STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
1060 Broad Street Newark 2, N. J.

BULLETIN 1010 APRIL 21, 1954.

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ITEM

STATE OF NEW JERSEY
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1060 Broad Street Newark 2, N. J.

BULLETIN 1010 APRIL 21, 1954.

1. APPELLATE DECISIONS - WATSON ET AL. v. CAMDEN AND VALENTINE.

MYRTLE C. WATSON and GABRIEL S. HARDEMAN,
Appellants,
-vs-
MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL OF THE CITY OF CAMDEN, and CLARENCE A. VALENTINE, JR.,
Respondents.

ON APPEAL
CONCLUSIONS AND ORDER

Gene R. Mariano, Esq., Attorney for Appellants.
John J. Crean, Esq., City Counsel, by Louis L. Goldman, Esq., Assistant City Counsel, Attorney for Respondent Municipal Board of Alcoholic Beverage Control.
Lipkin, Neutze & Lipkin, Esqs., by Joseph Lipkin, Esq., Attorneys for Respondent Clarence A. Valentine, Jr.

BY THE DIRECTOR:

This is an appeal from the action of respondent Municipal Board (referred to herein as the Board) whereby it granted a place-to-place transfer of respondent Valentine's plenary retail consumption license, during the license year 1952-53, and its further action in renewing said license for the 1953-54 license year for the proposed new premises

In order that the issues raised by the petition of appeal and the answers filed in this matter may be fully understood, a brief chronology of the events which took place before the local issuing authority is necessary.

Respondent Valentine had held a plenary retail consumption license for premises 773 Central Avenue for a number of years and such license was renewed for the 1952-53 license year. On January 13, 1953, apparently because he had been forced to move from said premises, Valentine applied for a place-to-place transfer to 1584 South 8th Street, which said transfer was granted February 3, 1953, subject to a special condition that the proposed new premises be completed according to plans and specifications filed with the Board. No one appeared before the Board in objection to the transfer and no written objections were received. At a meeting of the Board held May 5, 1953, a number of persons appeared to protest the aforementioned transfer which had already been approved February 3, 1953. Although Reverend Hardeman, one of the appellants herein, stated that the group objected to the transfer because the proposed new location at 1584 South 8th Street was too close to the Sumner School, was located in a residential section and would depreciate property values, one of the Board members stated that when the transfer had been made on February 3, 1953, there had been no protests against the transfer and that he doubted if anything could be done. At a meeting of the Board held June 2, 1953, a hearing was held at which a number of objectors appearing for church and civic groups, as well as other individuals, voiced objection to the granting of the transfer. The Chairman of the Board, Mr. Osborn, stated that there was some question whether the Board could reopen the matter but the Board proceeded to hear those present. The following objections were raised: (1) the proposed new premises are too close to the Sumner School; (2) sufficient licensed premises exist in the neighborhood;

(3) the area is strictly residential; and (4) the license in question is under suspension. In addition, petitions containing numerous signatures of other objectors were received. On June 18, 1953, the Board adopted a motion stating that it was powerless to act on the protests against the aforementioned transfer, and adopted a resolution effecting the 1952-53 transfer for the sole purpose of permitting a renewal. At a meeting of the Board held July 7, 1953, the objectors' attorney objected to the renewal of the license on the grounds previously stated and on the further ground that the proposed licensed premises are within two hundred feet of a public school house (Sumner School). On July 27, 1953, the Board renewed the license for the 1953-54 license year subject to a special condition that the premises be completed in accordance with the filed plans and specifications. As a result of a disciplinary proceeding Valentine's license had been suspended for twenty-five days and the renewal of the license is also subject to that suspension.

In their petition of appeal appellants contend that respondent Board abused its discretion in granting the application for the transfer from 773 Central Avenue to 1584 South 8th Street and in granting the application for the renewal for the 1953-54 license year, and stated the following reasons: (1) the proposed new premises are within the prohibited distance (two hundred feet) from a school house; (2) the proposed new premises are in such close proximity to a school house as to warrant denial of the applications for transfer and renewal; (3) respondent Valentine is not a fit or proper person to be a licensee; (4) the public notice required by the statute prior to the granting of the application for transfer "was not proper in that subterfuge was practiced;" (5) respondent Board erroneously granted the application for transfer in that said Board stated that it did not have authority to reconsider such transfer application after it had been granted; (6) the respondent Board failed to take into consideration the common interest of the general public in granting the renewal application; (7) the establishment of a "tavern" at the proposed new location will cause depreciation of property in the immediate vicinity thereof; (8) there are sufficient existing plenary retail consumption licenses in the immediate vicinity of the proposed new premises to satisfy the needs of the residents in that vicinity; and (9) the proposed new premises are in a strictly residential area.

In its answer respondent Board denied the allegations contained in the petition of appeal and alleged that its action was legally justified and not against the weight of the evidence. Respondent Valentine in his answer denied the allegations contained in the petition of appeal and contended that the neighborhood in which the proposed new premises are located is not residential but consists of homes, automobile graveyards, junk yards, manufacturing plants, a potato-peeling establishment, dumping grounds and vacant lots.

At the hearing on this appeal counsel for Valentine moved to dismiss the petition of appeal in so far as it involved the place-to-place transfer granted February 3, 1953, because such appeal was not taken within the thirty-day period prescribed by R.S. 33:1-26. The Hearer reserved decision on the motion and proceeded to receive evidence with respect to the transfer and the renewal of the license. Since the same questions are involved in both the transfer and the renewal, such ruling was proper.

A number of persons appeared and testified on behalf of appellants. Some live in the immediate vicinity of the proposed new location and represent local civic organizations. The appellants represent the Parent-Teachers Association of the Sumner School and the Bethel A.M.E. Church (the latter being located approximately three blocks from the proposed new premises). In addition, many of the facts hereinabove related were stipulated.

The objections of appellants' witnesses may be summarized as follows: (1) the proposed new premises are too close to the

Sumner School which is attended by 583 children from kindergarten to sixth grade inclusive; (2) it is even closer to the school playground; (3) many children would be required to pass the proposed new premises on their way to and from school; (4) the area in the vicinity of the proposed new premises is largely residential and contains a number of public housing projects; (5) there are five licensed premises within a few blocks of the proposed new premises; (6) the licensee's former premises at 773 Central Avenue were not conducted in a proper manner; and (7) said premises were too close to a row of houses on the north side of Jackson Street immediately to the rear of said premises.

A number of appellants' witnesses testified that they were unaware of the fact that a transfer had been applied for or granted until ground was broken for the foundation some time in April. The "subterfuge" charged in the petition of appeal appears to be the fact that Valentine's public notice of application for transfer of his license was published in the Camden Times which, appellants' counsel contends, is not published or circulated in south Camden, the portion of the City in which the proposed new premises are located. However, the statute requires that the notice be inserted "in a newspaper, printed in the English language, published and circulated in the municipality in which the licensed premises are located." (Underscoring added.) The affidavit of publication introduced in evidence, without objection, asserts that the Camden Times is such a newspaper and there is no proof to the contrary. Thus the notice appears to comply with the statutory requirements.

On behalf of respondent Valentine a number of witnesses appeared and testified that they had no objection to the place-to-place transfer or the renewal. Some of these witnesses live in the immediate neighborhood of the proposed new premises; others live several blocks away. In addition, petitions were received in evidence containing numerous signatures of persons who had no objection to the renewal of the license for the proposed new premises. It was stipulated that these petitions were not received by respondent Board until after the hearing held on June 2, 1953, but were received before the Board granted the renewal of the license for the proposed new premises.

Some of the witnesses testified that much of the area in the immediate vicinity of the proposed new premises is vacant ground; that there is a building where used auto parts are sold, an automobile junk yard, a potato-peeling establishment, an addressograph company, a florist and a gasoline service station in the general neighborhood of the proposed new location. Some of this testimony is in part corroborated by photographs introduced in evidence.

Valentine and his attorney, who also testified, described the building and its location and produced numerous photographs and blueprints and a survey. Valentine testified that the proposed new location is approximately two blocks from the former location at 773 Central Avenue which is on the corner of 8th Street and Central Avenue; that he has held the license since 1945; that he was once fined $25.00 for serving alcoholic beverages directly over the bar to a woman, in violation of a local ordinance; that the local issuing authority had imposed a twenty-five-day suspension of his license for permitting gambling on the premises and that such suspension had not yet been made effective because he is not presently conducting his business.

The hearing in this matter occupied three days, extending over the period from September 25, 1953, to December 14, 1953. Measurements had been made on behalf of appellants and on behalf of respondent Board purporting to show the distances between the nearest entrance of

the Sumner School and the nearest entrance of the proposed new licensed premises. The school building and adjacent schoolyard are located on the same (east) side of South 8th Street as the proposed new licensed premises and are south of Jackson Street. The premises in question are north of Jackson Street. Valentine had filed with respondent Board plans and specifications for the proposed new building. These plans showed a front entrance to the barroom by means of double doors located in the southerly portion of the front of the building and a single door in the northerly portion of the front of the building which apparently was an entrance to a proposed stairway leading to the second floor to be completed in the future. The plans also showed a door in the south side of the building (erroneously designated on the plans as the east side) and a doorway in the rear of the building near the southeast corner thereof. Between the first hearing and the second hearing Valentine caused structural changes to be made in the building which was then under construction whereby the double doors in the front of the building were eliminated and the entrance to the licensed premises was moved to the single door in the northerly portion of the front of such building, thus placing the front entrance to the licensed premises farther from the Sumner School and schoolyard.

At the request of all counsel, measurements were made by representatives of this Division from which it clearly appears that the distance from the nearest entrance to the Sumner School (being the northerly gate in the fence on the South 8th Street side of the schoolyard) to the front door of the proposed new licensed premises, as originally contemplated, was 202 feet 8 inches, and the distance between said northerly school gate and the front door in its new (present) location is 216 feet. Further measurements were made to determine whether the door on the south side of the licensed premises which was to lead into a rear sitting-room, known as the ladies' dining room, was within the prohibited distance (two hundred feet) from the Sumner School. The distance as properly measured was only 185 feet 2 inches, and said side entrance would thus have been within the prohibited two-hundred-feet distance. R. S. 33:1-76.

Between the second hearing and the third hearing Valentine again made structural changes in the building. The side door on the south side of the building has been eliminated, and the door in the rear of the building has been placed in the northerly portion of the rear of such building and an abutment or "baffle" has been erected on the south side of such doorway extending approximately 2-1/2 feet almost to the rear line of respondent Valentine's property. It was explained that this was erected to prevent people from entering or leaving the rear of the building by means of the rear door and the south side of the building and to cause any one using the rear door to come and go by means of the north side of the building.

Plans for these changes were filed with respondent Board but were not accompanied by specifications. A license may be granted for or transferred to premises not yet constructed, subject to a special condition (R. S. 33:1-32) that the premises be completed in accordance with plans and specifications filed with the issuing authority. Passarella v. Board of Commissioners of Atlantic City, 1 N. J. Super. 313 (App. Div. 1949); Re Harris, Bulletin 183, Item 11; Re Salter, Bulletin 184, Item 8. In the instant case, as noted, plans and specifications were filed with the Board for the building as originally contemplated in keeping with the procedure requirement set forth in Re Salter, supra, and the purpose of such requirement (see Re Murphy, Bulletin 389, Item 11) and the pertinent publication requirement of Rule 4 of State Regulations No. 6 appear adequately to have been served albeit the amended plans, covering the changes regarding location of doorways, were filed without specifications.

At the third hearing questions arose with respect to certain measurements which had not previously been placed in evidence,

including the distance between the rear door of the licensed premises and the nearest entrance to the Sumner School and the distance between the nearest part of the licensed premises and the dwellings on the north side of Jackson Street. It was agreed that representatives of this Division would inspect the premises as they then existed and take the necessary measurements. In addition a survey was admitted in evidence by stipulation.

From all of the evidence it now appears that the rear line of Valentine's property abuts an alley, three feet wide, which runs northerly from the north side of Jackson Street along the westerly side of the nearest dwelling on said north side of Jackson Street in the rear of the licensed premises. The distance between the rear of the proposed new building and the alley varies from 0.79 feet on the southeast corner to 2.75 feet on the northwest corner of the building. The distance from the nearest corner of such building to the nearest dwelling on the north side of Jackson Street is approximately fourteen feet.

As already indicated, the front door of the licensed premises is more than two hundred feet from the nearest entrance of the Sumner School. The door in the south side of the building has been entirely eliminated. The only other means of access to the licensed premises is the rear door aforementioned. The inspection by the Division's representatives and other evidence discloses the abutment on the south side of the rear door. Furthermore, there is shrubbery along the rear of the building extending from the southeast corner thereof to said rear door. There is no walkway along said rear (east) of the building, nor is there any walkway along the south side of the building leading to the rear thereof. Thus it would appear that entry to the licensed premises via the rear door may not readily be gained by traveling along the south side of the proposed new building. If access is sought by means of the north side of the building, the distance from the nearest entrance to the Sumner School, as properly measured, is greater than to the front door of the building and is more than two hundred feet.

On the south side of Jackson Street there is an opening in the gate to the schoolyard of the Sumner School. However, the distance from this gate to the rear (nearest) door of the proposed new building, as properly measured, is 287 feet. Thus, as properly measured, in any direction to any present entrance of school or tavern, the distance is greater than two hundred feet and, consequently, not in violation of the statute.

While, as originally contemplated, an entrance or entrances to the proposed new premises may have been within the prohibited distance, the appeal being a trial de novo the facts existing at the time of the determination of the appeal are controlling. Socony-Vacuum Oil Co., Inc. v. Mt. Holly Twp., 135 N. J. L. 112 (Sup. Ct. 1947); Franklin Stores v. Elizabeth, Bulletin 61, Item 1; Bock Tavern, Inc. v. Newark, Bulletin 952, Item 1. The circumstances in the instant case are akin to those found in Goldberg v. Livingston, Bulletin 163, Item 2, and quite different from those found in St. Mary's Greek Catholic Church v. Manville, Bulletin 187, Item 1.

There remains the question of whether or not, in the absence of a granting of transfer and renewal in violation of the statute, respondent Board abused its discretionary authority.

In defense of the Board's action Chairman Osborn testified at length and was extensively cross-examined. He testified that he had made a personal observation of the proposed new location; that it is in an area which had formerly been a "dump;" that there is much vacant land adjacent to and across from the site; that there are some dwellings and multiple housing units nearby and some business, and that

there had been no objection when the transfer was considered. He expressed it as his opinion that the proposed new structure would not harm the neighborhood but might benefit it. He testified that he had taken into account the various protests and the reasons for such protests, but that they were not sufficient to affect his judgment, and he further testified that he believed that, considering the population and the expected growth, public necessity and convenience would be served by the transfer, noting that the licensee had moved "only a couple of blocks." He further testified that he did not believe Valentine's prior record was bad enough to deny him a license.

Here "the burden of establishing that the action of the respondent issuing authority was erroneous and should be reversed" rests with the appellant. Rule 6, State Regulations No. 15.

No one has a right to the issuance, renewal or transfer of a license to sell alcoholic beverages. Zicherman v. Driscoll, 133 N. J. L. 586 (Sup. Ct. 1946); Biscamp v. Teaneck, 5 N. J. Super. 172 (App. Div. 1949). The decision as to whether or not a license will be transferred to a particular locality rests within the sound discretion of the local issuing authority in the first instance. Hudson-Bergen County Retail Liquor Stores Association v. North Bergen, Bulletin 997, Item 2; Jones et al. v. Atlantic City, Bulletin 935, Item 1. So also, in the case of the renewal of a license, Griffin v. Rutherford, Bulletin 376, Item 3; Lewis v. Orange et al., Bulletin 268, Item 3. Moreover, an unreasonable denial of a transfer (Sweeney v. Camden, Bulletin 64, Item 7; Olko v. Saddle River, Bulletin 926, Item 3) or of a renewal (Kleinberg v. Harrison, Bulletin 984, Item 2) will be reversed.

Appellants' contention that the Board erred in ruling that it could not reconsider its action of February 3, 1953, granting the place-to-place transfer, is unsound. It is well established that such action (essentially judicial in nature) is, in circumstances such as those here present, complete when final determination has been made and final action has been taken, and that the issuing authority has no jurisdiction to reconsider its action at a subsequent meeting. Re Hendrickson, Bulletin 47, Item 10; Wardach and Jaskulski v. Camden and Oreb, Bulletin 487, Item 4, citing Plager v. Atlantic City, Bulletin 80, Item 11; Atlantic County Licensed Beverage Association v. Hamilton, Bulletin 879, Item 5.

As to appellants' contention that respondent Board abused its discretion because the proposed new premises are too close to the school, see Trinity Methodist Church of Rahway, N. J. v. Rahway, Bulletin 972, Item 3, where it was said:

> "... while no license may be transferred in violation of R. S. 33:1-76, the statutory discretion to grant or deny an application for transfer of a license is vested in the municipal issuing authority (R. S. 33:1-26), and the exercise of this discretion includes the power to determine the policy question of whether or not particular premises, although beyond the required 200-foot distance, are 'too close' to a church or school. Cf. Williams v. Atlantic Highlands, Bulletin 715, Item 7. 'But where denial of an application is based upon the proximity of the premises to a church or school, though farther than 200 feet therefrom, such denial to have merit should be pursuant to a reasonable and bona fide municipal policy to that effect.' Drozdowski v. Sayreville, Bulletin 746, Item 5."

In the record before me on this appeal there is no evidence of any municipal policy in this regard. And in Sweeney v. Camden, supra, the late Commissioner Burnett, in reversing, on appeal, the denial of a plenary retail consumption license application by Camden's issuing authority (then the Board of Commissioners), stated:

"Respondent also contends that the application was properly denied for the reason that appellant's premises are located too close to a church. It is admitted, however, the distance between the church and appellant's premises exceeds 200 feet and there is no evidence that respondent has adopted any policy prohibiting the issuance of licenses for premises deemed by it too close to churches even though beyond 200 feet."

The contention that Valentine is not a fit or proper person to hold a license is based upon his prior record (hereinabove related) and upon claims that his former premises were not properly conducted. The determination of the fitness of a person to hold a retail license is within the sound discretion of the local issuing authority in the first instance (R. S. 33:1-19; R.S. 33:1-24), and the Board may determine whether or not to renew a license after the licensee has been found guilty of a violation. Griffin v. Rutherford, supra; Lewis v. Orange et al., supra. The Board found, as testified by its Chairman, that Valentine's record did not render him unfit to hold a license. On that point, and on the record before me, I shall not here substitute my judgment for the judgment of the Board's members. Cf. Lewis v. Orange et al., supra.

From the testimony of Chairman Osborn it would appear that the Board considered all of the other matters raised by the appellants, including the character of the neighborhood and the vital question of public necessity and convenience. Obviously the neighborhood is not exclusively residential in character. Furthermore, the person-to-person transfer is from one location in the general area to another location in the same area a few blocks away. Thus, this is not a new or additional license in the area, and it has consistently been held that the mere fact that other licensed premises also serve the same neighborhood is not a valid reason for denying a place-to-place transfer from one location in the neighborhood to another location in that same neighborhood, where no appreciable increase in concentration of licenses results from such transfer. Willner's Liquors v. Camden, Bulletin 669, Item 14; Kupay v. Passaic, Bulletin 803, Item 9; Trinity Methodist Church of Rahway, N. J. v. Rahway et al., supra.

There is before me on this appeal no evidence of any improper motivation on the part of any member of the Board.

Under all the facts and circumstances of this case I find that appellants have failed to carry the burden of establishing that the action of the respondent issuing authority was erroneous and should be reversed.

Accordingly, it is, on this 5th day of April, 1954,

ORDERED that the action of the respondent Municipal Board of Alcoholic Beverage Control be and the same is hereby affirmed, and the appeal herein be and the same is hereby dismissed.

WILLIAM HOWE DAVIS
Director.

2. APPELLATE DECISIONS - ROBERTS v. LONG BRANCH AND BRITTON.

W. I. ROBERTS,
Appellant,
-vs-
BOARD OF COMMISSIONERS OF THE CITY OF LONG BRANCH, and LUCILLE W. BRITTON, t/a BRITTON'S,
Respondents.

ON APPEAL
CONCLUSIONS AND ORDER

William I. Roberts, Pro Se.
Edward F. Juska, Esq., by Clarkson S. Fisher, Esq., Attorney for Respondent Board of Commissioners of the City of Long Branch.
Evans, Sexton and Stein, Esqs., by Milton A. Stein, Esq., Attorneys for Respondent Lucille W. Britton.
Ira J. Katchen, Esq., Attorney for property owner Frank Mansfield.

BY THE DIRECTOR:

This is an appeal from the action of the respondent Board of Commissioners in granting a transfer of a plenary retail distribution license held by Lucille W. Britton from 603 Broadway to 229 Port-au-Peck Avenue, Long Branch.

The appellant's petition of appeal alleges that the building at 229 Port-au-Peck Avenue to which the license was transferred is located in a neighborhood zoned for residential purposes. On that issue the matter to be determined is whether the amendment to the zoning ordinance, approved August 1, 1951, prohibits the respondent-licensee from operating her liquor establishment at the proposed premises located at 229 Port-au-Peck Avenue.

The pertinent provision of the zoning ordinance as amended applicable to the instant case reads as follows:

"AN ORDINANCE TO AMEND AND SUPPLEMENT AN ORDINANCE ENTITLED: 'AN ORDINANCE LIMITING AND RESTRICTING TO SPECIFIED DISTRICTS AND REGULATING THEREIN BUILDINGS AND STRUCTURES ACCORDING TO THE CONSTRUCTION AND THE NATURE AND EXTENT OF THEIR USE IN THE CITY OF LONG BRANCH AND PROVIDING FOR THE ADMINISTRATION AND ENFORCEMENT OF THE PROVISIONS THEREIN CONTAINED AND FIXING PENALTIES FOR THE VIOLATION THEREOF', passed March 3, 1931, and the several amendments and supplements thereto.

"The Commissioners of the City of Long Branch DO ORDAIN:

"1. That Section 3 of the above entitled ordinance be and the same is hereby amended so that it supersedes the present Section 3 of said ordinance and shall read as follows:

"Section 3. For the purposes of this Ordinance the City of Long Branch is hereby divided into three classes of districts as follows:

1. Residence Districts.
2. Business Districts.
3. Industrial Districts.

Residence Districts are herein subdivided in:

A. Residence 'A' Districts.
B. Residence 'B' Districts.
C. Residence 'C' Districts.
D. Residence 'D' Districts.
E. Residence 'E' Districts.

"2. That the above entitled Ordinance be and the same is hereby amended and supplemented as follows:

"A. That the area bounded by the Shrewsbury River and the rear line of the building lots adjoining the south side of Atlantic Avenue from Branchport Avenue to Florence Avenue, and then from the rear line of the building lots on the inland side of Florence Avenue from Atlantic Avenue north to Patten Avenue, thence north along Patten Avenue to Mannahasset Creek be and is designated Residence 'E' District.

"B. That the Map dated September 16, 1947 entitled 'Zoning Map of the City of Long Branch, Monmouth County, New Jersey' and which Map is a part of this Ordinance, is changed and amended showing that the above described area is in Residence 'E' District.

"C. That within a Residence 'E' District no building or structure shall be used, erected or altered, in whole or in part, for any industrial, manufacturing or commercial purpose, or for any other than the following specified purposes:

"(a) Single detached house used as a residence by not more than one family for strictly residence purposes.

"(b) A residence containing the professional office of its resident owner or lessee.

"(c) Church or any place of worship including parish house and Sunday School building.

"(d) Buildings used for private horticultural or agricultural purposes, providing that no green house heating plant shall be operated within fifteen feet of any lot line.

***"

The evidence herein discloses that on the north side of Port-au-Peck Avenue wherein respondent Britton's premises are located from Patten Avenue west to the bridge on the Shrewsbury River, which leads to the Borough of Oceanport, there are several buildings containing different types of business establishments. The amendment to the municipal zoning ordinance (part of which is outlined above), adopted August 1, 1951, by the respondent Board of Commissioners, included among other areas Port-au-Peck Avenue as a residential zone, referred to as District "E".

Various witnesses called by respondent including a City Commissioner, who voted for the transfer, the City Clerk and Building Inspector testified that the property in question is a business property and is located in a business zone or area.

From the testimony of these parties, therefore, it seems clear that in their expressed opinions the premises being located in a business zone the transfer appealed from should not be deemed to be in contravention of the zoning ordinance. Furthermore, respondent Board's attorney contended at the Hearing: "...there can be no question that the intent of this section when the description got to Florence Avenue intended that it would exclude the old business section on the east side of Florence Avenue and thence run down to Patten Avenue. The description when plotted out on the map of W. W. Morris, C. E., of April, 1951, which has been marked into evidence, clearly shows the excluded area and the Britton premises are, of course, within that excluded area and in the area which was testified to as being strictly business by all of the witnesses."

But the opinions of the witnesses are not controlling nor is the contention advanced by Counsel with respect to an exclusory intent in the ordinance or in the mind of the engineer. The ordinance controls and its plain language permits of no modifying or qualifying construction. Within the clear terms of the 1951 amendment the premises to which the license was transferred are in Residence E District. That measure makes no exception with reference to the north side of Port-au-Peck Avenue, the site of the premises in question. Furthermore, a nonconforming use may not be extended. De Vito v. Pearsall, 115 N. J. L. 323 (Sup. Ct. 1935); Kensington Realty, &c., Corp. v. Jersey City, 118 N.J.L. 114 (Sup. Ct. 1937), affd. 119 N.J.L. 338 (E. & A. 1938); Dubin v. Wich, 120 N.J.L. 469 (Sup. Ct. 1938); Vogel v. Bridgewater, 121 N.J.L. 236 (Sup. Ct. 1938); Simone v. Peters, 135 N.J.L. 495 (Sup. Ct. 1947); Scerbo v. Jersey City, 4 N. J. Super. 409 (App. Div. 1949); Struyk v. Samuel Braen's Sons, 17 N J. Super. 1 (App. Div. 1951), affd. 9 N. J. 294 (Sup. Ct. 1952); Gerkin v. Ridgewood, 17 N. J. Super. 472 (App. Div. 1952). Thus, even though the premises had been constructed prior to the adoption of the 1951 amendment the sale of alcoholic beverages therein would constitute a new and prohibited use and not a nonconforming use in existence at the time of the amendment's adoption. Talbot v. Keppler and Mendham, Bulletin 117, Item 1, and cases therein cited; Marinaccio v. Ocean, Bulletin 264, Item 11; Nasso v. Bridgewater, Bulletin 744, Item 10; Cornelius et al. v. Elizabeth et al., Bulletin 997, Item 4.

There can be no collateral attack, herein, upon the validity of the zoning ordinance. Unless and until it is set aside by a Court of competent jurisdiction I shall assume that its provisions are reasonable. See Murchio v. Wayne Township, Bulletin 379, Item 7; Cf. M. O'Neil Supply Co. et al. v. Township of Ocean et al., Bulletin 278, Item 1.

An operative municipal ordinance is binding upon the action of the municipal governing body itself so that such governing body has no jurisdiction to grant a license in violation thereof. Bachman v. Phillipsburg, 68 N.J.L. 552 (Sup. Ct. 1902).

The points argued, and the cases cited in support thereof, in the respondents' Memorandum are inapposite. This is not an appeal under R.S. 40:55 from action of a building inspector. It is an appeal (R.S. 33:1-26; R.S. 33:1-38) from the local issuing authority's granting of a transfer of an alcoholic beverage license. Consistently and for many years (and properly, I am convinced) the State Commissioner (now Director) has taken jurisdiction to reverse on appeal municipal action granting licenses in violation of zoning ordinances. Illustrative cases are Talbot v. Keppler and Mendham, supra; East Brunswick Township Board of Adjustment v. East Brunswick, Bulletin 223, Item 5; Cornelius et al. v. Elizabeth et al., supra. See, also, Re Bardessono, Bulletin 266, Item 3.

As hereinabove set forth, the transfer herein appealed from was granted in violation of the City's zoning ordinance and, thus, I am constrained to set the transfer aside. With disposition of the appeal on the stated ground it is unnecessary to consider here any other reasons advanced by appellant for reversal of respondent Board's action.

Accordingly, it is, on this 5th day of April, 1954,

ORDERED that the action of respondent Board of Commissioners, in transferring plenary retail distribution license held by respondent Lucille W. Britton from 603 Broadway to 229 Port-au-Peck Avenue, Long Branch, be and the same is hereby reversed, and such transfer declared null and void, and that all operations thereunder cease forthwith.

WILLIAM HOWE DAVIS
Director.

3. NUMBER OF MUNICIPAL LICENSES ISSUED AND AMOUNT OF FEES PAID FOR THE PERIOD JULY 1, 1953 TO MARCH 31, 1954 AS REPORTED TO THE DIRECTOR OF THE DIVISION OF ALCOHOLIC BEVERAGE CONTROL BY THE LOCAL ISSUING AUTHORITIES PURSUANT TO R.S. 33:1-19

CLASSIFICATION OF LICENSES

County	Plenary Retail Consumption No. Issued	Plenary Retail Consumption Fees Paid	Plenary Retail Distribution No. Issued	Plenary Retail Distribution Fees Paid	Club No. Issued	Club Fees Paid	Limited Retail Distribution No. Issued	Limited Retail Distribution Fees Paid	Seasonal Retail Consumption No. Issued	Seasonal Retail Consumption Fees Paid	Number Surrendered Revoked Expired	Number Licenses in Effect	Total Fees Paid
Atlantic	489	$208,750.00	71	$ 25,775.00	17	$ 1,600.00						577	$ 236,125.00
Bergen	816	303,366.16	298	84,537.00	88	8,219.53	56	$ 2,605.00	6	$ 1,605.74	5	1259	400,333.43
Burlington	187	74,531.00	33	8,950.00	40	5,686.85	1	25.00			1	260	89,192.85
Camden	456	218,247.37	82	31,925.00	69	6,650.41			1	375.00	2	606	257,197.78
Cape May	133	73,550.00	11	4,000.00	18	2,100.00						162	79,650.00
Cumberland	81	40,000.00	13	3,600.00	30	3,967.94						124	47,567.94
Essex	1376	765,454.11	351	205,700.00	105	14,440.00	30	1,500.00	1	750.00	6	1857	987,844.11
Gloucester	108	34,400.00	13	2,750.00	17	1,550.00						138	38,700.00
Hudson	1553	674,355.60	298	117,746.71	76	9,024.18	67	2,900.00				1994	804,026.49
Hunterdon	79	25,250.00	6	1,862.50	6	700.00						91	27,812.50
Mercer	426	258,650.00	51	10,200.00	53	7,500.00			1	92.50	2	529	276,442.50
Middlesex	634	304,205.00	74	22,670.00	83	7,334.55	4	200.00			1	794	334,409.55
Monmouth	554	279,897.55	119	41,181.05	34	4,058.70	11	460.00	29	12,413.38	31	716	338,010.68
Morris	365	123,296.42	98	30,550.00	49	4,552.81	21	1,050.00	6	1,417.86	7	532	160,867.09
Ocean	193	105,236.31	46	19,065.00	19	1,922.55						258	126,223.86
Passaic	876	358,580.00	167	51,370.00	38	4,542.61	11	525.00				1092	415,017.61
Salem	50	19,000.00	8	1,447.40	17	1,466.30			1	262.50	2	74	22,176.20
Somerset	187	77,488.50	38	10,395.00	24	2,547.95					1	248	90,431.45
Sussex	170	45,155.00	20	3,755.00	9	535.00	1	50.00	1	225.00	1	200	49,720.00
Union	556	292,583.56	145	59,500.00	72	8,106.10	33	1,600.00			1	805	361,789.66
Warren	148	42,555.00	17	4,157.50	30	3,130.00			2	304.11	2	195	50,146.61
TOTALS	9437	$4,324,551.58	1959	$741,137.16	894	$99,635.48	235	$10,915.00	48	$17,446.09	62	12511	$5,193,685.31

William Howe Davis
Director

April 6, 1954.

4. APPELLATE DECISIONS - MALLOY v. CAPE MAY.

SARAH A. MALLOY,
Appellant,
-vs-
BOARD OF COMMISSIONERS OF THE CITY OF CAPE MAY,
Respondent.

ON APPEAL
CONCLUSIONS AND ORDER

W. Russell Epler, Esq., Attorney for Appellant.
T. Millet Hand, Esq., by Nathan C. Staller, Esq., Attorneys for Respondent.
Irving Shenberg, Esq., Attorney for Objectors.

BY THE DIRECTOR:

This is an appeal from respondent's action on November 30, 1953, whereby it denied, without stating any reason, appellant's application for a plenary retail consumption license for a hotel premises on Beach Avenue at the intersection of Second Avenue. The premises were described in said application as a cement block building to be constructed and attached to appellant's existing hotel building and to contain a hotel with 50 sleeping rooms, accommodating 100 guests, a cocktail lounge, bar and restaurant.

In her petition of appeal, appellant contends that respondent's action was erroneous in that,

"(1) No reason, lawful or otherwise, was given for the denial of the application.

"(2) No evidence was presented by the issuing authority, or any objector who appeared before the Board of Commissioners, against the moral character or reputation of the appellant.

"(3) That the denial of the application was in contravention of the laws of the State of New Jersey of 1947, Chapter 94, page 503, which reads as follows: 'Nothing in this Act shall prevent the issuance, in the municipality, of a new license to a person who operates a hotel containing fifty sleeping rooms, or who may hereafter construct and establish a new hotel containing at least fifty sleeping rooms.'

"(4) That the premises upon which the hotel is to be constructed is within a zoning district of the City of Cape May in which business and hotels are permitted to be erected, and upon the premises of which alcoholic beverages may be sold."

Respondent filed no answer but the parties entered into the following stipulation which was introduced in evidence at the hearing on this appeal:

"1. That the original application for plenary retail consumption license was in order and the matters and things appearing therein were and are uncontroverted.

"2. That investigation by the respondent did not disclose any evidence against the moral character of the applicant-appellant.

"3. That no evidence was produced at the original hearing of the application against the moral character of the applicant-appellant.

"4. That the premises upon which the hotel is to be constructed are within a zoning district of the City of Cape May in which business and hotels are permitted to be erected.

"5. That upon application for issuance of a permit to erect a hotel containing fifty (50) or more sleeping rooms, the Building Inspector of the said City will issue a permit therefor.

"6. The Board of Commissioners denied the application for the reason that the premises to be licensed were in a residential locality and no license or licenses had ever been issued in the particular locality before, and that the number of persons whose names appeared on petitions against the granting of the license exceeded the number of names on petitions for the issuance of the license."

At the hearing on this appeal, appellant, her son and an employee testified in her behalf. From their testimony it appears that, since 1946, appellant has owned and conducted a 30-room hotel on the northwest corner of Beach and Second Avenues; that she has a dining room where meals are served to her hotel guests; that the premises are open for business between June and the middle of October; that a jetty has been built out into the Atlantic Ocean across from appellant's premises; that upwards of one hundred people congregate at or near the jetty to fish; and that more recently, appellant has conducted on her premises a store where bait, sandwiches, hamburgers, hot dogs, soft drinks, cigarettes and candy are sold. These witnesses also testified that requests for alcoholic beverages with meals have been received from hotel guests and that requests for meals and requests for alcoholic beverages have been received from fishermen and other transients and that, under the circumstances which have heretofore existed, such requests have had to be refused. They also testified that there are no restaurants near appellant's premises and that no plenary retail consumption license has been issued or exists for any premises within 6 or 7 blocks of appellant's hotel; that appellant contemplates enlarging her present hotel building so that it will contain 50 sleeping rooms for the accommodation of 100 guests, a bar, a cocktail lounge and a dining room open to the public the year 'round and that such facilities would serve a definite public need and provide a convenience to the public. They further testified that appellant has already lost business because of the lack of a license and that, unless appellant obtains the license sought, it will not be financially feasible to enlarge the existing building or increase the facilities and accommodations.

Mr. Mullin, one of appellant's employees, testified that most of the restaurants in the City either close in the winter or serve no alcoholic beverages. He further testified that he knew of two restaurants which serve both food and alcoholic beverages in the winter, including the American Legion which holds a club license which restricts its alcoholic beverage activity to its bona fide members and their bona fide guests. R. S. 33:1-12(5) and Rule 8 of State Regulations No. 7.

It is not disputed that plans and specifications for the enlargements and improvements were filed with the license application on November 4, 1953; that objections to the issuance of the license were received by respondent; that a hearing was held by respondent on November 23, 1953 at which objectors were heard and petitions for and against were received and that respondent postponed its decision until November 30, 1953, at which time it denied the application without further comment.

The City Clerk was called as a witness by appellant. From his testimony and the exhibits it appears that there are 18 plenary retail consumption licenses and 4 club licenses issued and outstanding in the City; that the population, according to the 1950 Federal Census, was 3,508; that the license here sought would not be barred by the local ordinance limiting the number of such licenses, because of an exception

in favor of hotels having a capacity to entertain not less than 100 guests at one time; that no license has ever been issued for the section of the City where appellant's hotel is located; that a license was issued to the Hotel Sylvania under the "hotel exception" even though there were 5 or 6 other licensed premises in the vicinity; that the last hotel erected in the City was built in 1919; that the City is steadily increasing in population and ratables; that parking meters have been erected on Beach Avenue, extending to appellant's premises, and that neither hotels nor businesses are prohibited at the premises sought to be licensed. With respect to the issuance of a license to the Hotel Sylvania, he testified that it is in a different section of the City from appellant's premises, being in the busy center of the City, near the City Hall. He further testified that there are no business buildings located near appellant's hotel premises.

Six objectors appeared and testified at the hearing on this appeal. All are near neighbors of appellant and their objections may be summarized as follows: They contend that the area is residential in character; that it is a quiet family resort; that they fear that the neighborhood would deteriorate if the license were granted and their property values would decline, and that there is no public necessity or convenience to be served by the issuance of such license.

Unfortunately, no member of the local issuing authority appeared at the hearing on this appeal, although opportunity therefor was specifically afforded. Thus, since the issuance of the license is not barred by the local ordinance or P. L. 1947, ch. 94 and since no reason for the denial of the application was assigned in the resolution of November 30, aforementioned, the only evidence of the reasons for such denial appears in paragraph 6 of the stipulation hereinabove set forth, namely, that (1) appellant's premises are in a residential locality, (2) no license has ever before been issued in the particular locality and (3) the number of persons whose names appeared on petitions against the granting of the license exceeded the number of names on petitions for the issuance of the license.

It may be noted in passing that, as to reason (1), the locality while residential in character, is so zoned that hotels and business are permitted. As to reason (3), mere numbers are not dispositive. Reason (2) would appear to disclose a policy not to issue any licenses in the particular section of the City where appellant's hotel is located. Such policies have been upheld. Sadovsky v. Millstone, Bulletin 120, Item 4 (and cases therein cited); Kemo v. Trenton, Bulletin 983, Item 2.

It is well established in this State that "No one has a right to demand a license. A license is a special privilege granted to the few, denied to the many." Paul v. Gloucester, 50 N.J.L. 585 (E. & A. 1888); Meehan v. Excise Commissioners, 73 N.J.L. 382 (Sup. Ct. 1906), aff'd. 75 N.J.L. 557 (E. & A. 1908); Bumball v. Burnett, 115 N.J.L. 254 (Sup. Ct. 1935).

Under the Alcoholic Beverage Law (R.S. 33:1-1, et seq.) the responsibility is placed upon each issuing authority in the first instance to determine whether or not a license shall be issued or transferred, Passarella v. Board of Commissioners, 1 N. J. Super. 313 (App. Div. 1949), and my function on appeal is not to substitute my opinion for that of the issuing authority but, rather, to determine whether or not reasonable grounds support its decision and, if so, to affirm its action irrespective of my opinion. Spector v. Roselle, Bulletin 703, Item 1; Bock Tavern Inc. v. Newark, Bulletin 952, Item 1.

In his memorandum, appellant's attorney concedes that the mere fact that a license could be issued to appellant under the "hotel exception" does not ipso facto entitle her to such license. Haba

Realty Corp.v. Long Branch, Bulletin 984, Item 1. He contends, however, that the instant case is parallel to Samuelian v. Ocean Township, Bulletin 985, Item 2, where a denial of such a license was reversed on appeal. I cannot agree with this contention. In that case licenses had previously been issued for the hotel premises in question. In addition, an application for a license had been denied two years earlier (1951) because the building was "badly in need of repair" and the Director found, as a fact, that this objection had been met by extensive repairs and that a certificate of approval and registration had been issued for said premises for the year 1953 by the State Supervisor of Hotel Fire Safety. No such facts are present in this case.

The burden of establishing that respondent's action was erroneous and should be reversed rests with appellant. Rule 6 of State Regulations No. 15. On the record before me I find that appellant has failed to carry that burden.

Accordingly, it is, on this 8th day of April, 1954,

ORDERED that the action of the respondent Board of Commissioners be and the same is hereby affirmed, and the appeal herein be and the same is hereby dismissed.

WILLIAM HOWE DAVIS
Director.

5. RETAIL LICENSEES - PRACTICES UNDULY DESIGNED TO INCREASE CONSUMPTION - MULTIPLE DRINKS AT SPECIAL PRICES DISAPPROVED.

April 2, 1954

Dear Sir:

You hold a plenary retail consumption license for your tavern at the above address.

In your letter of March 31st you ask whether you may put up a sign on your back bar indicating that between 1:00 and 6:00 p.m. drinks from any bottles bearing a yellow label will be two for $1.00; from any red label, two for 70¢; and from any white label, two for 50¢.

Neither the sign nor the scheme is proper. We have expressly disapproved schemes whereby, during special hours or days, drinks are reduced in price in order to stimulate drinking or patronage during those hours. See Bulletin 732, Item 8, copy enclosed. We likewise disapprove of schemes whereby patrons are induced to buy multiple drinks under lure of a special price for such multiple drinks. See Bulletin 817, Item 14, copy also enclosed. Such schemes are, in the words of the Alcoholic Beverage Law, R. S. 33:1-39, "unduly designed to increase consumption of alcoholic beverages". In the long run, they can only do harm to the public and to the industry itself.

Your proposed sign and scheme must be abandoned.

Very truly yours,
WILLIAM HOWE DAVIS
Director.

6. LICENSED PREMISES - BUS LINE MAY APPROPRIATELY ADVERTISE ITS BUS SERVICE IN TAVERNS OR OTHER RETAIL LICENSED ESTABLISHMENTS.

April 2, 1954

Gentlemen:

It appears that you plan to include in your regular bus service a run to and from various of the authorized race tracks in New Jersey. We assume that you are obtaining whatever clearance may be required from the Department of Public Utilities in the state.

Should your plans mature, there is nothing in the Alcoholic Beverage Law or in the Regulations of this Division to prohibit you from appropriately advertising the fact of your above bus service in taverns or other retail liquor licensed premises in New Jersey.

William Howe Davis
Director.