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

BULLETIN 2271

December 5, 1977

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STATE OF NEW JERSEY
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BULLETIN 2271 December 5, 1977

1. NEW LEGISLATION - PROHIBITION OF CONSUMPTION OF SPECIFIED ALCOHOLIC BEVERAGES IN CERTAIN UNLICENSED PREMISES - VIOLATION THEREOF IS A DISORDERLY PERSONS OFFENSE.

On October 3, 1977, Senate Bill No. 1802 was approved and thereupon became Chapter 244 of the Laws of New Jersey of 1977, effective immediately.

The Act is not a supplement or amendment to Title 33 of the Revised Statutes, the Alcoholic Beverage Law, but a general law establishing a disorderly persons offense for the proscribed activity. Violations thereof are to be reported to and processed as other disorderly persons offenses and not with the Division of Alcoholic Beverage Control.

Since the subject matter of the act does involve alcoholic beverages, it is being published herein for informational purposes, and provides as follows:

1. No person owning or operating any restaurant, dining room or other public place where food or liquid refreshments are sold or served to the general public, and for which premises a license or permit authorizing the sale of alcoholic beverages for on-premises consumption has not been issued:

a. Shall permit or allow the consumption or [sic] alcoholic beverages, other than wine or a malt alcoholic beverage, in a portion of the premises which is open to the public; or

b. Shall charge any admission fee or cover, corkage or service charge or advertise inside or outside of such premises that patrons may bring and consume their own wine or malt alcoholic beverages in a portion of the premises which is open to the public.

c. Shall permit or allow the consumption of wine or malt alcoholic beverages at times or by persons to whom the service or consumption of alcoholic beverages on licensed premises is prohibited by State or municipal law or regulation.

2. Nothing in this act shall restrict the right of a municipality or an owner or operator of a restaurant, dining room or other public place where food or liquid refreshments are sold or served to the general public from prohibiting the consumption of alcoholic beverages on such premises referred to herein.

3. Any person violating any provision of this act is a disorderly person, and the court, in addition to such sentence as may be imposed for the disorderly person violation, may by its judgment bar any owner or operator violating this act from

permitting or allowing consumption of wine or malt alcoholic beverages in his premises as authorized by this act.

4. This act shall take effect immediately.

For additional explanatory purposes, the Statement annexed to the aforesaid legislation is reproduced as follows:

STATEMENT

This bill would prohibit customers of restaurants, dining rooms or other food establishments open to the general public from bringing with them and consuming their own alcoholic beverages. The bill would not prohibit persons and organizations arranging for private parties in portions of unlicensed premises from making arrangements for provision of alcoholic beverages for those attending a private party.

JOSEPH H. LERNER
DIRECTOR

DATED: November 2, 1977

2. NEW LEGISLATION - CLASS "C" LICENSE RENEWAL PROHIBITED IN CERTAIN CASES.

On October 3, 1977, Assembly Bill No. 1875 was approved and thereupon became Chapter 246 of the Laws of New Jersey of 1977, effective immediately. The Act which supplements Title 33 of the Revised Statutes provides as follows:

1. No Class "C" license, as the same is defined in R.S. 33:1-12, shall be renewed if the same has not been actively used in connection with the operation of a licensed premises within a period of 2 years prior to the commencement date of the license period for which the renewal application is filed unless the director, for good gause and after a hearing, authorizes a further application for renewal; provided, however that, if the licensee has been deprived of the use of the licensed premises as a result of eminent domain fire or other casualty, and establishes by affidavit filed with the director that he is making a good faith effort to resume active use of the license in connection with the operation of a licensed premise then the period of 2 years provided for in this section shall be automatically extended for an additional period of 2 years.

2. This act shall take effect immediately.

JOSEPH H. LERNER
DIRECTOR

DATED: November 2, 1977

3. APPELLATE DECISIONS - McCRAY v. JERSEY CITY.

Cledis McCray, an Individual, t/a Clete's Place, Appellant, v. Municipal Board of Alcoholic Beverage Control of the City of Jersey City, Respondent.	:	On Appeal CONCLUSIONS AND ORDER

Boffa & Willis, Esqs., by Steven R. Maslo, Esq., Attorneys for Appellant
Thomas Fodice, Esq., by Bernard Abrams, Esq., Attorneys for Respondent

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

This is an appeal from the action of the Municipal Board of Alcoholic Beverage Control of the City of Jersey City (hereinafter Board) which, on February 7, 1977, suspended appellant's Plenary Retail Consumption License C-15, for premises 401 Ocean Avenue, Jersey City, for seventy-five days following a finding that, on February 5, 1976, appellant allowed, suffered and permitted gambling upon the licensed premises; in violation of Rule 6 of State Regulation No. 20.

Upon filing of the appeal, the Director of this Division, by Order dated March 10, 1977, stayed the imposition of the suspension pending determination of the appeal.

Appellant's petition of appeal contends that the finding by the Board was erroneous as against the weight of the evidence, and without basis in fact or law. The Board denies these contentions and averred that there was ample evidence upon which it predicated its findings and action.

A *de novo* appeal was heard in this Division, pursuant to Rule 6 of State Regulation No. 15, with full opportunity afforded the parties to present evidence and cross-examine witnesses.

The appellant, Cledis McCray, testified that on February 5, 1976, he was called to the licensed premises as a result of a police investigation. When he arrived, he was confronted with a search warrant and instructed to open a safe located under the bar. A slot in the safe permitted receipts to be dropped therein, but appellant was the only person with the combination to open the safe. In it was discovered a "numbers slip", and a further search of a small rear storage room also revealed similar slips. He professed ignorance as to how such slips found their way to those locations, contending that his bartender, Aaron Thomas, had been forbidden to permit gambling materials in the premises.

In order to meet the burden required by Rule 6 of State Regulation No. 15, appellant must show manifest error, or that the action of respondent Board was clearly against the logic and effect of the presented facts. Hudson Bergen, Etc., Ass'n. v. Hoboken, 135 N.J.L. 502 (E. & A. 1947); Nordco, Inc. v. State, 43 N.J. Super. 277 (App. Div. 1957).

The appellant offered no explanation whatever respecting the presence of the gambling slips discovered in the safe and store room. The unexplained failure to call witnesses, who have relevant knowledge of the incident, to testify, permits the raising of an adverse inference that their testimony, if given, would have been unfavorable to the appellant. Hickman v. Pace, 82 N.J. Super. 483 (App. Div. 1964); O'Neil v. Bilotta, 18 N.J. Super. 82 (App. Div.), aff'd. per curiam, 10 N.J. 308 (1952).

Appellant contends that he had no knowledge of the gambling paraphernalia discovered in the premises. However, it is well established that, a licensee is responsible for the acts of persons employed on the licensed premises, and is fully accountable for their activity during such employment. In re Olympic, Inc., 49 N.J. Super. 299 (App. Div. 1958); In re Schneider, 12 N.J. Super. 449 (App. Div. 1951); Rule 33 of State Regulation No. 20.

Furthermore, the responsibility of the licensee does not depend upon his personal knowledge or participation. In fact, it has been held that a licensee is not relieved even if the employee violates the explicit instructions of the licensee. F & A. Distrib. Co. v. Div. of Alcoh. Bev. Contr., 36 N.J. 34 (1961); Greenbrier, Inc. v. Hock, 14 N.J. Super. 39 (App. Div. 1951).

My examination of the facts and the applicable law generate no doubt that this charge was established by a fair preponderance of the credible evidence. I have also considered the other matter asserted in appellant's Petition of Appeal, i.e., denial of alleged request for postponement of the Board's hearing, and find it devoid of merit.

Therefore, I conclude that the appellant has failed to sustain the burden of establishing that the Board's action was erroneous and should be reversed, as required by Rule 6 of State Regulation No. 15.

It is, accordingly, recommended that an order be entered affirming the Board's action, dismissing the appeal, and reimposing the effective dates of the suspension of license previously imposed by the Board, and stayed by order of the Director.

CONCLUSIONS AND ORDER

No Exceptions to the Hearer's Report were filed pursuant to Rule 14 of State Regulation No. 15.

Having fully considered the entire record herein, including the transcripts of the testimony, the exhibits, and the Hearer's Report, I concur in the findings and recommendations of the Hearer, and adopt them as my conclusions herein.

Accordingly, it is, on this 19th day of July 1977,

ORDERED that the action of the respondent Board of Alcoholic Beverage Control of the City of Jersey City in finding appellant guilty of violation of Rule 6 of State Regulation No. 20 be and the same is hereby affirmed, and the appeal herein be and the same is hereby dismissed; and it is further

ORDERED that my Order dated March 10, 1977 staying the Board's suspension pending determination of this appeal be and the same is hereby vacated; and it is further

ORDERED that Plenary Retail Consumption License C-15 for premises 401 Ocean Avenue, Jersey City, New Jersey be and the same is hereby suspended for seventy-five (75) days commencing 2:00 a.m. Thursday, August 4, 1977 and terminating 2:00 a.m. Tuesday, October 18, 1977.

Joseph H. Lerner
Director

4. APPELLATE DECISIONS - YESTERDAY'S, INC. v. NORWOOD.

Yesterday's, Inc., Appellant, v. Mayor and Council of the Borough of Norwood, Respondent.	:	On Appeal CONCLUSIONS AND ORDER

Skoloff and Wolfe, Esqs., by Saul A. Wolfe, Esq., Attorneys for Appellant
Gruen, Olick and Ritvo, Esqs., by Marvin Olick, Esq., Attorneys for Respondent.

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

This is an appeal from the imposition of certain special conditions attached to the renewal of appellant's Plenary Retail Consumption License C-4, for premises 430 Tappan Road, Norwood, by respondent Mayor and Council of the Borough of Norwood (hereinafter Council).

The special conditions in dispute are as follows:

1. Off street parking shall be limited to eighteen (18) passenger motor vehicles; and

2. Occupancy of the building shall be limited to eighty (80) persons.

In its petition of appeal, appellant contends that the special conditions are an unreasonable exercise of the discretion reposing in respondent Council and not based upon any competent proof submitted. Furthermore, its action was arbitrary and capricious.

In its answer, the Council denies the allegations and interposes four separate defenses, as follows:

(1) Appellant is barred by the application of the equitable doctrines of estoppel, waiver and laches, having consented to said conditions in 1975; and

(2) Appellant is barred by the doctrine of res judicata, in that, an order was entered on March 24, 1976, by the Director, affirming the imposition by the Council of a seven day suspension for violating these same conditions; and

(3) Appellant's premises are a non-conforming use in a residental zone, the unlimited increased use of which would constitute a nuisance; and

(4) The Council would not have renewed the license, based upon prior experience and complaints, without the said conditions being imposed.

Preliminarily, I observe that two of the Council's four defenses are without merit.

A license renewal is treated as a new application and any special conditions attached to the renewal may be appealed to this Division. Thus, the defense that the appellant has heretofore complied with the conditions voluntarily and is, therefore, barred by the application of the equitable doctrines of estoppel, waiver and laches, is without merit. Additionally, it is apparent from the testimony that the appellant agreed to the conditions for the 1975-76 licensing year only.

Similarly, the Council's separate defense that the issue has been previously determined (the doctrine of res judicata) when this Division affirmed the Council's imposition of a suspension for violation of the same conditions during the 1975-76 licensing year, is without merit. Those conditions expired with the license at the end of the 1975-76 licensing year. The very basis of this appeal is the appellant's objection to the reimposition of said conditions for the 1976-77 licensing year.

An appeal de novo was held in this Division pursuant to Rule 6 of State Regulation No. 15, with full opportunity afforded the parties to introduce evidence and cross-examine witnesses.

The matter was heard on two dates, December 6, 1976 and January 20, 1977.

In support of the Council's action, Mayor Raymond McKenna testified that the conditions existant in 1975, which

motivated the imposition of conditions on the 1975-76 license, included the following:

> "The people that were complaining to me complained about the fact of youngsters coming out of the tavern, urinating on their lawn, the screeching of brakes at all hours of the night, youngsters leaving the tavern or patrons leaving the tavern, cars parked all over the streets, parked on their residential street, parked down the street, the slamming and banging of doors, late hours in the morning when the tavern closed, the fact of boisterous noise, the fact of beer bottles thrown on some of the residents' lawn, the fact that some people's health was jeopardized by the fact that they were awakened at all hours of the night by the vehicles leaving.
>
> All this led up to the governing body to take action and try to resolve the situation and try to restore it to the more or less country tavern that existed there or a neighborhood tavern that existed there prior to Yesterday's."

The Mayor also testified that, from his recollection under the previous management, approximately fourteen cars could be parked at the premises; eleven in front, and three or four in the rear. Additionally, the average number of patrons was eighteen to twenty during the week, and "...22, 24, maybe 26 at tops, usually on a Saturday afternoon." He then testified as follows:

> "Q. Today, sir, the complaints that you get or from personal knowledge of your own, do you know the average number of people there during the week and weekends?
>
> A. I have no idea, just from the complaints of the people.
>
> Q. From the complaints of the people, have you heard?
>
> A. I would say, from listening to the people, over a hundred people, 120 people."

On cross examination he admitted that now, as previously, there is no live entertainment of any kind, or a dance floor, and the basic difference is the younger age of the patronage under present ownership.

As a result of the complaints from residents, the Borough prohibited parking on Tappan Road and adjacent streets

in the immediate area of the licensed premises. He admitted that these restrictions are not now uniform throughout the Borough, although it is the Council's intention to make them uniform in the future.

Police Chief Frank D'Ercole then testified in behalf of the Council, and was recalled to testify on the second day of the hearing.

On the first day of testimony, he stated that the seating was recently increased to accommodate approximately seventy persons. Additionally, since the current owners took over the licensed premises he has had approximately two hundred to three hundred complaints, of which one hundred and twenty-five to one hundred and fifty were for the period July 1, 1975 through July 1, 1976. The complaints were for alleged patron misconduct in the adjacent area including urinating on lawns; beer cans and other tavern related items littering the immediate area; vandalism to cars and property; loud speech and vehicular noises; and illegal parking.

D'Ercole admitted that the appellant properly controlled the patronage within its premises, and, upon its own property; as the police had to respond to calls from the tavern only once or twice during this time period. He averred that "...the situation has improved tremendously with the restrictions imposed on the licensed premises... (as)... I've observed prior to the restrictions cars going in and out of the lot, slamming of car doors, the whole area saturated with vehicles, Summit Street, double parked... there were always 50 to 75 cars parked on residental streets surrounding the licensed premises... I would say the restrictions cut it (complaints) down to possibly--possibly cut it down in half."

D'Ercole expressed his concern that should more cars be allowed to park in the appellant's lot it might create, depending on lot design, a fire hazard by possibly hampering access of emergency vehicles.

In determining to reduce maximum legal occupancy to eighty, D'Ercole testified that he did not analyze the number of entrances and exits the premises contained, and admitted his concern was with the impact upon the neighborhood, rather then any problem, as such, inside the premises.

D'Ercole corroborated the Mayor's testimony that there was room in the rear to park only four cars. In response to the question propounded by the Council's attorney concerning the effect, from the nuisance aspect, of permitting parking for more than eighteen vehicles, he responded: "My personal opinion would be that whether there were 18 or 25 cars, the problem would be the same."

D'Ercole could not recollect, during the fourteen years he was on the Police force, any complaint relative to urination in public, littering of area with beer bottles and/or cans, parking too close to intersections and private driveways, or damage or vandalism to shrubs, trees, hedges, lawns, etc., prior to appellant's ownership of the licensed premises.

D'Ercole was recalled to testify by appellant on the second day of the hearing and also produced police records relative to appellant's licensed premises. The records revealed twenty-one alleged references to appellant, excluding motor vehicle and parking violations, for the period July 1, 1975 through June 30, 1976, as contrasted to his previous testimony of one hundred and twenty-five to one hundred and fifty complaints. When the twenty-one blotter enteries were scrutinized in detail, it was clear there was no reasonable, logical relationship to the appellant's premises in a large number of them and relatively few could be considered complaints, per se. The police records further disclose no reported claims of public urination or vandalism to cars, as alleged in prior testimony.

Frank A. Faraldo testified that he resides a few homes north of the licensed premises. Prior to the current owners taking possession there were no lights in the surrounding area. A few months after appellant's acquisition there were spot lights installed in the tavern's rear parking lot which were visable from his mother's bedroom and which disturbed her. He also observed youths exiting the premises "yelling and screaming". Cars entered the tavern parking lot with greater frequency and resultant noise.

Frances Van Dyke who resides on Tappan Road directly opposite the licensed premises, characterized it as "a quiet neighborhood tavern", prior to appellant's acquisition. She averred that there would be eight to ten cars parked on an average evening. After the sale to the current owners, all available front spaces were occupied and the back parking area was in active use, as well. On warm evenings young patrons sat on fenders of cars and conversed in a boisterous manner often using foul language. On one occasion, she witnessed two young men exit the tavern and proceed to urinate in the street between two parked cars.

Recently, the Van Dyke's television set has had interference problems which she ascribed to cars parked in front of the tavern with their motors running; a condition which she did not experience prior to the sale to the current owner. She admitted that "...a good majority of them (the patrons) are good, respectable kids, but you have a handful, you know." In the twenty-six years she resided opposite the tavern, she never witnessed any acts of vandalism, trampling of shrubbery and lawns, etc., other than an occasional abandoned or thrown empty

beer bottle or beverage glass, prior to appellant's ownership. Lastly, she stated that under prior ownership "...at the greatest point there was maybe twenty-six people in there."

Vincent Russo the former proprietor of the subject license (from 1948 to 1973) testified on behalf of the appellant. He stated that in addition to his wife and himself, he had a full-time bartender, a part-time bartender, and a cook. He asserted that he could not pay the employees' salaries, much less his other bills, if his business was as minimal as the Mayor, the police chief and Mrs. Van Dyke had indicated. He contradicted the Mayor and Police Chief's testimony as to how many cars could, and often were, parked in the rear; the number being fourteen without blocking passage. He had parking for fourteen in front, as well, totaling twenty-eight vehicles. He parked more than that number from time to time, by using an attendant to relocate vehicles.

The tavern was not the "neighborhood" type as the Borough's witnesses stated. Regular patrons included people from Englewood and other nearby towns, as well as New York State. Further, if he had to depend soley upon the neighborhood he would not have been able to earn a living during the years he owned the tavern.

Russo scoffed at the description of a completely trouble-free operation under his management, stating "anybody that can run a tavern trouble-free is a miracle man." He admitted having had car noise problems, loud patrons, intoxicated patrons, whose behavior required police assistance, and being assaulted by a patron on one occasion. He maintained that there was a litter problem, and that one exists wherever a bar is operated.

The spotlights that Faraldo thought were installed by the current owners were, in fact, installed by Russo years ago, and in use throughout. When questioned as to his average nightly patronage he stated "...40, 50, 60, I don't know. I never counted. I had no reason to count." On Friday and Saturday nights he had a "fairly full house", although not reducing it to number.

Andrew Hnath, the Principal Shareholder and an officer of corporate appellant, testified that he had fifteen years experience in the sale of alcoholic beverages prior to purchasing the subject establishment from Russo in 1973. Other then an occupancy violation last year, he has had no violations. His family resides above the tavern. Their health and sleep are unaffected by their proximity to the tavern. He maintains a tavern and restaurant business avoiding live music, entertainment, a disc jockey, or dancing. He does not promote the place in advertisements. The limitation of eighty patrons and eighteen cars has hurt his lunch business, particularly since most people cannot spend time seeking a place to park.

By removing the pool table and adding a few additional tables and chairs, he seats seventy-five persons in the premises. When he acquired the establishment, he made inquiry of the Borough officials as to the legal occupancy limit. Hnath was advised it was seventy-five per exit and, since he had two exits, he was allowed a maximum of one hundred and fifty persons. A sign was posted to that effect prior to the imposition of the special condtion reducing it to eighty.

Hnath indicated that prior to the imposition of these special conditions he parked sixteen or seventeen small cars (Volkswagon sized was his description), or fourteen to fifteen big cars, in the rear parking area, without a parking attendant. With a parking attendant he could accommodate more. He continues to utilize the spot lights in the rear parking area that were in place at the time of purchase. He has not added any additional lighting, increased wattage or altered their angle in relation to the ground.

It was Hnath's understanding that the imposition of the two conditions would be for one year and, absent consent, his license would not be renewed. Under these circumstances, the appellant consented to the limitations. Appellant's request to remove or liberalize the conditions for the 1976-77 licensing year was denied.

The imposition of the special conditions reduced his luncheon business from approximately sixty patrons to an average of thirty to thirty-five patrons.

Rickey Hnath, son of Andrew Hnath, testified that he is employed by appellant. Prior to imposition of the conditions, on an average evening, the patronage varied between one hundred and one hundred and twenty-five persons, with little difference between weekday and weekend evenings. The imposition of the restrictions resulted in a marked reduction of patronage, including a reduction in the luncheon trade which averaged sixty to sixty-five persons (on Friday it averaged one hundred), to approximately thirty patrons.

I have set forth in considerable detail the testimony herein in order to obtain an objective perspective of the underlying circumstances connected with the imposition of the special conditions herein.

It is important to state the basic principle that no testimony need be believed in these cases but, rather, the Hearer must credit as much or as little as he finds reliable. 7 Wigmore Evidence, Sec. 2100 (1940); Greenleaf Evidence, Sec. 201 (16th Ed. 1899).

Evidence to be believed must not only proceed from the mouths of credible witnesses, but must be credible in

itself, and must be such as common experience and observation of mankind can approve as probable in the circumstances. Spagnuolo v. Bonnet, 16 N.J. 546, 554-55 (1954); Gallo v. Gallo, 66 N.J. Super. 1, 5 (App. Div. 1961). The accepted standard of persuasion relating to testimony governing the trier of the facts is that the determination must be founded in truth. Riker v. John Hancock Mutual Life Ins. Co., 129 N.J.L. 508, 511 (Sup. Ct. 1943).

Using the above principles as a guide, I am persuaded that the testimony of the Council's witnesses, though honestly advanced, was replete with inaccuracies, misinformation and exaggeration. When the testimony is reduced to its proper perspective, there does remain a residuum of evidence that the patrons of this tavern created some degree of inconvenience and nuisance to the residents of the surrounding area.

On the other hand, I am more impressed with, and find credible, the testimony of the former owner, Russo. He established to my satisfaction, that the parking area was utilized to accommodate as many as twenty-eight vehicles without an attendant during his proprietorship. Additionally, he demolished the image created by the various witnesses that this was a sleepy, anonymous tavern creating no problems whatsoever. Lastly, he established that his patronage, though more modest in number than that enjoyed by the appellant, was none the less considerable, and not "neighborhood" in character.

The Chief of Police erred at the de novo hearing when he stated that he received between one hundred and twenty-five and one hundred and fifty complaints for the 1975-76 licensing year specifically relating to the appellant. In fact, there were fewer than twenty one, and not all ot them could be reasonable associated with the appellant.

Special conditions attached to a license need only be reasonable to obtain approval by the Director of this Division. Belmar v. Div. of Alcoholic Beverage Control, 50 N.J. Super. 423 (App. Div. 1958); Marinaccio v. Asbury Park, Bulletin 2009, Item 2; Alanwood Holding Co. v. Atlantic City et als, Bulletin 1963, Item 1. Conversly, if no special conditions need be attached in the judgment of the local issuing authority but, in the alternative, revocation or non-renewal is warranted, and such judgment appears reasonable, the action will be affirmed. Gauntt v. Paulsboro, Bulletin 2187, Item 2; Alice G. Townsend, Inc. v. Orange, Bulletin 2186, Item 3.

The dispositive issue herein may be identified as follows: Did the Council act arbitrarily or unreasonably in imposing conditions per se, or in the alternative, in establishing the specific maximum occupancy of the premises at

eighty patrons and allowable vehicular parking at eighteen?

I find that there was a sufficient basis or residuum of testimony to support the Council's imposition of special conditions governing occupancy and parking. I shall now treat the alternative issue whether the specifice amounts set forth in the special conditions are reasonable and supported by the record.

The testimony establishes that the Council arrived at a maximum occupancy of eighty persons based upon what it believed was consistent with the patronage under prior ownership. It was the conceded desire of the Council to "roll back" the number of patrons to where it would again be a "country tavern".

It is basic that the action of the municipality must be reasonable in equating the public's interests, which are paramount, with the interests of the licensee. Rajah Liquors v. Div. of Alcoholic Bev. Control, 33 N.J. Super. 598 (App. Div. 1955). A liquor license is a privilege and there is no inherent right in a citizen to sell intoxicating beverages at retail. No licensee has a vested right to the license or its renewal. Zicherman v. Driscoll, 133 N.J.L. 586 (Sup. Ct. 1946).

In A's Inn, Inc. v. Deal, Bulletin 2139, Item 3, the Director cautioned however, that such special conditions, as are imposed, must be reasonable.

However, in order to determine whether there has been a fair and reasonable exercise of its authority, objective criteria must exist upon which the imposed special conditions can be weighed. In the instant matter, I find a lack of such criteria.

Thus, I find that, although the imposition of the special condition relating to a patronage limitation upon appellant's license was a reasonable exercise of the Council's power, it abused its discretion and acted arbitrarily when it determined that eighty should be the limitation. Such selection does not comport to the reasonable and credible evidence adduced.

I feel that relaxing the present occupancy restriction to and permit one hundred persons would be reasonable, based upon the proofs and consistent with the Council's actions, to alleviate the exterior noise, litter and related problems. For precedent see A's Inn, Inc. v. Deal, supra, wherein the Director increased occupancy from seventy-nine to one hundred persons.

I further find that in restricting the on-premises parking to eighteen vehicles, the Council erroneously concluded

that this was the capacity of the lot, and it did not want to increase an alleged non-conforming use.

Testimony discloses that the prior owner often had twenty-eight vehicles in his lot without an attendant. Furthermore, a proposed parking plan was entered into evidence which provided for twenty-five patron spaces, allowing adequate passage on either side of the building for fire or other emergency vehicles.

Similarly, while a parking limitation is supported by the record, I find that the Council abused its discretion when it selected such number without having competent evidence before it upon which to arrive at its determination.

I therefore find that increasing patron parking to twenty-five vehicles, in strict accordance with the plan and survey dated September 25, 1974, revised February 10, 1975 is reasonable under the circumstances, and I so recommend.

For the reasons aforesaid, it is recommended that the action of respondent Council be affirmed, subject to the conditions as herein modified, i.e., limiting patronage at any one time to one hundred, in place of eighty, and limiting patron off-street parking to twenty-five, in place of eighteen, after first being approved by the Director.

Conclusions and Order

Written Exceptions to the Hearer's report were filed by the respondent pursuant to Rule 14 of State Regulation No. 15.

During the course of my full review of the entire record herein, including the transcripts of the testimony, the exhibits, the written memoranda, and the Hearer's report and written exceptions filed thereto, I was advised by respondent Counsel's letter dated July 1, 1977, that a settlement between the parties had been reached.

The conditions imposed upon appellant's license for the 1976-77 licensing year, which were the subject of the within appeal, were modified and consented thereto by the parties in the renewal of the subject license for the 1977-78 license term.

He, therefore, requests that the appeal herein be dismissed. By letter dated July 5, 1977, counsel for the appellant confirms the settlement and consents to the dismissal herein.

The parties further seek approval of the terms of the settlement which provide for the imposition of conditions on the appellant's license for the 1977-78 license term. I have determined that said conditions are consistent and appropriate with the entire record herein and shall approve same.

Good cause appearing, I shall grant the said requests.

Accordingly, it is, on this 20th day of July 1977,

ORDERED that the appeal herein be and the same is hereby dismissed, expressly subject to the special conditions hereinbelow set forth; and it is further

ORDERED that the following conditions be and the same are hereby approved and said conditions be and the same shall be affixed to appellant's plenary retail consumption license for the 1977-78 license term:

1. Off street parking shall be limited to twenty-five (25) passenger motor vehicles.

2. Occupancy of the building shall be limited to eighty (80) persons, subject to application by the licensee for reconsideration at the conclusion of the 1977-78 license term.

3. A wooden stockade fence of a height consistent with applicable ordinances shall be erected along both sides and the rear property lines of the premises. One-half of the fence is to be constructed around the parking area on or before September 1, 1977. The balance is to be completed on or before June 1, 1978.

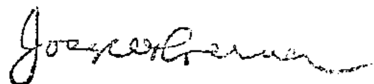
JOSEPH H. LERNER
DIRECTOR

5. STATE LICENSES - NEW APPLICATIONS FILED.

M. & T. Beer Distributors, Inc., 272 Route 9, Howell, N. J.
Application filed November 18, 1977 for state beverage distributor's license.

Chas. Nash & Sons Corp., 3711 Dell Avenue, North Bergen, N. J.
Application filed November 28, 1977 for additional warehouse license for premises 5 Empire Boulevard, Carlstadt, N. J., under Limited Wholesale License WL-24.

The West End Brewing Company of Utica, N. Y., 811 Edward St., Utica, New York
Application filed December 5, 1977 for limited wholesale license.



Joseph H. Lerner
Director