STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
25 Commerce Drive Cranford, N.J. 07016

BULLETIN 2220 March 23, 1976

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ITEM

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BULLETIN 2220

March 23, 1976

1. APPELLATE DECISIONS - A'S INN, INC. v. SOUTH BELMAR.

A's Inn, Inc.	)	
Appellant,	)	On Appeal
v.	)	CONCLUSIONS and ORDER
Borough Council of the Borough of South Belmar,	)	
Respondent.	)	

Christiansen, Jube & Keegan, Esqs., by John P. Keegan, Esq., Attorneys for Appellant
Klitzman, Klitzman & Gallagher, Esqs., by William B. Gallagher, Esq., Attorneys for Respondent.

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Appellant appeals from the action of respondent Borough Council of the Borough of South Belmar (hereinafter Council) which, on June 24, 1975, denied appellant's application for renewal of its Plenary Retail Consumption License C-5, for premises 415 - 417 18th Avenue, South Belmar.

Appellant contends that the action of the Council was erroneous in that the Council determined appellant operated its premises as a nuisance, without sufficient evidence in support thereof. The Council denied appellant's contention and averred that the evidence before it fully buttressed its conclusion.

By order of the Director of this Division, appellant's 1974-75 license was extended, pending the determination of this appeal.

A de novo appeal was heard in this Division pursuant to Rule 6 of State Regulation No. 15. Additionally, a transcript of the proceedings before the Council was received into evidence, pursuant to Rule 8 of State Regulation No. 15. Full opportunity was afforded the parties to introduce evidence and to cross-examine witnesses.

The transcript of the proceedings before the Council, upon which the action of the Council was based, reveals that testimony was elicited of ten neighbors who reside in close proximity to appellant's premises. In summary, their complaints of

conditions attributed to the appellant were concerned with excessive noise of young patrons after midnight who committed acts of vandalism and prevented sleep by haranguing at each other; debris, including broken bottles; destruction of property, urination on lawns, frequent necessity of calling and complaining to police; improper parking; obscene language and, in general, conditions which have made their lives unbearable.

On behalf of appellant, six patrons testified that appellant managed the premises properly. The difficulties ascribed to it resulted from young persons, some of whom were patrons, who conducted themselves improperly outside the premises, which conduct was not the responsibility of appellant: One of the witnesses who testified to this effect was a member of the New Jersey State Police, who commended appellant's concern for the law and efforts made to obtain approbation of the community.

At the hearing in this Division, a copy of a petition signed by fifty-eight residents living in close proximity to appellant's premises which had been presented to the Council urging the correction of the complained-of situation was admitted into evidence. Further testimony was elicited from twenty-eight witnesses, most of whom had not testified before the Council. Photographs of the area, interior and exterior of appellant's premises together with a map of the municipality were admitted into evidence.

South Belmar Mayor Clarence G. Reed, testified that he had visited appellant's premises in 1974 on two occasions relative to noise complaints. Reference by the Mayor (as well as every witness who gave evidence) to the appellant was not to the appellant corporation but rather to Armand Grez, Jr., who was identified at the outset of the hearing as the owner of half of the capital stock and general manager of appellant corporation. At the conclusion of the 1974 meetings, Grez promised that the noise situation would be abated and, toward that end, Grez had an additional doorway erected as a sound barrier.

Further conferences with Grez which occurred in January and May of 1975 with Police Chief White and Police Commissioner Fitzgibbons present, resulted in the admonition to Grez that, if the noice and other problems which were on the increase, were not immediately corrected, the license would probably not be renewed.

Following the denial of renewal of appellant's license, when the premises were open during the Labor Day weekend, there were eighty arrests of persons in the Borough, most of whom were apprehended in the area near to appellant's premises.

In May of 1975, after numerous complaints, a police task force was convened for the purpose of quelling the constant disturbances caused by appellant's patrons; and, on one weekend, more than one hundred arrests followed. When two hundred or more young people exit appellant's premises at two o'clock in the morning, the result is bedlam. On one evening alone, there were between thirty-five and forty traffic violations.

The task force was employed again during the Labor Day weekend because the noise situation was "still terrible"; there was a problem with urination in public, traffic congestion and other disturbances during the early morning hours, which resulted in frequent citizen complaints. The Mayor revealed that he had spoken to hundreds of his fellow citizens, and their outrage demanded the closure of appellant's premises.

A copy of a report of the Police Department which reflects the number and character of arrests of persons in the vicinity of appellant's premises from May 10, 1975 to July 31, 1975, indicate a total of 159, of which half consisted of charges against persons for consuming alcoholic beverages in public, in violation of the local ordinance. A report of the Chief of Police to the Commissioner of Police noted that the specific arrests in the vicinity of appellant's premises in the month of August 1975, totalled forty-six. And finally, a report reflecting the arrests during the first week of September 1975, indicated that there were thirteen in that period. Hence, there were two hundred and eighteen arrests in the vicinity of appellant's premises in a four month period.

Police Commissioner John J. Fitzgibbons testified that he met with the Mayor and Armand Grez on three occasions, beginning in the early part of the year. At those meetings Grez was noticed concerning the noise and loud music complaints by elderly neighbors. At each successive meeting, the Mayor, Chief of Police, who was also present, and the Commissioner became more and more direct in their criticism, to which Grez was always conciliatory and promised the situations would be corrected.

Finally, at the third meeting, the Commissioner admonished Grez that "We told him that we were not going to take this any longer - - he would have to stop the noise...profane language ... and urinating." The Mayor warned Grez that if the problems were not corrected it "would be rough for Grez to get a renewal of the license." It was definitely made clear to Grez that if the conditions were not corrected, the license would not be renewed.

Commissioner Fitzgibbons, who is also a member of the Council, related that, in discussions with the Mayor and his colleagues, it was apparent to all of them that appellant, by permitting the continued live entertainment, attracted a young and boisterous crowd. Thus, immediately before voting on the issue of appellant's renewal, Grez was asked if he would discontinue live entertainment; he replied in the negative. Sensing no solution other than denial of renewal, the Council voted unanimously to deny the application for renewal.

Police Chief J. Allen White testified that, during the past year he met with Grez four or five times in an effort to have the noise and other incidents reduced; but despite Grez's assurances that the problems would be solved, they were not. The parking problems would remain constant in that appellant had too limited a parking area. At the final meeting between Grez and

the chief, Grez was noticed that he would have a "problem" with the license renewal if the situations described to him were not corrected. The noise, litter, parking, accidents, and general problems were such that the neighbors repeatedly protested the continued operation of appellant's premises. He admitted that there were no complaints against appellant itself and no disciplinary proceedings were brought against appellant. But he attributed that to proper management of the interior of the premises, whereas the problems arose from patrons before or after leaving the establishment.

Four special policemen of the Borough, Bradford C. Behrman, Jr., Albert Hazel, Luigi Manditto and Charles Pinto, testified concerning the difficulties occasioned by appellant's premises in their municipality. They all agreed that the keeping of two of their number outside the appellant's premises on busy evenings did much to reduce the difficulties caused by the patrons. Their testimony was corroborative in complimenting Grez for paying the two special policemen and by being most cooperative with the police in an endeavor to have noise volume reduced.

Behrman declared that appellant's business has tripled; Hazel characterized the week-end business as "you can't hardly move around"; Manditto has made sixty to seventy arrests in the area since Memorial Day, hence, it would take at least four special police officers to keep the area policed during week-ends; but Pinto estimated that no specific number of guards would assure the elimination of the problems.

Appellant produced six of the hundreds of persons arrested, Steinmetz, Mitchell, Doyle, Morrison, Seitz and Campbell. All but one had been a patron of appellant's premises and most of them had been convicted in the Municipal Court on charges of public urination. Each testified, however, that they did not feel that appellant had been responsible for their actions. They believed that there were adequate restroom facilities within appellant's premises; they were prohibited from taking out opened containers of alcoholic beverages; and some of them had been arrested by the special policemen assigned to appellant's premises.

Seven neighbors whose homes were within the immediate area of appellant's premises testified concerning conditions caused by that establishment. Each complained bitterly concerning the noise, which interrupted their sleep. Edward Robinson, whose property boundary touches upon appellant's and who is an engineer, testified that he took sound readings in support of his belief that the sound is unbearable. Mary and Daniel Franklin described the exodus, from appellant's premises at 1:30 a.m., of two hundred patrons. Eleanor and William Chenoweth described their continual loss of sleep. Charles Kostura characterized the difference between appellant's operation of the premises and that of the prior owner, Harmony III, as being the difference between fifty to seventy-five patrons and now over two hundred. He denied that the hiring of the guards has significantly reduced the problems.

James R. Murray gave graphic description of the problems he and his family have faced. He resides about one block or ten houses away from appellant's premises. He described the patrons' departure as a series of door-slammings of their cars; shouting, from one to another; constant conversations among the departees; parking their cars in such manner as to obstruct driveways and fire hydrants; urinations; deposits of excrement on lawns; malicious damage to property; constant litter; and traffic excesses all during the late evening and early morning hours.

From the testimony of James T. Sullivan, Peter E. Hartung, Donna L. Marino, Robert Titmas, Russ Hurden and James F. Murray, the latter two being police officers in other areas, it is uncontroverted that appellant manages the interior of his premises properly and in a lawful manner.

Appellant's principal stockholder and manager, Armand Grez, Jr., testified that, in the early part of 1973 he purchased the subject premises from people who had begun to convert the premises from a neighborhood tavern to a cocktail lounge with live entertainment. Upon his purchase, he undertook a complete renovation project, increasing the number of potential patrons and hiring popular musical groups for entertainment.

Upon being apprised of the complaints of neighbors respecting noise emanating from his establishment, he immediately added an additional entrance as a sound barrier. Upon further complaints, he engaged the services of a sound engineering firm to explore methods of correcting the sound problem.

Stephen M. Ober, a sound engineer attached to Louis S. Goodfriend and Associates, testified that, on July 11, 1975, at the request of Grez, he made a sound analysis, using the most sophisticated equipment. His report containing his tests was introduced into evidence. He determined that the interior music is generally inaudible on the exterior of the building; however, at three locations at the rear of the building, sound is audible. He was advised of some prior complaints which, he believed, had been thereafter corrected by the disconnection of an attic fan. He made several suggestions as to methods by which the sound at the rear of the building could be muffled.

Grez testified that, following the receipt of the report of Ober, he had the chinks in the rear door filled and the door itself soundproofed. Relating the conduct of the patrons on the outside of his establishment, he insisted that, by signs and other warnings, the removal of alcoholic beverages from the premises is forbidden and the special police he has hired were instructed to arrest any patrons who violated the mandate. It was his belief that he has done everything that he could do to eliminate the criticisms against his establishment, and is willing to do anything further to eradicate the problem, short of discontinuing live music.

From the totality of the testimony it was abundantly clear that although some of the difficulties were caused by young persons who were not patrons of these premises, few if any, of the problems set forth hereinabove existed prior to the enlargement of appellant's business. It was further clear, from an examination of the police reports, that the average age of young people in difficulties with the law was twenty-two years. Of the fifty-nine persons arrested since August 1, 1975, four were under twenty years of age and four were over twenty-four years old.

The central issue herein is whether the Council acted erroneously in denying renewal of appellant's license. A corollary issue is also presented: Is the licensee responsible for the acts of his patrons when they are beyond the confines of his licensed premises.

From the testimony of the long parade of witnesses, it is readily apparent that the licensed premises, a typical neighborhood tavern, has been located on this site for many years. Less than five years ago, new owners attempted to convert the business to one that would cater to a younger patronage; this attempt was not wholly successful; in due course, its then-owner conveyed its interest to appellant. About that time the minimum drinking age in New Jersey was reduced to age eighteen.

From photographs introduced into evidence, appellant's premises consists of a barn-like structure surrounded by residences, and is located on the principal thoroughfare of this geographically tiny community. By the adroit use of amplified music, the premises soon attracted large gatherings of young people, often numbering two hundred. Off-street parking was practically non-existent.

The music coming from the building began disturbing the neighbors, and others became annoyed by the great number of cars of patrons. Hence, complaints began coming to the attention of the local officials, which generated the several conversations between the Mayor or the chief of police and Grez.

It is uncontroverted that Grez did take some steps to quell public animus; he erected a sound barrier at the front door, insulated against the escape of some sound at other points in the building, hired a "clean-up" man to police the area, retained two special policemen in an effort to reduce the number of police incidents.

Nonetheless, whether his business increased during those efforts, or for other reasons unclear, the indignation of the citizens was not abated, nor did the public incidents leading to arrests diminish. In consequence thereof, and in recognition of the public sentiment against continuance of what the officials considered a nuisance, appellant's license was not renewed.

> "It is firmly established that the grant or denial of an alcoholic beverage license rests in

the sound discretion of the Board in the first instance and, in order to prevail on this appeal, the appellant must show unreasonable action on the part of the Board, constituting a clear abuse of such discretion."

Malone v. Union, Bulletin 2187, Item 3; Rajah Liquors v. Div. of Alcoholic Bev. Control, 33 N.J. Super. 598 (App. Div. 1955); Blanck v. Magnolia, 38 N.J. 484 (1962).

These principles were succinctly applied in the matter of Kaplan et al v. Englewood, Bulletin 1745, Item 1 (which was affirmed by the Superior Court in an unreported opinion cited in Bulletin 1790, Item 1) wherein the Director quoted Judge Conford from an earlier decision, as follows:

"...in the area of licensing, as distinguished from disciplinary violation proceedings, the determinative consideration is the public interest in the creation or continuance of the licensed operation, not the fault or merit of the licensee. In the matter of licensing the responsibility of a local authority is 'high', its discretion 'wide', and its guide 'the public interest'. Lubliner v. Bd. of Alcoholic Bev. Con., Paterson, 33 N.J. 428, 446 (1960). 'Whether an original license should issue or a license be renewed rests in the sound discretion of the issuing authority.*** The common interest of the general public should be the guide post in the issuing and renewal of licenses.' Zicherman v. Driscoll, supra (133 N.J.L. at p.588). And while, assuredly, the nature of the application is one for renewal rather than original issuance is a proper factor for consideration, yet in principle, 'A renewal license is in the same category as an original license,' Id., at p.587.

"Thus, here, entirely apart, from considerations as to the licensee's culpability for the deleterious conditions which surrounded this establishment, the broad question necessarily posed before the local board on the application was whether, in the light of all the surrounding circumstances and conditions, it was good for Bayonne and the neighborhood involved that a tavern continue to exist at this particular location at all. There were eleven or twelve other taverns within a radius of a few blocks (150 in the city as a whole). The evidence makes it clear that this is a fairly crowded area of mixed residential and commercial character, of a probably moderate or low income level. There could hardly be any quarrel with an objective judgment that one less tavern, even if well conducted, would probably serve the public interest of the community at large and the immediate neighborhood.

> That observation is a fortiori in the light of the peculiar magnetism of this establishment for drunkards, as reflected by this record, and the concomitant disorder and disturbance of public morality consequent thereupon. The conclusion of the local body that there flourished here a nuisance was, as noted, concurred in by the Director."

Applying these principles to the instant matter, it is abundantly clear that the nuisance complained of resulted solely from the attractions offered by appellant. Its appeal is bottomed upon the erroneous premise that the Council must renew the license so long as the infractions did not occur within the licensed premises. Appellant further argues that, since several hundred arrests could not be specifically related to its premises or patrons, those incidents should not be counted in the consideration of the application for renewal of the license. Testimony indicating the relative quiet prior to appellant's enlargement of its business and the gradual increase of arrests and other annoyances paralleling the spillage of two hundred or more young patrons from appellant's premises is persuasive evidence of the relationship of appellant to the growing nuisance.

In an extensive memorandum, appellant advances the argument that it was not noticed prior to the hearing on renewal of license that such license might not be renewed; hence, the Council acted in error in failing to renew the license. Appellant cites Drozdowski v. Sayreville, 133 N.J.L. 536 (1946) in support of such argument.

Such argument is totally frivolous; Drozdowski does not hold for that proposition; it concludes that a license may not be revoked without a full and impartial hearing. The instant license was not "revoked". Its annual term coming to end, the Council conducted a hearing on the renewal of license, and held a plenary hearing. There was no suggestion that its motives were improper, or that a hearing should not have been held; only that appellant should have been forewarned that its license was in jeopardy.

Contrary to the conclusions drawn by appellant, the several conferences called by the municipal officials with the owner of appellant corporation, gave ample testimony to the ongoing concern with the licensed premises. Hence, I find that the appellant was not abruptly summoned to face a termination of its licensed privilege.

Appellant cites Benedetti v. Trenton, 35 N.J. Super. 30 (App. Div. 1955) in support of the assertion that only a preponderance of the believable evidence is required to support a charge against a licensee. To that there can be no quarrel except for the conclusion also advanced by appellant that there was insufficient legal evidence to ground the Council's action. I find that the evidence is more than ample. Appellant mistakes some insubstantial differences in the observations or reactions of witnesses as proof of lack of evidence. For

example, some of the witnesses were not disturbed by the exterior music which they had heard. Others were continuously annoyed and sought police assistance in having the noise level reduced. Appellant concludes that because of the lack of annoyance to some, therefore, the noise was not disturbing to others.

Similarly, as no more than a dozen of so miscreants could be directly identified with appellant's premises at the time of their arrest, appellant concludes that the almost two hundred arrested nearby could not have been attracted to its premises.

By a preponderance of the evidence, indeed, by substantial evidence, it has been clearly established that the conditions which brought about the rage of the residents was caused primarily by the appellant. Visits to and conferences with Grez continually alerted him to the problems, some of which he sought to alleviate. Nonetheless, it has been repeatedly held that no licensed premises need be tolerated when it constitutes a nuisance to the residents of the municipality in which it is located. I find that appellant's premises were operated in such manner as to constitute a nuisance. Appellant has thus created and encouraged a local nuisance in consequence of which it should properly be denied the privilege of dispensing alcoholic beverage. Cf. R.O.P.E. Inc., v. Fort Lee, Bulletin 1966, Item 1; C & S Tavern, Inc. v. Newark, Bulletin 1973, Item 2; Edelson v. Paterson, Bulletin 1999, Item 4; Gauntt v. Paulsboro, Bulletin 2187, Item 2; Alice G. Townsend, Inc. v. Orange, Bulletin 2186, Item 3; Greenstein v. Elizabeth, Bulletin 2135, Item 4 (affd. Superior Ct.); Ocean Club Corporation v. Jersey City, Bulletin 2122, Item 2 (affd. Superior Ct.).

The Director's function on appeal is not to substitute his personal judgment for that of the local issuing authority, but merely to determine whether reasonable cause exists for its opinion and, if so, to affirm, irrespective of his own personal view. Fanwood v. Rocco, 59 N.J. Super. 306 (App. Div. 1960).

In evaluating the totality of the evidence presented herein and the argument of counsel, I find that the action of the Council was neither unreasonable nor arbitrary. To the contrary, the many opportunities offered by the Council to appellant to share in search of remedy to the problems caused by appellant, including the last minute reprieve from loss of license by the inquiry concerning appellant's willingness to discontinue "live music", and its rejection, is indicative of the reasonableness of the Council.

Applying the test as set forth in Lyons Farms Tavern, Inc. v. Newark, 55 N.J. 292 (1970), i.e., Did the decision of the Council represent a reasonable exercise of discretion on the basis of the evidence presented? It is quite apparent that the response is in the affirmative.

I find that appellant has failed to meet the burden imposed upon it by Rule 6 of State Regulation No. 15 of showing

that the action of the respondent was erroneous and should be reversed.

It is, therefore, recommended that the action of the Council be affirmed, and the appeal be dismissed. It is, further, recommended that the Director's order of June 30, 1975 staying the Council's action, pending determination of this appeal, be vacated.

Conclusions and Order

Written Exceptions to the Hearer's report, with supportive argument, were filed, on behalf of the appellant, and Answering argument to the said Exceptions, was filed on behalf of the Council pursuant to Rule 14 of State Regulation No. 15. Additionally, oral argument was had before me.

The Hearer's report recommends a finding that the appellant has failed to meet its burden of establishing that the action of the Council was erroneous and should be reversed, as required by Rule 6 of State Regulation No. 15. Therefore, it recommends that the action of the Council, in denying renewal of the subject license, be affirmed.

The Exceptions to the said report deal primarily with the factual findings of the Hearer and the alleged errors in such findings. I find that most of these exceptions refer to irrelevant matters in the record and do not concern themselves with the critical issues which were identified and resolved in the Hearer's report.

For example, with respect to the complaints about noise, which appears to be a major complaint, the appellant denied that this and similar problems were ever brought to his attention and that he was ever warned that his license would be in jeopardy if the situation was not corrected. The record speaks to the contrary. The Chief of Police, the Police Commissioner and the Mayor warned him, during the course of several conferences, that if the situation was not corrected he "was going to have problems renewing his license"; that his license would not be renewed.

Furthermore, the record significantly manifests that, from July 1, 1975 thru September 1975, there were two-hundred and eighteen (218) arrests in the immediate vicinity of the appellant's licensed premises. Appellant argues that the Hearer erred in determining that one-hundred and fifty-nine (159) arrests were directly attributable to the appellant, and hence, he failed to find, as a critical fact, that only twelve (12) of those arrested were specifically identified as patrons of appellant's premises. It is incontrovertible, from the testimony, that the remaining number were arrested on the outside of and in the immediate vicinity of these premises. It would be absurb to

require that the police make inquiry of every person arrested in order to ascertain whether or not such person was a patron in these premises.

The record fully establishes that hundreds of arrests were made, and continued to be made (to the date of the hearing in this Division) outside of and in the immediate vicinity of these premises for violations which involve the consumption of alcoholic beverages in public, disorderly conduct, excessive noise and similar offenses. The place has properly been characterized as a nuisance. Vide Nordco, Inc. v. State, 43 N.J. Super 277 (App. Div. 1957).

The Hearer found that the appellant could not properly control the patronage and was primarily responsible for the said conditions. He, thus, recommended that the action of the Council, in denying appellant's application for renewal of its plenary retail consumption license for the current licensing period be affirmed.

Nevertheless, in my consideration of the entire record herein, including the recommendation of the Hearer, I have carefully considered the alternative remedy requested by the appellant. The appellant states that the license should be renewed "for the purpose of permitting the (appellant) licensee to effectuate a sale of the licensed premises". Red Ranch, Inc.v. Wall Township, Bulletin 1773, Item 2; Walker v. Newark, Bulletin 2032, Item 2. The appellant has expressed its willingness to forgo live music in the licensed premises; to continue to provide special officers when necessary; and to sell no package goods after nine o'clock in the evening.

Under these circumstances, and after a full evaluation of the record, I have determined to reject the Hearer's recommendation that the action of the Council be affirmed; instead, I shall reverse the action of the Council, in order to afford an opportunity to the appellant to execute a person-to-person transfer of the said license to a bona fide transferee within ninety (90) days from the date of this order, the said renewal be granted expressely subject to the conditions hereinbelow set forth.

Accordingly, it is, on this 8th day of January 1975,

ORDERED that the action of the respondent Borough Council of the Borough of South Belmar, be and the same is hereby reversed; and it is further

ORDERED that the Council be and is hereby directed to renew the appellant's license for the current licensing period expressely subject to the following conditions:

(1) That the appellant shall effectuate a person-to-person transfer of its license to a bona fide transferee within

ninety (90) days from the date of this Order or such extension of time thereof, granted by the Council or the Director of this Division;

(2) If an application for the said transfer is not approved by the Council, in the exercise of its discretion within the above stated period of time, or any extension of time thereof granted by the Council or the Director of this Division, the said license shall be cancelled;

(3) That no live music shall be permitted in the said licensed premises at any time during the term of the said license;

(4) That the patronage in the premises shall be limited to, and shall, at no time, exceed one-hundred twenty-five (125) persons.

LEONARD D. RONCO
DIRECTOR

2. PETITION FOR WAIVER CLUB LICENSE REQUIREMENT - APPLICATION GRANTED.

In the Matter of the Petition filed by

Yorktowne Social Club
50 Yorktown Drive
Englishtown, N.J.,

Requesting the Director to Waive the provisions of Rules 3 and 4 of State Regulation No. 7.

PETITION

CONCLUSIONS AND ORDER

Cerrato, O'Connor, Mehr & Saker, Esqs., by Richard T. O'Connor, Esq., Attorneys for the Yorktowne Social Club of Englishtown
Clifton Thomas Barkalow, Esq., Attorney for Freehold Tavern Owners Association

BY THE DIRECTOR:

Yorktowne Social Club filed a petition with the Director, pursuant to the applicable provisions of Rule 5 of State Regulation No. 7, for a waiver of Rule 4 of the said regulation.

Rule 4 provides that, except as provided in Rule 5, no license shall be issued to any club unless

> "it shall have been in exclusive possession and use of a clubhouse or club quarters for at least three years continuously immediately prior to the submission of its application for a license".

Rule 5, in pertinent part, reads as follows:

"Nothing in Rules 3 and 4 hereof shall prevent the issuance of a club license to a bona fide club provided that special cause for such issuance is shown in writing to the Director and provided that the Director's written approval of such issuance is first obtained."

A written objection to the issuance of such waiver having been received from the Freehold Tavern Owners Association, a hearing was held in this Division, on November 21, 1975.

At the hearing Robert R. Sullivan, past president of the petitioner, gave the following account: This Club has 106 registered members and its membership is open to all adult residents of Manalapan Township.

The Club has been in operation in this Township for the past eleven years, and was incorporated approximately eight years ago. It has held regular weekly meetings within the Township but did not have its own clubhouse or club quarters. The meetings were held in various facilities from year to year. The Club has had an average of 110 members during its existence, all of whom either live in the Township of Manalapan, or in close proximity thereto.

The primary purpose of the Club has been to actively participate in many Township-sponsored activities. They have been particularly involved recently in hemophiliac activities. They have also provided volunteer services for local recreational and athletic programs, as well as to the local Little League.

Inaddition, they furnish volunteer manpower to the local hospital and to such other municipal agencies as the Teen and Juvenile Agency, the Fire Department, and the First Aid Squad.

During the Christmas season, they annually provide Christmas baskets to the needy; and throughout the year, run special benefit nights for local residents who need assistance by reason of sudden casualties, such as fire damage to their homes or prolonged family illness.

The witness stated that the present American Legion headquarters, where they meet, have now become too small for their purposes, and they propose to relocate in a vacant building situated on a 3/4 acre plot. The petitioner feels that this building will provide a proper club atmosphere, and an identity and continuity for the Club in its program to expand its benevolent, charitable, recreational and fraternal purposes. The proposed site, which is located on Millhurst Road, in the Township of Manalapan, includes improvements well designed for a clubhouse.

The witness asserted that the granting of this waiver to permit it to apply for a liquor license will help to promote its program through the revenues obtained from the sale of alcoholic beverages to its memebers.

Finally, he noted that there has been no objection by local residents to the said application.

The file contains four documents sent to this Division in support of this application. These documents, which include a supportive petition signed by local residents, were submitted by the Manalapan Hemophilia Auxiliary and the Molly Pitcher Post No. 434 of the American Legion.

Inaddition thereto, I am in receipt of a letter from Mayor James ". Flanagan, of Manalapan Township, who states in pertinent part as follows:

> "On behalf of the Township, and I know I speak for the Governing Body of Manalapan, I wish to reinforce the testimony already presented as to the importance of the Yorktowne Social Club as a beneficial and contributing group within our Township. In Manalapan Township we have a heavy concentration of commuter population, and we have not been privileged to have and sustain the usual luncheon type of service clubs that so often do much of the charitable and volunteer work as prevails in most communities.
>
> The members of the Yorktowne Social Club have, since their inception, filled the void in this area, in the Township and we trust that it can remain a vigorous and motivating organization to continue its many areas of volunteer and charitable contributions, in an effort to establish its own identity, to the end of securing its own meeting place."

On behalf of the objectors, a letter sent to this Division by Clifton Thomas Barkalow, Esq., attorney for the Freehold Tavern Owners Association, states that although there is "little doubt that this club consists of, in excess of, 60 members", the issuance of this "waiver concerning the location of this club license which would circumvent the rules and regulations of the Alcoholic Beverage Commission".

Several Witnesses testified on behalf of the objectors. The substance of their testimony was to the effect that there are other licensed facilities they can accommodate this Club for its meetings and activities.

Harry Kandell, the president of the New Jersey License Beverage Association testified that the petitioner could receive as many as twelve special permits per year and, therefore, it did not really need a club license. In fact, it was his feeling that there was never a need for club licenses to be issued to any club in the state.

I have carefully considered the petition filed by the applicant herein and am persuaded that it has established proper and adequate grounds for the issuance of the waiver. It is clear that petitioner serves a very useful community purpose and has the support of the residents of the community. This is manifested by the fact that no resident objects to this petition; the only ones who did object were several licensees who own facilities in neighboring communities. Inaddition, the governing body has very warmly endorsed this petition.

I find the objections to this petition to be devoid of merit.

A Hearer's report in this matter was specifically waived by the attorneys for the respective parties.

Since I find reasonable cause to exist, I will, in the exercise of my discretion, grant petitioner's application for a waiver of the provision of Rule 4 of State Regulation No. 7, as authorized by Rule 5 of the State Regulation. Of course, the grant of this waiver is merely a procedural step, and the issuance of a club license rests in the sound discretion of the local issuing authority. Blanck v. Magnolia, 33 N.J. 484 (1962); Re Commodore Club, Bulletin 2165, Item 1.

Accordingly, it is, on this 18th day of December 1975,

ORDERED that the application of the Yorktowne Social Club for a waiver of Rule 4 of State Regulation No. 7 be and the same is hereby granted.

Leonard D. Ronco
Director