spirits and that they were profitable because they sold different items than Newtowne Market Beer & Wine. But Ms. Longwell expressed the opinion that both stores cannot coexist if Applicant can also sell beer at Newtowne Plaza. She also indicated that, when she worked at the County's store, the wine did not sell well.

At the conclusion of the testimony, Chairman Esham asked the following question of Competing Licensee's counsel:

CHAIRMAN ESHAM: . . . The only question that I had, and I'm not sure I should ask it, what she's testified to, if I heard you correctly, she's opposed to this license but she wants to come get one for herself, but if she's turned down she thinks that the need is being met. Do you really mean that?

[COUNSEL FOR COMPETING LICENSEE]: Yes.

The Liquor Board reconvened on June 21, 2017, to make its findings. Each of the three Board members explained their reasons for approving the license.

Commissioner Pusey stated:

First of all, I would like to say that this is a very difficult and confounding situation with this application for the Class "A" license. Primarily because the county has the change in the law, which has resulted in the distribution of liquor now being available through the private sector . . .

The Board of License Commissioners does not provide a liquor-only license. The new law eliminated the suspension system, allows for the purchase and transfer of the inventory of a county dispensary, and in some cases existing stores in advance of other retailers who are also hoping to add liquor to their inventory but must wait until July 1, 2017. . . .

There has been significant testimony by at least seven people, including Mayor Morrison, that public accommodation was currently being

met by Don's Seafood located 2.2 miles away. There were others in the audience also who came in opposition to the application.

It may be that the close proximity of the Somerset County store [*i.e.*, Don's Seafood] influences the need for this community.

However, according to past sales volume, it also appears that in fact there is a need and/or a desire for a liquor store in that community. . . . [T]he Worcester County Liquor Mart, Newtown[e] Market Beer & Wine store, and Lin's Asian Cuisine, are all located in close proximity of a small shopping center and have successfully coexisted for five to six years.

\* \* \*

As I stated, there is not a license which allows for the sale of liquor only.

Even though consideration is given to the impact [on] the existing licensees, and the density of stores in a community offering beer, wine and spirits, competition alone cannot be the sole consideration for denying an application.

\* \* \*

Potential commonality or uniqueness of services and products[:] this applicant will offer liquor, which will be unique to the immediate area with the closure of the county liquor mart. . . .

Impact on health, safety, and welfare[:] there was significant concern expressed by several life-long members of the community that favored the existing private business owner versus a new owner who is not known to the community.

The only potential negative impact of this business on the welfare of the community that I could discern was the hours of operation. . . . Limiting the hours of operation would alleviate this concern; however, this Board does not have the authority to limit hours of operation.

Grounds for denial, not necessary to accommodate the public[:] it appears that based on the above opinion there is a need for public accommodation.

Applicant not fit to receive a license[:] Based on the applicant's experience with the sale of beer, wine, and liquor with the ownership of other locations in Delaware, and he has no reported violations, there is no reason to deny based on being unfit.

Applicant has made a material false statement in the application[:] Not to my knowledge.

Applicant has acted fraudulently in connection with the application[:] I know of none.

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[:]

I just want to state that the time of operation should be modified in order to be consistent with community practices and the past operation.

Commissioner Nichols made the following statement:

Well, I certainly will keep my comments brief, and will also state that the state law has caused this conundrum. But I also feel that, you know, with our facts to consider, that [the Applicant] has shown the need. There's been a dispensary there since 1970, in that general area, and since 2007 in that location.

Chairman Esham made the following statement:

I will concur with my cohorts. The applicant's application seems to be in order . . . .

Based on the fact that there's been a store in the Pocomoke area, an alcoholic beverage dispensary since some time in the mid '70's, and in this particular shopping center since 2007, I believe that . . . [the Applicant has] shown a public need.

And I should also add that when the Newtown[e Market Beer & Wine] people went to this location, there was already an alcoholic beverage store there that sold beer and wine.

And I don't believe it has any negative impact on the neighborhood since it's been in that particular neighborhood since 2007. I think that the

need was shown clearly when the sales in the last couple of years exceeded a million dollars. I also believe that [Ms. Janik Patel] showed that [she] believed there was a public need because [she] wanted us to turn down this application so that [she] could come in and ask for the same Class “A” license in July.

It’s true that, if we grant this license, Class “A”, they will be selling beer, and it may have a negative effect on Newtown[e] Station. I don’t believe that’s enough of an effect for us to turn this application down.

So I believe the issuance of the license is necessary to accommodate the public. The State and the County put us in this position, and we’re just here to see it through.

The Board voted 3-0 in favor of granting Applicant’s application for a Class A beer, wine, and liquor license.

Competing Licensee filed a petition for judicial review in the Circuit Court for Worcester County. After the circuit court affirmed the decision of the Liquor Board, this appeal by Competing Licensee followed. *See* Alc. Bev. § 4-908(a) (appeal to Court of Special Appeals authorized).

### STANDARD OF REVIEW

The standard of review for an appeal from a local liquor licensing board is governed by Alc. Bev. § 4-905, which states:

(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.

(Emphasis added.)

Our review of a local liquor board’s decision is similar to the review of most other agency decisions. *Baltimore County Licensed Beverage Ass’n, Inc. v. Kwon*, 135 Md. App. 178, 186 (2000). “If the Board’s decision is supported by substantial evidence and it committed no error of law, we must affirm that decision.” *Id.* at 186-87. “Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” *Id.* at 194 (citations and internal quotation marks omitted). We review the Board’s decision “in the light most favorable to the agency since its decision is prima facie correct and carries with it the presumption of validity.” *Dakrish, LLC v. Raich*, 209 Md. App. 119, 142 (2012) (citing *Bd. of License Comm’rs v. Toye*, 354 Md. 116, 125 (1999)). “Moreover, the action of the local licensing board is presumed to be proper and to serve in the best interest of the public. The burden of proof is on the licensee to show that the board’s decision was arbitrary, fraudulent, unsupported by substantial evidence, or illegal.” *Id.* (citations omitted).

## **DISCUSSION**

### **I – Signatures on application**

Focusing on the testimony of Mr. Hall (who recanted his support for Applicant’s application despite having signed the application as a supporter), Competing Licensee asserts that the residents’ signatures on Applicant’s application are legally deficient because all of the signatories indicated that they had “just met” Kalpesh Patel. Competing Licensee asserts, therefore, none of the signatories could have been sufficiently acquainted with Applicant to provide the requisite supporting statements.

Alc. Bev. § 4-110 sets out the requirements for supporting residents’ signatures on a liquor license application as follows:

The application shall also include a petition of support signed by at least 10 residents who are owners of real estate and registered voters of the precinct in which the business is to be conducted stating:

(1) the length of time each of the residents has been acquainted with the applicant or, if the applicant is a corporation, acquainted with the individuals making the application;

(2) that they have examined the application, have good reason to believe that the statements contained in the application are true, and in their judgment the applicant is a suitable person to obtain the license; and

(3) that they are familiar with the premises on which the proposed business is to be conducted and that they believe the premises are suitable for the conduct of business as a retail dealer.

Worcester County has adopted a standard form application for an alcoholic beverages license with the following language printed immediately above the spaces provided for residents’ signatures on the petition of support:

We the undersigned reputable citizens (real estate owners, registered voters with Worcester County and reside within the tax district in which the business covered by the foregoing application is to be conducted) certify that each of us has been personally acquainted with the applicant for the length of time indicated after our respective names; that we have examined the application of the applicant and that we have good reason to believe that all of the statements contained in said application are true, and that we are familiar with the premises upon which the proposed business is to be conducted and we believe such premises are suitable for the conduct of the business of retail dealer in alcoholic beverages, and that we are of the opinion that the applicant is a suitable person to obtain the license applied for[.]

Anticipating that persons who sign the form may have just met the applicant who requests the signature, the Worcester County form specifies: “Length of time acquainted with applicant(s). If not acquainted prior to application filing, indicate ‘Just Met.’”

Competing Licensee urged the Liquor Board to rule that the fact that the residents who signed Applicant’s application indicated that they had “Just Met” Kalpesh Patel rendered the application “legally deficient.” The Liquor Board did not accept that argument. And, as noted above, “the action of the local licensing board is presumed to be proper and to serve in the best interest of the public.” *Dakrish*, 209 Md. App. at 145.

Even if Mr. Hall’s signature is discounted, the application contained a sufficient number of other signers, and none of the other signers appeared at the hearing or otherwise attempted to disavow the effect of their signatures.

Competing Licensee argues that the Liquor Board should have concluded that the application did not contain the requisite signatures of residents who had good reason to conclude the Applicant is a “suitable person” to obtain the license he was seeking. And Competing Licensee urges us to hold that the application did not satisfy Alc. Bev. § 4-

110(2). But Competing Licensee cites no case or regulation that establishes a minimum period of time a signer must have been “acquainted” with the individual making the application.

In view of the lack of any objective legal standard, and in light of the fact that Worcester County’s standard form permits signatures to be made by persons who have “just met” the applicant, we conclude that the Competing Licensee has not carried the burden to show that the Liquor Board’s action in declining to reject Applicant’s application “was arbitrary, fraudulent, unsupported by substantial evidence, or illegal.” *Dakrish*, 209 Md. App. at 145.

## **II – Substantial evidence of public need**

Competing Licensee asserts that the Liquor Board did not adequately consider the six factors a local board is to consider before deciding to grant a license, as set forth in Alc. Bev. § 4-210(a):

- (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 factor that the local licensing board considers necessary.

Focusing on Alc. Bev. § 4-210(a)(1), Competing Licensee asserts: “In this case, there is no substantial evidence of public need or desire. In fact, there is absolutely no evidence that the license is necessary to accommodate the public.” Competing Licensee emphasizes that there was testimony of several witnesses who expressed the opinion that there was no need for an additional seller of liquor because another vendor of packaged liquor, Don’s Seafood, was located just a little over two miles away. But the evidence that there was an existing seller of liquor two miles away does not lead us to conclude that the Liquor Board’s finding of public need to issue this license was not supported by substantial evidence.

There was evidence before the Liquor Board that Shore Spirits had sold packaged liquor and wine in the precise location for which Applicant was seeking a license. The evidence indicated that Shore Spirits had been profitable for the past five years, and had grossed over \$1,000,000 in sales in each of the two most recent years. This was certainly substantial evidence to support the Board’s conclusion that there was a “public need and desire for the license.” Moreover, as members of the Liquor Board noted, there had been three businesses operating in the Newtowne Plaza that have been able to sell alcoholic beverages and coexist since at least 2015 without any complaints from any owner. There was no testimony that raised any concerns regarding crime or traffic problems related to the liquor sales at that location.

The existence of testimony in the record contesting the need does not alter our conclusion. We do not reweigh the evidence, and do not substitute our view of the

evidence for the conclusions of the local board. As noted above, substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. It is clear to us that the evidence regarding past successful operations of Shore Spirits meets this standard and provides substantial evidence to support the Liquor Board's decision to approve the Applicant's application.

### **III – Evidence as to public need for beer**

Competing Licensee contends that, in addition to offering evidence of the public need for liquor sales at Newtowne Plaza, Applicant also bore the burden of proving that there was an unmet need to provide beer at that location, and Applicant failed to meet that burden. Competing Licensee states: "Because the prior liquor store did not sell beer, it is undisputed that there is no evidence of public need or desire for beer." And there was testimony from a prior employee of Shore Spirits who said that that liquor store had "reduced their wine inventory because it was not selling."

But the Liquor Board rejected the argument that there needed to be independent evidence of public need for beer and wine, pointing out multiple times that the license authorizing sales of beer and wine in addition to sales of liquor was the only license available at that point in time that could be issued to permit continued sales of liquor at the location of Shore Spirits.

Possible grounds for denial of a license application are listed in Alc. Bev. § 4-210(b) as follows:

- (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.

If the local board does not find any of these grounds to exist—and here, the Liquor Board did not find any of these grounds to exist—§ 4-210(c) states that 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.” (Emphasis added.)

Competing Licensee concedes that there is “no relevant case law” stating that an applicant must demonstrate a need for *each type* of alcoholic beverage that may be sold under a license. And the plain language of Alc. Bev. § 4-210 does not support her contention that a local licensing board is subject to that constraint. Section 4-210(a)(1) refers to “public need and desire for the license,” not “for each class of products that might be sold pursuant the license.” Here, the Liquor Board did not find any of the reasons enumerated in § 4-210(b) for denying a license to exist, and it did not find any other reasons to consider the application deficient.

With respect to the public need for another license permitting sales of beer or wine, the Liquor Board pointed out that there was no other license it could issue that would have covered only liquor. So the only way for the Board to meet the need for an additional vendor of liquor was to grant Applicant's application that covered beer and wine as well as liquor.

In our view, the evidence of public need for continuing liquor sales in Newtowne Plaza satisfied the requirement that there be substantial evidence to support issuance of the license Applicant applied for even in the absence of a separate showing of need for additional beer sellers or additional wine vendors. There was evidence showing that Applicant would be the only store within 2.2 miles that had the ability to sell packaged liquor, and therefore, granting the Application would provide convenience for members of the public in that vicinity. Indeed, there was testimony from some of opponents to the application recognizing that the ability to purchase liquor in the Newtowne Plaza was convenient.

Most of the witnesses who testified in opposition to the application were primarily concerned about the impact a new competitor would have upon Competing Licensee. The Liquor Board recognized that there could be some negative impact, particularly with respect to beer sales. Commissioner Pusey observed: "Even though consideration is given to the impact [on] the existing licensees, and the density of stores in a community offering beer, wine and spirits, competition alone cannot be the sole consideration for denying an application." And Chairman Esham similarly observed: "It's true that, if we

grant this license, Class ‘A’, they will be selling beer, and it may have a negative effect on Newtowne Station. I don’t believe that’s enough of an effect for us to turn this application down.”

Both of these comments are in accord with this Court’s interpretation of the pertinent factor in Alc. Bev. § 4-210(a)(3), *i.e.*, “the potential effect on existing license holders of the license for which application is made.” In *Kwon*, 135 Md. App. at 188, we stated that protecting existing licensees from competition cannot be the primary basis of a liquor board’s decision:

[I]t appears, from the transcript of the hearing, that the Board employed a standard that focused, at least in part, on the effect the transfer would have on other licensees who are competitors of the Kwons. Although the proper exercise of **the Board’s power** may produce a secondary effect of limiting economic competition, its power **must be used for the primary purpose of protecting the public and promoting general welfare, and not to benefit and protect individual license holders**. Accordingly, **the Board may not subvert the “necessity” standard to use it to shield license holders from increased competition**.

(Emphasis added; citations omitted.)

Because the Liquor Board clearly gave consideration to the potential effect upon existing licensees, we conclude that the Board did not err in concluding that it was in the public interest to grant Applicant’s application even though there might be some negative impact upon existing licensees who sell beer and wine. And, because granting the license for sale of all three products (beer, wine and liquor) was the only option available to the Liquor Board for meeting the public need for a vendor of liquor in Pocomoke, it was not error for the Board to grant Applicant’s application.

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