STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
1100 Raymond Blvd. Newark, N. J. 07102

BULLETIN 1624 July 27, 1965

TABLE OF CONTENTS

ITEM

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1. APPELLATE DECISIONS - SILVER SANDS MOTEL v. POINT PLEASANT BEACH.

Silver Sands Motel, Appellant, v. Mayor and Borough Council of the Borough of Point Pleasant Beach, Respondent.	On Appeal CONCLUSIONS and ORDER

Pindar, McElroy, Connell & Foley, Esqs., by William T. McElroy, Esq., and William J. Kearney, Esq., Attorneys for Appellant
Robert H. Doherty, Jr., Esq., Attorney for Respondent
Samuel M. Morris, Esq., Attorney for Objectors

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

Hearer's Report

This appeal challenges the action of respondent Mayor and Council of the Borough of Point Pleasant Beach (hereinafter Council) whereby on April 20, 1964, by a vote of three-to-two of the members present, it denied appellant's application for a plenary retail consumption license for the period expiring June 30, 1964, for premises located at 1201-1205 Ocean Avenue, Point Pleasant Beach.

The resolution denying the said application does not set forth any reason for such denial. In appeals from the issuance or denial of liquor licenses by municipal issuing authorities, it has been repeatedly counselled that, in all fairness, the issuing authority should state the reasons for its decision but that such failure is not fatal where the reasons are set forth in respondent's answer or fully developed at the appeal hearing. Rokay Wines & Liquors, Inc. v. Passaic, Bulletin 1198, Item 1; cf. Fanwood v. Rocco, 33 N.J. 404. The reasons for denial were developed at this plenary appeal de novo. Cf. Spring Manor, Inc. v. Newark, Bulletin 1319, Item 4.

The petition of appeal reflects the following picture which is supported by testimony offered on this appeal: Appellant, the operator of a fifty-two-room motel, filed an application for a plenary retail consumption license pursuant to the exception provision contained in R.S. 33:1-12.20 and municipal ordinance adopted May 14, 1957, relating to hotels. It fully complied with the statutory prerequisites. Upon the receipt by respondent of objections thereto, a full public hearing was held thereon, after which the said application was denied.

In its petition of appeal appellant asserts that such action was erroneous for reasons which may be summarized as follows:

1. Council acted in an "arbitrary, capricious and unreasonable manner" and disregarded the relevant evidence presented, but based its determination on factors which were "immaterial and irrelevant to the issue in question."

2. Council failed to assign formal reasons for denial of the application.

3. One of the councilmen refused to disqualify himself although ineligible to vote because of interest in the subject matter.

4. Two of the councilmen based their vote on a mistaken conception of the law, rather than on the evidence.

During the hearing and in the memorandum submitted by counsel for appellant in summation, the additional point was advanced that the vote of Council was based upon political considerations, rather than on the evidence. This seems to be embraced by the statement in the petition that Council's determination was based on factors "immaterial and irrelevant" to the issue.

The answer of respondent generally denies the allegations of the petition and asserts that its action was based upon "all the factors presented to it at a regular hearing, and was within its sound discretion."

Since this was a plenary de novo hearing on appeal, full opportunity was afforded to present testimony and cross-examine witnesses, in accordance with Rule 6 of State Regulation No. 15.

The basic issue to be determined in this case is whether or not the Council properly exercised its discretion in denying appellant's application for said license. Conversely, it must be determined whether or not there was an unreasonable exercise of its discretion and thus an abuse of its discretion. Simply stated, discretion must be reasonable; conversely, abuse of discretion is equated with unreasonableness. "Reasonable" is defined as "being in agreement with right thinking or right judgment; not absurd." Webster's (3rd Edition) New International Dictionary. "Reasonable" has also been defined as "governed by reason", "sensible"; also "fair", "equitable", "fair-minded" and "suitable in the circumstances." 75 C.J.S. 634, and cases therein cited. What is "reasonable" must, of course, be determined according to the context and circumstances of each particular case.

As the court pointed out in Bivona v. Hock et al., 5 N.J. Super. 118, 121:

"...the Legislature has not sought to delegate unlimited 'discretion' to these agencies, but rather has spelled out a system within the principles of which the agencies shall act. Accordingly, the courts must measure the propriety of the administrative action by the authority granted, and may not merely surrender the subject matter to the agencies on the premise that theirs is a discretion exercisable on the basis of any and all factors which pertain to the political issue of prohibition."

The issuance of a liquor license is not an inherent or automatic right. If denied on reasonable grounds, such action will be affirmed. Richmon, Inc. v. Trenton, Bulletin 1560, Item 4. On the other hand, where it appears that the denial was arbitrary or unreasonable, the action will be reversed. Tompkins v. Seaside Heights, Bulletin 1398, Item 1.

In Fanwood v. Rocco, supra, it was held, at p. 414:

> "Although New Jersey's system of liquor control contemplates that the municipality shall have the original power to pass on an application for a tavern or package store license or the transfer thereof, the municipality's action is broadly subject to appeal to the Director of the Division of Alcoholic Beverage Control. The Director conducts a de novo hearing of the appeal and makes the necessary factual and legal determinations on the record before him.... Under his settled practice, the Director abides by the municipality's grant or denial of the application so long as its exercise of judgment and discretion was reasonable."

In addition, in Blanck v. Magnolia, 38 N. J. 484, it is stated that "the test in the establishment and issuance of liquor licenses is whether the public good requires it." Thus it must first be determined whether there was a need and necessity for such license, i.e., the best interests of the public required it.

I

In support of its contention that there was a need and necessity for the license applied for, appellant produced as its primary witness Andrew DeBenedictis (president of the corporate applicant). He testified that the motel, as originally purchased in 1959, had eighteen units. The following year an adjoining motel was purchased, additional units have been constructed, and this motel today has a total of fifty-two units. It contains a restaurant and swimming pool, is an attractive structure, and is located on a street on which in the immediate vicinity are located four smaller motels. Ocean Avenue is a street containing numerous guest houses, real estate and commercial structures and other business enterprises. On the opposite corner is Bradshaw's Beach, a public beach which rents lockers on a daily basis to transients.

The witness also testified that Point Pleasant Beach is a resort community which has a population of about 5,000 during the winter months. Tourism is its primary industry, and its population increases about ten times during the summer months. The nearest consumption license is located about three blocks from appellant's motel, at a facility known as the Hoffman Beach House. DeBenedictis stated that the motel cost a total of $360,000, of which he paid cash in the amount of $100,000, the balance being covered by mortgages. He further stated that this license was needed in order to accommodate patrons of his motel who seek first-class accommodations and who would not patronize the facility unless they were able to obtain alcoholic beverages.

Harold Hayes (chairman of the local Board of Adjustment and a director of the Point Pleasant Chamber of Commerce) testified that he has been in the insurance business in Point Pleasant Beach for twenty-five years. He has also built, bought and sold numerous bungalows and apartments on Ocean Avenue in this Borough. It was his opinion that there is a need for the license at the premises in question and he expressed his feeling in the following language:

"... I believe that our area needs at least one or two more places where folks can get a cocktail before dinner; and I know that on my vacation, and I think some of you folks on your vacations have probably traveled in other communities, where cocktails are available before dinner, and I think we only have one establishment in Point Pleasant Beach where a cocktail can be obtained before dinner. And I also think that it is in an area that will not harm anyone."

He further stated that the particular area has undergone a substantial commercial transition during the past ten years and that Ocean Avenue is a commercial avenue with numerous motels, stores and other businesses. He enumerated them: a restaurant, a bathing pavillion, summer cottages, motels, a warehouse, rooming houses, a miniature golf course, an amusement area, a laundry, parking lots, and so forth.

On cross examination he expressed his opinion that the summer cottages are commercial enterprises because they are rented to tourists for seasonal occupancy. He admitted that this area was zoned as B-residential. As chairman of the Zoning Board of Adjustment, he felt that, although this street had not been rezoned, Ocean Avenue had grown into a commercial area. He explained that while properties in the rear of commercial places may be entirely residential, "that does not mean that these commercial streets cannot be used for commercial purposes and I have always felt that Ocean Avenue is the same thing. It should be used for commercial purposes, even though the areas behind it may be residential."

Anthony V. Spezzano (a neighboring twenty-room motel operator) supported appellant and felt there was a genuine need in the community for a liquor license at this location. He felt it would be an asset to the community.

Rev. Justinian Schellberg (Assistant Pastor of St. Peter's Church in the Borough), testifying in his own behalf and as a representative of his parish, spoke enthusiastically in support of appellant's application. He stated, "I think it would be a great asset to the community. As a representative of the parish I speak on the part of all the priests in the parish now, and I think it would be a great asset to the community. It's very well run. The person who is running it, or the people running it are, I believe, assets to the community." He endorsed the opinions of the prior witnesses that the community needed this type of facility because there were "very few places where someone can go in and get a meal at a restaurant and have maybe a cocktail or a glass of beer ...." He emphasized that DeBenedictis was a person of the highest character and was an active and valuable member of civic and church organizations.

There were introduced into evidence, with the consent of counsel, letters from residents, including one from the president of the Junior Chamber of Commerce, in support of the said application. Also admitted were petitions signed by residents of the community, both in support of and in opposition to the said application.

On behalf of the Council several witnesses were called who testified in opposition to issuance of the license. Rudolph Spader (a resident of the neighborhood who owns two parcels of land in the general area) based his primary objection to the

granting of the application on his allegation that there were insufficient parking facilities. He also stated that a considerable amount of noise emanated from the motel and the motel pool which might be increased if a liquor license were granted. He added that there might be some devaluation of property in the event of favorable action thereon.

On cross examination he admitted that no one had raised the objection of parking at the hearing before Council and further acknowledged that the parking which he personally objected to may have been contributed to by other residents and transients who use the public beach. With respect to property values he admitted that property in and about the area of the motel had increased in value from $6,000 to $6,800 for a single lot and he was willing to pay that increased amount if such lots were available.

Katherine Gleason testified that she prepared a petition, submitted at the hearing, in opposition to this application. She felt there was a tendency to develop commercial areas to the detriment of residential portions of the community.

It was stipulated at this time that several other witnesses who were present would testify essentially that, in their opinion, there was no need or necessity for such license and that it would be a detriment to the neighborhood in which they lived.

Having set forth a summary of the testimony of the witnesses, I shall now summarize the testimony at this appeal of the three councilmen who appeared. Councilman Wall testified in support of his affirmative vote; Councilmen Zezula and Kronenwetter sought to explain their votes in opposition. Councilmen Cherry and Stikeleather did not testify.

Councilman Wall, who voted for the grant of this application, set forth his reasons for so voting as follows: "...My reason was to attract a better type ratable to Point Pleasant Beach we had to consider these motels in the respect that they're, and this is my exact words, I believe that they're our industry. We're a resort town. They're an industry. We need the ratables, and to attract the better ratables, I couldn't see how anybody could attract large sums of money in this town without being considered with the liquor license. It would be one of the necessary requirements for these large ratables." He also stated that he was satisfied that the granting of this license would be legal in every respect; he had been assured of that by Council's attorney.

Wall further testified that Councilman Cherry stated at the meeting that he voted against the grant because one of the objectors at the said hearing asserted that she had not been served with notice of an application for a special permit in 1961. This was his only assigned reason for so voting.

Councilman Zezula, who voted against the application, stated that the principal motive for his vote was that he saw no reason for the introduction of a liquor license into a residential area. It was zoned B-residential and is characteristically residential. On cross examination he was asked whether, in his opinion, the influx of motels and other commercial establishments had any influence upon the character of the area, to which he answered, "I don't consider a motel far from being a residence. I mean that's what the purpose of the motel is."

Councilman Kronenwetter testified that his vote to deny the application was based on the fact that this area was zoned residential. He felt that the area in which the motel was situated should have been rezoned "fifty years ago" but, since it had not been rezoned, he was bound by the present zoning restrictions. He admitted that he voted to deny for that specific reason, although it was explained to him by the borough attorney that the motel was not disqualified from obtaining a license merely because it was in a B-residential zone.

There has never been any question with respect to the personal qualifications of appellant's officers, especially that of its president DeBenedictis. This was expressed by witnesses for both appellant and respondent. I am convinced that he has established a large reservoir of good will in the community, and I was particularly impressed in this regard with the testimony of Reverend Schellberg who expressed the highest confidence in the integrity of DeBenedictis.

I am further persuaded from the evidence that Ocean Avenue, on which the motel is situated, is a commercial artery. In addition to the commercial enterprises which were testified to, the other motels and summer cottages are clearly commercial in character. It is true, as Councilman Gleason stated, that motels are places in which people reside. However, a distinction must logically be drawn between a motel catering to transients or a cottage that is commercially rented to seasonal tenants, and a house that is clearly residential in character, occupied by residents. A motel, by definition, is a commercial structure catering to automobile tourists. That Ocean Avenue is commercial in character has been affirmed by the chairman of the local Zoning Board and even by Councilman Kronenwetter who had voted in opposition to this application.

Therefore it must be concluded, and I find as a fact, that the neighborhood is mixed residential and that the facility in question is located on a commercial artery.

In considering the reasonableness or unreasonableness of the action of Council, there are several other practical factors that must be identified. The Borough of Point Pleasant Beach is a summer resort and tourism is its major industry. As in many other such communities in New Jersey, that industry has benefited from the general population explosion in the State. Such population increase has resulted in an increase in the summer population of the Borough of at least four or five times its normal winter population. There is testimony that within a five-mile radius this industry caters to at least one hundred thousand people.

Within this context it follows that modern facilities to service this increased population are desirable and necessary. Conversely, the lack of up-to-date facilities would deter people from coming to this community and, instead, they would patronize modern facilities which may be provided in other communities.

Appellant has sought to provide this type of facility. The motel in its present form cost $360,000 and contains a modern restaurant and swimming pool. There has been testimony to the effect that, especially in a resort community, a restaurant which does not provide alcoholic beverages cannot and will not attract

the more desirable patronage. There is also testimony to the effect that most of the diners at this restaurant will be patrons of the motel itself and that the licensed facility will be operated in a respectable manner. If it is not, there are always available disciplinary proceedings to suspend or revoke the license.

It should also be observed that the motel already exists; and many of the objections with respect to parking, noise and possible property depreciation are objections raised to the operation of the motel and restaurant. Whether or not the license is ultimately granted will have no effect upon the continued operation of the present premises. I conceive, therefore, that those objections are insubstantial where they relate merely to the introduction of a liquor license to the present operation.

With respect to parking, there has been no satisfactory showing that a greater parking problem will be created by the granting of a liquor license. In fact, some of the objections raised with respect to parking were clearly due to the unlawful and improper parking on the part of local residents and patrons of the public beach nearby. In any event, issuance of this license will, of course, be subject to compliance with municipal regulations as they relate to parking.

On the subject of property values, there has been no affirmative showing that property would be devalued. On the contrary, testimony of one of the Council's witnesses suggests that general property values in this area have escalated, so that this argument is more fanciful than real.

One additional point to be considered is that petitions have been filed with the Council favoring and opposing the application in question. Petitions are, of course, influential and persuasive. However, the counting of noses cannot serve as a substitute for the considered determination of the local issuing authority in fulfilling its obligation and responsibility in its designated capacity. Petitions are given weight after proper discount for self-interest and the often irresponsible way petitions are signed as friendly accommodation without considered thought of the contents or of arguments on the other side. The weight to be given a petition must, in large measure, depend on what it states, who signs it, and how it accords with the policy and common sense of the officials responsible for the administration of the law and whose duty and privilege it is to hear both sides. Dunster v. Bernards, Bulletin 99, Item 1.

I therefore conclude, on the basis of the testimony, that there is a reasonable need for the issuance of this license and that the denial of the said application was against the logic and sum of the presented facts. Cf. Hudson-Bergen County Retail Liquor Stores Assn. v. Hoboken, 135 N.J.L. 502, 511.

II

There is one additional matter projected by appellant, and fortified by testimony, which buttresses the conclusion that the Council's action was unreasonable. In support of its petition of appeal appellant asserts that certain councilmen voted under a mistake in law in denying its application. In furtherance of this charge the evidence shows that, although Councilman Kronenwetter was advised by the borough attorney that the applicant was not disqualified under the existing zoning ordinance

from obtaining a liquor license under the special provisions of the statute relating to hotels containing fifty rooms or more, he nevertheless felt bound by the ordinance because the total area was zoned as a B-residential zone. Kronenwetter stated that he personally felt the whole beach front should be rezoned "but right now it isn't changed, and I don't think -- since 1941 somebody should nave done something before I got on Council." He was then asked the following question:

"Q The reason here was, as you say, you played a lot of ball and you go by the regulations and because this is classed as residential, that's the reason why you denied the application?
A Absolutely."

It seems abundantly clear that Kronenwetter voted in disregard of the specific advice given to him by the borough attorney with respect to the applicable zoning law as it relates to this application. Of course, he was not obligated, as a councilman, to accept the advice of the Council's attorney as to the applicability of the zoning ordinance. The construction of such zoning ordinance is not properly before this tribunal. Lubliner v. Paterson, 59 N.J. Super. 419 (App. Div. 1960), aff'd 33 N.J. 428 (1960).

I am satisfied that he understood, as explained to him by the borough attorney, that the existing zoning ordinance permitted the Council to grant appellant's application if it so desired, i.e., that it was not disqualified from doing so by reason of the fact that the motel was located in a B-residential zone. Kronenwetter nevertheless insisted that he was "stubbornly" determined to abide by what he conceived to be the rules with respect to such zone in voting for denial of said application. By so voting it is evident that he failed to take into consideration the paramount issue of the needs and the best interests of the community. Such action was inconsistent with right judgment and is unreasonable. I find that he misconceived and misconstrued the zoning law as it applied to this motel. As stated above, it was not his function, any more than it is the function of the Director of this Division on appeal, to interpret zoning laws. As Lubliner pointed out, that is within the province of the Zoning Board and, by appeal, the appropriate law courts.

Cherry's reason for voting to deny, as set forth hereinabove (if in fact that was his reason), is clearly irrelevant. I also find that the basis upon which Zezula voted to deny the application is unrealistic, arbitrary and unreasonable.

On the question of reasonableness I find, in view of the fact that this facility is located in a mixed residential and commercial area, that Kronenwetter's misconception and misconstruction of the applicable law amounts to an unreasonable determination on his part. I am therefore persuaded that the majority action in denying appellant's application was arbitrary and unreasonable.

Appellant has raised additional objections to the action of the Council, namely, (1) that political consideration influenced its decision and (2) Councilman Kronenwetter had a disqualifying interest. However, in view of my findings with respect to the issue, as hereinabove set forth, which are dispositive of the matter herein, it is unnecessary to consider these allegations.

I therefore recommend that an order be entered reversing the Council's action and directing the issuance by respondent of the appropriate license for the current licensing period, upon filing of a new application for the 1964-65 license year by appellant and compliance with all procedural requirements. See R.S. 33:1-38, which provides in pertinent part:

"The commissioner (director) is hereby authorized to order the other issuing authority to issue a license when and if, after a hearing on the appeal of an applicant therefor, the commissioner (director) shall decide that a license was improperly refused..."

Conclusions and Order

Pursuant to Rule 14 of State Regulation No. 15, written exceptions to the Hearer's Report and written argument in support thereof were filed by the attorney for respondent, and answers to the said exceptions were filed by the attorneys for appellant. I also heard oral argument in furtherance of the exceptions and the answers thereto.

The Hearer concluded "on the basis of the testimony, that there is a reasonable need for the issuance of this license and that the denial of the said application was against the logic and sum of the presented facts." Cf. Hudson Bergen County Retail Liquor Stores Assn. v. Hoboken, 135 N.J.L. 502. Counsel for respondent argues that the Director is not bound by the recommendations of the Hearer and that he should not disturb the action of the governing body in the absence of an abuse of discretion. The argument continues that the common interest of the general public should be the guidepost in issuing and renewing licenses, citing Zicherman v. Driscoll, 133 N.J.L. 586 (Sup.Ct. 1946).

I am fully in accord with the contention that the Director is not bound by the recommendations of the Hearer and, in fact, under Rule 14 of State Regulation No. 15, the Director may adopt, modify or reject a Hearer's report. However, it is important to restate the function of the Director in matters of appeal from the action of a local issuing authority. This is a plenary appeal de novo, and the power of the Director is not entirely appellate in nature but, rather, it is concurrent with the municipality. The Director conducts his own independent hearing and makes his own finding of fact. If he should find that the action of the municipality was erroneous or unreasonable, the action will be reversed. Tompkins v. Seaside Heights, Bulletin 1398, Item 1; cf. Harty v. Delaware, Bulletin 722, Item 5 (denial of issuance - reversed); Drozdowski v. Sayreville, Bulletin 746, Item 5.

As the court pointed out in Bivona v. Hock et al., 5 N.J. Super. 118:

"...the issue is, not whether a discretionary power has been improperly exercised, but rather whether in the exercise of the power respecting transfers, R.S. 33:1-26, authority existed in the local body to refuse a transfer of a license for the reason upon which the refusal was based."

The court further pointed out that:

"... the Legislature has not sought to delegate unlimited 'discretion' to these agencies, but rather has spelled out a system within the principles of which the agencies shall act. Accordingly, the courts must measure the propriety of the administrative action by the authority granted, and may not merely surrender the subject matter to the agencies on the premise that theirs is a discretion exercisable on

the basis of any and all factors which pertain to the political issue of prohibition."

To put it another way: The Director must make his own independent examination of the totality of circumstances and all of the facts contained in the record before arriving at his independent judgment. He abides by the action of the municipality where he finds its exercise of judgment and discretion was reasonable. Fanwood v. Rocco, 33 N.J. 404 (1960). If he finds, on the other hand, that the local issuing authority made an erroneous judgment and therefore acted unreasonably, he must reverse: and it makes no difference whether such erroneous action was made in good faith,

It must be emphasized that the Director possesses the final agency review of the action of the local board relating to liquor licenses. Neiden Bar and Grill, Inc. v. Newark, 40 N.J. Super. 24 (App.Div. 1956), cited in Blanck v. Magnolia, 38 N.J. 484 (1962).

The Hearer's report thoroughly examined the factors which led to the conclusion that the action of respondent was unreasonable and erroneous. I am particularly mindful of the fact that a vote of three-to-two carried the day. I am also persuaded, and subscribe to the view of the Hearer, that "It seems abundantly clear that Kronenwetter voted in disregard of the specific advice given to him by the borough attorney with respect to the applicable zoning law as it relates to this application" and, further, "I am satisfied that he (Kronenwetter) understood, as explained to him by the borough attorney, that the existing zoning ordinance permitted the Council to grant appellant's application if it so desired, i.e., that it was not disqualified from doing so by reason of the fact that the motel was located in a B-residential zone. Kronenwetter nevertheless insisted that he was 'stubbornly' determined to abide by what he conceived to be the rules with respect to such zone in voting for denial of said application. By so voting it is evident that he failed to take into consideration the paramount issue of the needs and the best interest of the community. Such action was inconsistent with right judgment and is unreasonable. I find that he misconceived and misconstrued the zoning law as it applied to this motel. As stated above, it was not his function, any more than it is the function of the Director of this Division on appeal, to interpret zoning laws."

Counsel further suggested that, in view of the fact that Councilman Cherry did not appear to testify on this appeal de novo, the matter should be remanded to respondent for its further consideration and in order to afford Councilman Cherry the additional opportunity to set forth his reasons for voting to deny this application.

My examination of the record discloses that, at the appeal hearing, Councilman Wall (who voted for the grant of the application) testified that, when this matter was originally heard by respondent Council, Cherry stated that he voted against the grant because, according to the Hearer's report, "one of the objectors at the said hearing asserted that she had not been served with notice of an application for a special permit in 1961. This was his only assigned reason for so voting."

No reason was given for the absence of Councilman Cherry at this plenary hearing. Nor did respondent produce any witness to challenge the accuracy of Councilman Wall's testimony with respect thereto. Wall was competent to so testify and, in the absence of a challenge to, or rebuttal of, this testimony I must assume that Cherry's assigned reason was the only one which motivated his negative vote. Clearly, again, such reason was a non sequitur, would not reflect a reasonable exercise of his discretion, and was arbitrary. I therefore conclude that both Kronenwetter and Cherry voted arbitrarily and unreasonably against the grant of this application.

Where the facts are such that, in the interests of justice, a remand to the issuing authority for its further consideration is warranted, the Director has unhesitatingly directed such action. Thus, in Colonial Hotel Company v. Cape May, Bulletin 1479, Item 1, there were appeals from the actions of the City of Cape May, which revoked appellant's license on the ground that inadequate notice was given to respondent of a change of corporate officers as set forth in its original application, as required by R.S. 33:1-34. Respondent thereupon refused to consider appellant's application for renewal. Upon appeal, the Director modified the penalty of revocation to suspension of license for fifteen days for the offense charged.

In view of such action, the matter was remanded to respondent to consider the renewal application at a hearing where the issues of public convenience and necessity, the best interests of the community, the fitness of the applicant and other pertinent matters may be resolved.

This case may be properly distinguished from the matter sub judice. Whereas, in Colonial, no consideration of the matter of renewal, and no inquiry was made of the factors as set forth hereinabove, a hearing was held in the instant case, and reasons were set forth by the members of the respondent for their action.

It would appear to be manifestly unfair to appellant to remand this matter to respondent for a restatement by the members of their reasons, since the same reasons were presented both at the hearing below and at the plenary de novo hearing on appeal. The suggested course would in effect, give them another "bite at the apple" and would be entirely gratuitous.

Therefore, since fairness is the touchstone of the administrative process, no meaningful or useful purpose could be served by the remand of this matter to respondent.

Counsel for respondent further takes exception to the Hearer's finding with respect to public need and argues that there is no public need or necessity for the issuance of this license because the community is adequately provided for by various types of liquor licenses. Counsel maintains that, where the local issuing authority declines to license operation of any taverns or package stores in a municipal business center, it is improper for the Director to reverse such denial "merely because the Director, in his opinion, felt that the operation of a package store in the business area would not be detrimental to the community", citing Fanwood v. Rocco, supra.

In this connection it should be pointed out that the measure based upon population is specifically not applicable in the matter sub judice. The Borough of Point Pleasant Beach has adopted a certain policy consistent with R.S. 33:1-12.20, permitting municipalities to pass ordinances making hotel liquor licenses an exception to the limitation rule. This municipality has passed such an ordinance. This ordinance provides for the existence of such licenses and also provides for the construction of hotels and motels which will meet the requirements of the hotel liquor license ordinance. It should be understood that appellant does not seek to have respondent adopt a new policy but, rather, to implement the policy which they have already established and have implemented through the establishment of at least one other hotel liquor license. Municipal policies, in order to be valid, must be uniformly applied or they are of no moment on appeal. Vonella v. Long Branch, Bulletin 71, Item 12.

If the present application were one for an additional plenary retail consumption license for use by a tavern or night club, the populational argument would be persuasive. As the court pointed out in Brush v. Hock, 137 N.J.L. 257, 260 (Sup.Ct. 1948):

> "The Commissioner found that the Borough Council were in favor of issuing licenses for hotels and that they were satisfied that Ciroalo operated a bona fide hotel, and that the nearest licensed hotel was located approximately one-half mile distant. A review of the evidence below reveals that the petitioners here did not conduct bona fide hotels, and, therefore, the Ciroalo determination is not applicable."

It is, of course, unarguable that considerations of the private interests of the applicant must be subordinated to the public interest. Hence, in Hosts, Inc. v. Point Pleasant Beach, Bulletin 732, Item 2, where the sole proof in support of an appeal from denial of an application for the issuance of a liquor license to a hotel was from the testimony of an officer of the corporate appellant, which demonstrated that such issuance would serve its private interests, the Director affirmed the action of the respondent in arriving at his conclusion that public need and convenience were not served.

However, in the matter sub judice there was considerable evidence adduced in addition to the testimony of appellant's officer in support of its position. The Hearer's report delineated and detailed such documentation. They include the fact that appellant's facility is presently operating as a motel; is located on the main artery of this municipality which is clearly commercial although technically not so zoned; is surrounded by many and varied commercial enterprises. I am impressed with the testimony of Hayes (the chairman of the local Board of Adjustment and an officer of the Chamber of Commerce), as well as that of Rev. Schellberg, representing ministers of his parish, that this license would serve a public convenience. I have noted that other business interests, including other licensees, have endorsed such issuance; and, finally, Councilman Wall has realistically articulated the facts of economic life

in this area which motivated his vote in support of this application. Such cumulative evidence convincingly argues that the best interests of the public would be served by the issuance of this license.

I therefore find that there is no substance to respondent's argument that the present facilities fully meet the public needs and convenience.

I have carefully examined the entire record herein, including the transcript of the testimony, the exhibits, the articulate memoranda in summation by both counsel for the appellant and the respondent, the Hearer's report, the written exceptions filed thereto and the answers to the said exceptions. I concur in the findings and conclusions of the Hearer and adopt them as my conclusions herein. Hence I shall enter an order as recommended.

Accordingly, it is, on this 20th day of May 1965,

ORDERED that the action of the respondent be reversed and respondent be ordered to issue the license to the appellant in accordance with the application filed by the appellant.

JOSEPH P. LORDI,
DIRECTOR

2. DISCIPLINARY PROCEEDINGS - SALE TO A MINOR - CHARGE NOLLE

In the Matter of Disciplinary Proceedings against	)	
Joe's Corp., Inc. t/a Lancers Lounge 9-11 Lehigh Avenue Gloucester City, New Jersey	)	CONCLUSIONS AND ORDER
Holder of Plenary Retail Consumption License C-31, issued by the Mayor and Common Council of the City of Gloucester City	)	

Michael Melissas, Esq., Attorney for Licensee.
Edward F. Ambrose, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR

Charge was preferred against the licensee alleging that on April 8, 1965, it sold a mixed drink of an alcoholic beverage to a minor, age 18, in violation of Rule 1 of State Regulation No. 20.

At the hearing herein, the attorney for the Division moved for a nolle pros of the charge because of refusal of the minor, an essential witness, a resident of Pennsylvania, voluntarily to appear and testify at the hearing, his attendance (because of his non-residence) not being compellable by subpoena.

Good cause appearing, I shall grant the motion.

Accordingly, it is, on this 18th day of May, 1965,

ORDERED that the charge herein be and the same is hereby nolle prossed.

JOSEPH P. LORDI
DIRECTOR

3. DISCIPLINARY PROCEEDINGS - SALE IN VIOLATION OF STATE REGULATION NO. 38 - PRIOR SIMILAR RECORD - LICENSE SUSPENDED FOR 30 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

Harry B. Quinn
t/a Town Cafe
1591 Main Street
Rahway, New Jersey

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-24, issued by the Municipal Board of Alcoholic Beverage Control of the City of Rahway

Feinberg and Feinberg, Esqs., by Joseph M. Feinberg, Esq., Attorneys for Licensee.
Edward F. Ambrose, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on April 28 and May 2, 1965, he sold a pint bottle of whiskey for off-premises consumption during prohibited hours on each date, in violation of Rule 1 of State Regulation No. 38.

Licensee has a previous record of suspension of license by the municipal issuing authority for ten days effective August 1, 1960, for similar violation.

The prior record of suspension of license for similar violation occurring within the past five years considered, the license will be suspended for thirty days, with remission of five days for the plea entered, leaving a net suspension of twenty-five days. Re Macciocca, Bulletin 1578, Item 7.

Accordingly, it is, on this 24th day of May, 1965,

ORDERED that Plenary Retail Consumption License C-24, issued by the Municipal Board of Alcoholic Beverage Control of the City of Rahway to Harry B. Quinn, t/a Town Cafe, for premises 1591 Main Street, Rahway, be and the same is hereby suspended for twenty-five (25) days, commencing at 2:00 a.m. Monday, May 31, 1965, and terminating at 2:00 a.m. Friday, June 25, 1965.

JOSEPH P. LORDI
DIRECTOR

4. DISCIPLINARY PROCEEDINGS - ALCOHOLIC BEVERAGES NOT TRULY LABELED- PRIOR SIMILAR RECORD - LICENSE SUSPENDED FOR 35 DAYS, LESS 5 FOR PLEA.

In the matter of Disciplinary Proceedings against

Novelty Inn, A Corporation
t/a Novelty Inn
1536 Irving Street
Rahway, N. J.,

Holder of Plenary Retail Consumption License C-10, issued by the Municipal Board of Alcoholic Beverage Control of the City of Rahway.

CONCLUSIONS AND ORDER

Stanley H. Needell, Esq., Attorney for Licensee
Morton B. Zemel, Esq., Appearing for Division of Alcoholic Beverage Control

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on March 18, 1965, it possessed alcoholic beverages in five bottles bearing labels which did not truly describe their contents, in violation of Rule 27 of State Regulation No. 20.

Licensee has a previous record of suspension of license by the Director for sixty-five days effective July 30, 1962, for similar violation and possession of indecent matter. Re Novelty Inn, Bulletin 1473, Item 3.

The license will be suspended for twenty-five days (Re Villa Robatto, Inc., Bulletin 1605, Item 6), to which will be added ten days by reason of the record of suspension of license for similar violation within the past five years (cf. Re Hittner & Hodes, Bulletin 1420, Item 6), or a total of thirty-five days, with remission of five days for the plea entered, leaving a net suspension of thirty days.

Accordingly, it is, on this 19th day of May 1965,

ORDERED that Plenary Retail Consumption License C-10, issued by the Municipal Board of Alcoholic Beverage Control of the City of Rahway to Novelty Inn, A Corporation, t/a Novelty Inn, for premises 1536 Irving Street, Rahway, be and the same is hereby suspended for thirty (30) days, commencing at 2 a.m. Wednesday, May 26, 1965, and terminating at 2 a.m. Friday, June 25, 1965.

JOSEPH P. LORDI
DIRECTOR

5. STATE LICENSES - NEW APPLICATIONS FILED.

Holly Distributors, Inc.
36 East South Avenue
Mount Holly, New Jersey
Application filed July 20, 1965 for person-to-person transfer of State Beverage Distributor's License SBD-83 from Lilian K. Bohlen, t/a Holly Distributors.

Joseph P. Lordi
Director