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

BULLETIN 2232 July 14, 1976

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ITEM

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

BULLETIN 2232 July 14, 1976

1. COURT DECISIONS - W. C. THREE, INC. v. WASHINGTON ET ALS.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
A-3667-74
A-3699-74

W. C. THREE, INC.,

Petitioner-Appellant,

v.

TOWNSHIP COMMITTEE OF WASHINGTON TOWNSHIP, JOSEPH R. MOSS AND DELSEA ASSOCIATES,

Respondents-Appellees.

STEVEN ROTH,

Petitioner-Appellant,

v.

TOWNSHIP COMMITTEE OF WASHINGTON TOWNSHIP, JOSEPH R. MOSS AND DELSEA ASSOCIATES,

Respondents-Appellees.

Argued June 8, 1976 - Decided June 16, 1976.

Before Judges Kolovsky, Bischoff and Botter.

On appeal from Department of Law and Public Safety, Division of Alcoholic Beverage Control.

Mr. Warren H. Carr argued the cause for appellant W. C. Three, Inc. (Messrs. Cresse & Carr, attorneys).

Mr. Saul A. Wolfe argued the cause for appellant Steven Roth (Messrs. Skoloff & Wolfe, attorneys).

Mr. Robert E. Francis argued the cause for respondent Township Committee of Washington Township.

Mr. Robert T. Healey argued the cause for respondents Delsea Associates.

Mr. William F. Hyland, Attorney General of New Jersey (Mr. David S. Piltzer, Deputy Attorney General, of counsel) filed a Statement in

Lieu of Brief on behalf of the Division of Alcoholic Beverage Control.

PER CURIAM.

(Appeal from the Director's decision in Re W. C. Three, Inc. v. Washington, et als., Bulletin 2192, Item 3. Director affirmed. Opinion not approved for publication by the Court Committee on Opinions).

2. COURT DECISIONS - IRVING REINGOLD and BROTHERS TWO OF ORADELL, INC.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
A-705-75

In the Matter of Disciplinary Proceedings against

IRVING REINGOLD and
BROTHERS TWO OF ORADELL, INC.

Argued June 8, 1976 - Decided June 17, 1976

Before Judges Matthews, Lora and Morgan

On appeal from the Division of Alcoholic Beverage Control.

Mr. Allan H. Klinger argued the cause for appellant (Messrs. Jones, Cuccio, Klinger and Baldino, attorneys; Mr. Richard B. Honig on the brief).

Mr. David S. Piltzer, Deputy Attorney General, argued the cause for respondent (Mr. William F. Hyland, Attorney General of New Jersey, attorney).

PER CURIAM

(Appeal from the Director's decision in Re Irving Reingold and Brothers Two of Oradell, Inc., Bulletin 2212, Item 2. Director Affirmed. Opinion not approved for publication by the Court Committee on Opinions).

3. APPELLATE DECISIONS - THOMPSON v. BLOOMFIELD, ET AL.

Martha D. Thompson, Appellant, v. Town Council of the Town of Bloomfield and Fat Mary's, Inc., Respondents.	)	On Appeal CONCLUSIONS AND ORDER

Martha D. Thompson, Appellant, Pro se
Joseph D. Lintott, Esq., Attorney for Respondent, Town Council
John R. Scott, Esq., Attorney for Respondent, Fat Mary's, Inc.

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Appellant appeals from the grant by the Town Council of the Town of Bloomfield (hereinafter Council) of a person-to-person transfer of Plenary Retail Consumption License C-26 from Emlo, Inc., to Fat Mary's, Inc., for premises 409 Franklin Street, Bloomfield.

In her petition of appeal, appellant contends that the action of the Council was erroneous in that "the use for which the original license was used has been changed" and "present use of the license creates an atmosphere in the area offensive to those located nearby". Supplementing the appellant's petition of appeal were four letters, received in this Division, from churches in the community decrying the name used by the respondent Fat Mary's, Inc., and the word "booze" painted prominently on the building.

The answers filed by the respondents deny any offense by the name it employs, Fat Mary's, Inc., and, further that the Council properly considered the effect of such name, if any, on the sensibilities of the community and, by its action approving the transfer, concluded that such name was not improper.

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

At the outset of the hearing, it became apparent that appellant's complaint was directed entirely to what was considered to be an affront to the sensibilities of the citizens in that the respondent, Fat Mary's, Inc., upon assuming ownership of the hitherto licensed business in an historic building had desecrated this landmark by both an inappropriate name, i.e., Fat Mary's, which was prominently painted in large letters on the exterior walls of the building, as well as the words "Booze & Bites" painted adjacent to the name. Photographs of the building as well as area, were admitted into evidence.

Initially, the parties were advised that in the absence of some obscene or outlandishly grotesque situation, the Director has not been statutorily clothed with the power to determine aesthetic values of licensed premises in a community. This power rests initially with the local issuing authority. Fanwood v. Rocco, 33 N.J. 404 (1960).

It has been long established that "No case has been cited, nor are we aware of any case which holds that a man may be deprived of his property because his tastes are not those of his neighbors", O'Mealia Outdoor Advertising Co. v. Rutherford, 128 N.J.L. 587, 591 (1942). Nonetheless, the grant or denial of the license privilege may be based upon a determination of the effect of morals, economics or aesthetics upon the public. (underscore added). Cf. Fanwood v. Rocco, 59 N.J. Super. 306, 320, rev'sd on other grounds, supra.

Should the Council have determined that the words painted upon the licensed premises were an effrontery to good taste and resulted in injury to the community or was contra to the expressed sentiments of the citizenry, the Director, following the practice of abiding by the exercise of judgment of the local board, Fanwood v. Rocco, supra, would undoubtedly have affirmed its action.

As a general rule, the police power of municipal corporations cannot properly be exercised for merely aesthetic purposes. 62 C.J.S. Mun. Corp. @ 147, p. 304.

> "However, when it is determined that the regulation has a reasonable reference to the safety, health, morals or general welfare of the corporation, considerations of an aesthetic nature may enter, as an auxiliary."

In the long history of the present Alcoholic Beverage Law (N.J.S.A. Title 33), there appears to be no reported decision reflecting the denial of a liquor license to premises based solely on aesthetic rejection. Recently, however, the over-turning of a long established precedent that objections to person-to-person transfers of license could not extend beyond the inquiry into

the persons applying, has extended the right of the municipal issuing authority to consider public sentiment as part of the decisional process in evaluating such person-to-person transfer applications. Lyons Farms Tavern, Inc. v. Newark, 68 N.J. 44 (1975).

Hence, it is assumed that a municipal issuing authority may consider the aesthetic effect of a licensed premises upon the public as one of the measures upon which to base decision.

However, in the instant matter, it appeared uncontroverted that, at the hearing before the Council, there was no great expression of public disapproval and that criticisms directed to this Division by letters from several churches and a temple in the Community had not been previously focused upon the Council prior to its determination. In short, the Council did not have before it any overwhelming public sentiment against the transfer and such sentiment as has grown from the decorations on Fat Mary's building may be an appropriate subject for the Council's exploration when the license becomes considered for renewal.

However, in reviewing items of evidence proposed to be introduced, a survey made by George C. Stewart Associates in 1969 was examined and, by such initial examination, it appeared that there could be a major question relating to the statutory minimal distance between respondent's licensed premises and a church across the street. The hearing was then adjourned to provide an opportunity to investigate such distance.

On the adjourned date of the hearing, and with prior notice to the parties, the matter was reopened solely for the purpose of obtaining evidence relative to the distance measurements.

Appellant introduced the testimony of Theodore R. Freund, a local surveyor for the past fifty years, who stated that, at the request of the appellant, he had made a survey of the distance between a point on the sidewalk at the entrance of respondent Fat Mary's to a point on the sidewalk at the entrance to the First Baptist Church doorway at Washington Street nearest to its intersection with Franklin Street. He noted this distance to be 176.2 feet. He admitted, on cross examination, that he had no knowledge whether the Church doorway to which the measurement was made was a principal doorway.

Rev. Robert C. Becker, pastor of the First Baptist Church testified that his Church has eight doorways to it, four on Washington Street and four on Franklin Street. The doorway to which measurement was made is a doorway used principally by young people visiting the Church for its Youth Activity Program.

The Church has a Youth Director, and this program is an important one. During the two and one-half years he has been its pastor, the principal doorway located on Franklin Street is never the sole doorway, as entrances and exits are permitted at the others, including the door to which the measurement was made.

Donald C. Fisk, a member of the Church Board of Trustees since 1960, testified that he has served consecutive terms since his initial appointment, save for the requirement that a Trustee not succeed himself, hence, between terms there was a period when he was not a holder of that office. Nonetheless, during 1969, when a retail consumption license was first obtained for the building housing the licensed premises, the license was used solely to augment the existing restaurant business.

In respect to the doorways of the Church, Fisk averred that doors on Franklin and Washington Streets are in full use. He sketched the interior of the Church by which diagram it appears that the doors near the corner of Washington and Franklin Streets lead into the Church auditorium and are located on either side of the Church platform. The doorway which the Pastor described as a principal doorway is used more frequently because it is more centrally located in relation to the front and rear of the building.

Herbert H. Keller, a licensed surveyor, testified on behalf of respondent respecting a survey which he had prepared and which was introduced into evidence. The measurements which Keller made along the interior line of the sidewalk from the licensed premises to the nearest door of the Church was 204.55 feet. The distance, when measured similarly to the adjoining door was 240.75 feet. However, when the distance from the midpoint to the interior edge of the sidewalk is subtracted, so that a measurement would be made between the mid-points of the sidewalk entrances, the distance to either doorway would be 196 feet and a few inches. Clearly, by Fat Mary's, Inc's. own survey, the distance is short of the required 200 feet.

The appellant conceded that the doorways to which measurements were made were not the principal doorways and could be infrequently used, particularly in inclement weather. The respondent offered to produce motion pictures which it had taken during the mornings of prior Sundays, which, it proffered, would show the doorways to be opened after service began, but were unused.

Photographs of the Church, surrounding area, the licensed premises and the subject doorways were introduced into evidence and made part of the record. Respondent also introduced

a copy of the 1969 Resolution of the Council approving the initial transfer of a liquor license to its building.

The statute applicable to distance requirements between licensed premises and a church or school is N.J.S.A. 33:1-76, the pertinent section of which is as follows:

> "...no license shall be issued for the sale of alcoholic beverages within two hundred feet of any church.... Said two hundred feet shall be measured in the normal way that a pedestrian would properly walk from the nearest entrance of the said church ... to the nearest entrance of the premises sought to be licensed."

From the evidence it is uncontroverted that the Church was located as present since 1936 and the licensed premises became such in 1969.

That statute adopted in 1934 as part of the modern Alcoholic Beverage Law (Title 33) has given rise to constant questions requiring judicial interpretation. For example, the phrase "nearest entrance" has been determined to mean

> "between points on the sidewalk intersecting any walk which a person would use in entering the properties in question...We take this to mean the point at which the line between the sdiewalk and the premises proper would intersect a line from the entrance door to the nearest sidewalk which a pedestrian would normally traverse in leaving or entering the premises, as the case might be."

Karam et al v. Alcoholic Bev. Control, 102 N.J. Super. 291, 293 (App. Div. 1968).

The distances along the sidewalk only are used in calculations; not the distances from the respective buildings to the sidewalk. A copy of a survey locating the several churches, temple and licensed premises was made a part of the record in Presbyterian Church v. Div. of Alcoholic Beverage Con., 53 N.J. Super. 271, 277 (App. Div. 1958). From that survey it is clear that a distance from a midpoint on the sidewalk to such other midpoint nearest the walk to the subject premises is used; not the distance from the doorway to the sidewalk. Applying that approach to measurement to the instant matter, it is obvious that the distance between the church and the subject premises is less than the minimum 200 feet.

However, the relative proximity of the subject licensed premises to the Church was the subject of exploration

at the time the license was first transferred to that building about 1969. A survey was then prepared from which the Council determined the measurement from doorway to doorway to be in excess of 200 feet. While the then mode of measurement was not in compliance with the method approved in Presbyterian Church, supra, there was no evidence to indicate that the Council was then aware of proper distance calculations. It can only be concluded that the Council then considered that it acted in compliance with the statute. Hence, the doctrine of equitable estoppel is clearly applicable.

Additionally, the distance prohibition of the statute is by no means inexorable. Such distance violations may be waived in any given year by the nearby Church. The proximity between licensed premises and Church does not render the license void, merely voidable. Thus, voidability is subject to the effect of an equitable estoppel. Cf. Hill v. Eatontown, 122 N.J. Super. 156 (App. Div. 1956).

From the history of the license from the time it was placed in its present position, there was no substantial difficulty that occasioned distress to the Church, until the respondent selected the name "Fat Mary's". This impolitic and obviously offensive appellation generated such ire of the parishioners of the churches of the community that this appeal resulted. The selection of such name was exacerbated by the painting of the name and slogan on the exterior of the building.

The estoppel, indirectly protectory of the licensed premises, runs solely to the benefit of the Council; their act in having approved the license transferred to its present location comes within the protectory ambit of the doctrine. No shield exists for the benefit of the licensee under which an immunity from the understandable wrath of the public can be based. The Council may, at any license renewal hearing, determine the expression of public sentiment in opposition, to be sufficient to warrant a denial of renewal of the respondent's license.

Certainly, the expression of sentiment of the community is a proper basis upon which the municipal issuing authority may act in rejecting continuance of licensed business. Lyons Farms Tavern, Inc. v. Newark, 68 N.J. 44 (1975). Should the Council later deny renewal of respondent's license based, in part, on substantial public outcry, the Director, following usual practice, would probably not substitute his opinion for that of the Council. Fanwood v. Rocco, 53 N.J. 404 (1960) at 414.

Although a recommendation follows that the action of the Council be affirmed, the respondent, Fat Mary's, Inc., should take little comfort from such recommendation. For, as

noted above, the action of respondent in creating an effrontry to the citizens of that community, may, unless corrected, generate future corrective action by the Council.

It is, thus, recommended that the action of the Council be affirmed, and the appeal herein be dismissed.

Conclusions and Order

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

The principal thrust of such Exceptions is that the Hearer did not make a finding that the "nearest doorway" of the Church was not, in fact, a regular doorway, but rather an auxiliary doorway, not generally used. The Hearer's report cites Presbyterian Church v. Div. of Alcoholic Bev. Con., 53 N.J. Super. 271 (App. Div. 1958) as interpretative basis of the distance statute (N.J.S.A. 33:1-76) in which the court said, (on p. 280), referring to a survey contained on p. 277:

> "...The argument of the Church is based upon the contention that a door on the northwest side of the Temple building should be considered an entrance to that building. The proof is clear, however, that the door in question is only a fire exit. There is no outside handle on it, and it is not intended to afford ingress from the outside. The regular entrances to the Temple are in the rear of the building. Access is gained thereto from a driveway on the southeast side of the building. In our opinion, the point of measurement should be in reference to that driveway, and this would result in the entrance to the Temple being more than 200 feet from the applicant's premises."

I find, from a review of the testimony adduced in the matter, that the Hearer misapplied the doctrine of the Presbyterian case. The doorways which the Hearer used as points for measurement were not "regular" doorways to the Church. The Pastor and the Church officer forthrightly noted that those two doors used primarily for alternative uses, i.e. as exits following a crowded service, air ventillation in hot days and, at infrequent intervals, for use of a youth group. I thus, conclude, that neither of these doors are "regular" doorways of the Church.

Moreover, the Hearer elicited from a witness that the principal doorway to the Church, where an entrance bell was affixed, is far beyond the two hundred foot proscription.

In any event, the concluding recommendation of the Hearer, although not grounded on this allegation, did reach a similar result.

Having carefully considered the entire record herein, including the transcripts of the testimony, the exhibits, the Hearer's report and the Exceptions thereto, I concur in the findings and recommendations of the Hearer, as supplemented herein, and adopt them as my conclusions herein. However, in doing so, I wish to reemphasize my concurrence with the Hearer in noting the objections with respect to the name of this facility and the paintings on the exterior of the premises.

Accordingly, it is, on this 29th day of April 1976,

ORDERED that the action of the respondent, Town Council of the Town of Bloomfield, be and the same is hereby affirmed, and the appeal herein be and the same is hereby dismissed.

Joseph H. Lerner
Acting Director

4. APPELLATE DECISIONS - BRICK CHURCH PUB v. EAST ORANGE.

Brick Church Pub, (A Corporation)	)	
Appellant,	)	On Appeal
v.	)	CONCLUSIONS AND ORDER
Municipal Board of Alcoholic Beverage Control of the City of East Orange,	)	
Respondent.	)	

Riker, Danzig, Scherer & Debevoise, Esqs., by George C. Pappas, Esq., Attorneys for Appellant
Julius Fielo, Esq., by David Brantley, Esq., Attorney for Respondent.

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Appellant holds a plenary retail consumption license C-2, for premises 22 Washington Place, East Orange, in a building recently acquired by the Housing Authority of the City of East Orange as a part of an urban renewal development. An application made by appellant for a place-to-place transfer of that license to premises in the rear of 527 William Street, was denied by the Municipal Board of Alcoholic Beverage Control (hereinafter Board); this appeal followed.

The Board's action was grounded on the following: (a) granting the proposed transfer would work a hardship on existing licensed premises one hundred sixty-two feet away; (b) such proposed location would result in an undue concentration of licenses in the area; (c) the proposed location would not be convenient to the public; and (d) the transfer would not be in the best interests of the public safety, health and morals.

Appellant contended that the Board acted erroneously, and that the proposed location would render better service to the public than the existing location.

An appeal de novo was heard pursuant to Rule 6 of State Regulation No. 15.

The owner of the majority of the stock of the corporate appellant, Margaret B. Stanton, testified that she operates a small restaurant and bar that specializes in serving sandwiches to luncheon and a few evening guests. The property in which the license is located has been recently acquired by the Housing Authority as part of an urban renewal project, and her license must be moved. She selected the proposed location because it is only three hundred yards distant from her present location, and is near no active license. Licensed premises lying about two hundred feet away are presently dormant.

The Housing Authority, through its relocation program, provided addresses of several locations to which a license might be moved, but when an investigation was made of each of these premises it was readily apparent that none would conform to the parking or other requirements for licensed premises.

The proposed location lies in the rear of a large parking area so that adequate off-street parking would always be available. Additionally, as that proposed location is merely across a major avenue and a short distance from its present location, the patrons of the existing premises would continue as patrons in the new premises. The mere movement "around-the-corner" would not increase the number of licensed premises whatever in that area.

Urban Relocation Officer Barbara J. Weaver, testified that appellant's premises have been acquired by the Housing Authority and an immediate vacation of the building is required. She admitted that a list of proposed locations which she had supplied the appellant had not been evaluated for prospective liquor licenses as she was unaware of the special requirements for such licensed facilities.

The president of the Business Association, Luke E. Walsh, testified that the proposed location is an ideal one and fits into the long-range planning of his Association. In his opinion, the number of eating facilities should not be diminished, as the commercial health of the area suffers from economic malnutrition and needs the infusion of business enterprise rather than the diminution of it.

The proposed location was once part of a large department store in East Orange. The building which then contained it, is now an office building with miscellaneous stores on the ground level. A one-story wing in the rear of the large building projects into the ample parking area in the rear. This description was provided by Harry A. Bonn, formerly the president of the store and now the owner of the buildings. He explained in detail that he once owned the alcoholic beverage license across the street, which license had been described as dormant. That license is presently the subject of a foreclosure he is instituting against its owner and, in the foreseeable future, will be in operation again. He believes the proposed location for appellant would be an excellent advantage for the commercial community in the area.

The president of the Board, Frank J. Tullio, re-affirmed the opinion of the Board respecting its grounds for denial of appellant's application. He added that one of the principal objections was the prevalence of crime in the area; and that the location being within a parking lot and not on the main street, would create difficulties. It was the Board's feeling that such a location would be dangerous for patrons departing from the premises particularly at late hours. He believed that there is a greater possibility of crime in a parking area than on the street because of the inaccessibility situation.

The burden of establishing that the action of the Board was erroneous and should be reversed rests with appellant. Rule 6 of State Regulation No. 15. The decision as to whether or not a license should be transferred to a particular locality rests within the sound discretion of the municipal issuing authority in the first instance. Hudson-Bergen County Retail Liquor Stores Assn. v. North Bergen et al., Bulletin 997, Item 2; Paul v. Brass Rail Liquors, 31 N.J. Super. 211 (1954); Biscamp v. Teaneck, 5 N.J. Super. 172 (1949). Each municipal issuing authority has wide discretion in the transfer of a liquor license, subject to review by the Director who may reverse its action in the event of any abuse thereof. However, action based upon such discretion will not be disturbed in the absence of clear abuse. Blanck v. Magnolia, 38 N.J. 484 (1962). As Justice Jacobs pointed out in Fanwood v. Rocco, 33 N.J. 404,414 (1960):

> "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...."

Later restated in Lyons Farms Tavern, Inc. v. Newark, 55 N.J. 292, 303 (1970), the court opined:

> "The conclusion is inescapable that if the legislative purpose is to be effectuated the Director and the courts must place much reliance upon local action ... Although the Director conducts a de novo hearing in the event of an appeal, the rule has long been established that he will not and should not substitute his judgment for that of the local board or reverse the ruling is reasonable support for it can be found in the record....".

It is apparent that the first two grounds set forth in the Board's resolution are without merit, i.e., the hardship to an existing licensee, and the "undue concentration of licenses" complaints of the existing license one hundred sixty-two feet away. Rather, the public interest and welfare transcend any financial hardship or concerns for an individual license. Nardone v. [illegible], Bulletin 2103, Item 3.

Nonetheless, the public interest, particularly relating to the Board's fears for the safety of patrons and others if the licensed premises are removed to the back of a parking lot, must be given great weight. It is manifest that the Board arrived at its determination after thoroughly considering all of the facts pertinent to the appellant's application.

The principal stockholder of the corporate appellant testified with candor that her exploration of alternative locations was at best cursory and, having found the present proposed location, no great effort was expended to seek another. Hence, the Board was obviously not convinced that the appellant had made sufficient efforts to relocate in premises which would be safer than that proposed.

The controlling principle herein is that the Director's function on appeal is not to substitute his personal judgment for that of the local issuing authority, but merely to determine whether reasonable cause exists for its opinion and, if so, to affirm irrespective of his own personal view. Fanwood v. Rocco, supra.

I conclude that the appellant has failed to sustain the burden imposed upon it under Rule 6 of State Regulation No. 15 of establishing that the action of the Board was erroneous and should be reversed.

It is, therefore, recommended that an order be entered affirming the action of the Board and dismissing the appeal.

Conclusions and Order

Written Exceptions to the Hearer's report, with supportive argument, were filed by the appellant, pursuant to Rule 14 of State Regulation No. 15.

Appellant contends that the Hearer erred in his recommendation that the action of the Board be affirmed, because he concluded that there was merit in only two of the four reasons assigned by the Board for its action. It argues that, since the first two reasons given by the Board for its action, namely: (1) hardship to an existing license, and (2) undue concentration of licenses in the area, were found by the Hearer to be without merit, that the Hearer, therefore, should have recommended reversal of the Board's action. Appellant further argues that the Hearer

gave "great weight to the 'public safety question', but his reliance on that factor is not supported by the evidence presented at the hearing."

From my examination and evaluation of the record, I find substantial evidence in support of the Board's determination. The Board found that the proposed transfer would not be in the best interests of the public safety, health and moral and that the proposed location would not be convenient to the public.

It is true that the Hearer gave great weight to the "public safety question" and quite properly so. As he noted, the testimony of the Board President stressed the fact that, in his own opinion, which he asserted also represented the opinion of the Board, one of the principal objections to the said proposed transfer, was the prevalence of crime in the area. He pointed out that the location was in a parking lot and not in the main street and would, thus, create safety problems.

He added that the Board felt that such location would be dangerous for patrons parting from the premises, particularly at late hours, and that there is a greater possibility of crime in a parking area then on a street "because of the inaccessibility situation."

For this reason alone, the Board, in the lawful exercise of its discretion, was justified in denying the said transfer. Cf. Lyons Farms Tavern, Inc. v. Newark, supra.

In a letter accompanying the said Exceptions, the appellant requests a rehearing in order to produce additional testimony with respect to the issue of "public safety". I find such request to be unwarranted, and it is, therefore, denied.

Having considered the entire record herein, including the transcript of the testimony, the exhibits, the Hearer's report, and the Exceptions thereto filed on behalf of the appellant, I concur in the findings and recommendations of the Hearer and adopt them as my conclusions herein.

Accordingly, it is, on this 29th day of April 1976,

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

Joseph H. Lerner
Acting Director

5. STATE LICENSES - NEW APPLICATIONS FILED.

Roland Distributors, Inc.
6136 Washington Street
West New York, New Jersey
Application filed July 8, 1976
for limited wholesale license.

V. James Destasio
t/a Hawthorne Beverage House
550 Lafayette Avenue
Hawthorne, New Jersey
Application filed July 12, 1976
for person-to-person transfer of
State Beverage Distributor's
License SBD-112 from The Hawthorne
Beverage House, Inc.

Joseph H. Lerner
Acting Director