

STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
U. S. Routes 1-9 (Southbound) Newark, N. J. 07114

BULLETIN 2420

November 12, 1981

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1. COURT DECISIONS - NEW JERSEY RETAIL LIQUOR STORES ASSOCIATION v. JOHN J. DEGNAN, ATTORNEY GENERAL and N. J. DIVISION OF ALCOHOLIC BEVERAGE CONTROL and OVERPECK LIQUORS, INC., INTERVENER-RESPONDENT.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
A-4245-79

NEW JERSEY RETAIL LIQUOR STORES
ASSOCIATION,

Plaintiff-Appellant

v.

JOHN J. DEGNAN, Attorney General
of New Jersey, JOSEPH H. LERNER,
Director, Department of Law and Public
Safety, Division of Alcoholic Beverage
Control and DEPARTMENT OF LAW AND
PUBLIC SAFETY, DIVISION OF ALCOHOLIC
BEVERAGE CONTROL,

Defendants-Respondents,

and

OVERPECK LIQUORS, INC.,

Intervener-Respondent.

Argued: April 14, 1981 - Decided: June 4, 1981.

Before Judges Botter and King.

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

Michael J. Herbert argued the cause for appellant
(Sterns, Herbert & Weinroth, attorneys).

Kenneth I. Nowak, Deputy Attorney General, argued the cause
for respondents (John J. degnan, former Attorney General of
New Jersey and James R. Zazzali, attorneys; Stephen Skillman,
Assistant Attorney General, of counsel).

David S. Piltzer, argued the cause for intervener-respondent
(Piltzer and Piltzer, attorneys).

(VALIDITY OF COOPERATIVE RETAIL PRICE ADVERTISING REGULATION UPHOLD)

2. APPELLATE DECISIONS - THE BROWNSTONE INN, INC. v. WYCKOFF.

#4194

The Brownstone Inn, Inc.,
t/a The Brownstone Inn, }

Appellant,

v. }

Township Committee of the
Township of Wyckoff,

Respondent. }

ON APPEAL

CONCLUSIONS

AND

ORDER

John A. Spizziri, Sr., Esq., Attorney for Appellant.
Samuel M. Lyon, Jr., Esq., Attorney for Respondent.

BY THE DIRECTOR:

The Hearer has filed the following report herein:

HEARER'S REPORT

This is an appeal from the action of the Township Committee of the Township of Wyckoff (Committee) which, on December 20, 1977, adopted a resolution suspending appellant's Plenary Retail Consumption License for three days upon finding it guilty of charges alleging that, it sold and delivered alcoholic beverages to a person under the age of 18 years, contrary to Rule 1 of State Regulation No. 20. (Now N.J.A.C. 13:2-23.1.)

The appellant's Petition of Appeal alleges that the action of the Committee was unreasonable and erroneous.

In its Answer, the Committee denies the substantive allegations contained in the Petition of Appeal.

Upon the filing of the Appeal, the Director, by Order dated January 19, 1978, stayed the suspension pending determination of the appeal.

Both attorneys relied at this de novo hearing on appeal upon the transcripts of the local hearing, held in two parts, as well as summations of the respective positions submitted by mail. No witnesses were called upon to give testimony, N.J.A.C. 13:2-17.6 and N.J.A.C. 13:2-17.8.

- I -

Thomas K., a minor, was subpoenaed to testify at the hearing held on September 13, 1977 before the local issuing authority. He was admonished that any testimony he gives could be used against him. The licensee's attorney further warned him that testimony as to the purchase of alcoholic beverages by a minor was unlawful and exposes him to the charge of being a disorderly person. He gave his age and date of birth (July 31, 1960) and refused to respond to any further questioning, stating he did not wish to incriminate himself.

Joseph G., a minor, was also subpoenaed to give testimony that day. The above scenario was repeated, and after admitting the youth's birth certificate into evidence, he too was excused.

Detective Carl Nuebler of the Wyckoff Police Department testified that he interviewed Thomas K. in the presence of the youth's mother, and the minor voluntarily gave and signed a statement. The statement was admitted into evidence, but was not read into the record, nor was it among the documents submitted to the Division for consideration of the appeal. Similarly, Joseph G. was interviewed by Nuebler, in the presence of the youth's father and a statement voluntarily given and signed, but this document too, is unavailable to the hearing officer.

Patrolman Kenneth Hagedorn of the Wyckoff Police Department testified as to the events that generated the charge. He observed a parked vehicle in which three youths were seated at 1:00 a.m. He investigated and observed two unopened and one empty twelve ounce bottles of Schlitz beer on the floor in the rear. Among the three youths in the car was Thomas K.

After the above mentioned witnesses testified, the Prosecutor was asked whether he had anything else and he responded, "No, that's all the evidence that the state has, Mr. Mayor."

In defense of the charges, Ronald Gallo, a bartender employed at the licensed premises, testified that, although he was not on-duty the evening of the alleged occurrence, he was present as a patron. He arrived at approximately 9:00 p.m. and departed a few minutes after midnight. He sat approximately seven feet from one, and fifteen feet from the other beer cooler. Gallo said that he saw no one in the tavern that evening whose arm was in a plaster cast, supported by a sling, as stated in the report of Detective Nuebler. Nor did he see either of the

minors who were subpoenaed but declined to testify at the hearing. Lastly, he stated that two bartenders were on-duty that evening.

On cross-examination, Gallo stated that he frequents the tavern quite often, on his evenings off-duty. He insisted that he had "just a couple" of scotches that evening.

James Van Riper, a bartender on-duty the evening of the alleged occurrence, denied seeing the two minors alleged to have purchased the beer, prior to the evening of the hearing. He emphatically denied selling beer to these or any other minors, describing how careful he is to require "a positive form of identification" from youthful appearing persons requesting service. When asked what he looks for (by way of identification) he stated; "Yes, I ask for three things, I ask for a driver's license, plus a county I.D. card, plus a student's I.D. card if they are in college." Van Riper, too, denies seeing anyone in the barroom that evening having an arm in a cast, and using a sling.

The hearing ended with the announcement that decision was being reserved.

Thereafter, a second hearing was held in order for the prosecutor to present witnesses to rebut the licensee's witnesses testimony, as well as present additional testimony.

Thomas K., the minor who had declined to testify at the earlier hearing, changed his position, and now decided to give testimony. He explained that the police had informed him that there may be charges preferred against him and he'd have to appear at Juvenile Court as a result of his refusal to testify at the last hearing. His mother retained an attorney who advised him to testify with respect to his involvement in the events which formed the basis of the current charge.

Thomas stated that he and three friends were in an automobile when the decision was made to purchase beer. He and another minor, Joseph G., entered the tavern and proceeded to the beer cooler where Thomas removed four six-packs of Schlitz and one six-pack of Budweiser beer. Thomas' arm was in a plaster cast, supported by a sling, which prevented his carrying any of the beer.

Joseph carried the beer to the cash register where they paid for the beer, and departed. No challenge as to age,

identify, etc., was made by the bartender. The boys went to a movie and were apprehended by the police later that evening. He could not identify the person who sold him the beer.

Joseph G. similarly indicated that he desired to testify. He stated that his decision to testify resulted from discussions with his parents. His testimony was corroborative of Thomas K., although he left the vehicle before the others were detained by the police.

Captain Sokoly of the Wyckoff Police Department was called as a rebuttal witness. Sokoly related a conversation had with the owner of the license, Mr. Toth, shortly after the occurrence, who related that the evening in question was slow and he had one bartender on-duty.

- II -

From the transcripts submitted into evidence, I make the following findings of fact:

1. The two minors testified to their age and one produced a birth certificate establishing that they were not of legal age on the date of the alleged occurrence.

2. They established that the beer was bought from the subject licensed premises where no effort was made to have either or both produce identification or prove their age.

3. The police official's testimony tended to refute the licensee's version that more than one bartender was on-duty that evening, and further established that soon after the occurrence licensee was aware of the facts and thus able to prepare a defense.

4. It would appear that the Township Committeemen did not find credible the bartender Gallo's statement that, although this was his evening off, he was in the barroom drinking, as a patron. Nor, did they apparently find credible the testimony that there were two bartenders on-duty that evening.

I have read both transcripts thoroughly and find it reasonable for these Committeemen to have reached their conclusion, bearing in mind that they were present and capable of observing the manner and demeanor of the various witnesses as their testimony unfolded.

- III -

The licensee's attorney objects to the propriety of admitting the statements of the two youths on the second evening of the hearing, after the Committee rested its case on the prior evening.

The Township Attorney maintains, and I concur, that the testimony is admissible by way of rebuttal to statements made by licensee's witnesses. The boys testified that there was no attempt to ascertain their age, rebutting the bartender's testimony of how they exercise great care in making a thorough investigation and denying service if any doubt exists in their minds.

Secondly, the licensee maintains that there was coercion and that the boys were intimidated into testifying.

It is quite clear that on the first evening of the hearing, the licensee's attorney, despite admonitions from the Mayor that the matter was civil, not criminal in nature, behaved as if he were defending a client accused of committing a crime. The direct, and intended result of his behavior was that the minors declined to testify, fearing possible incrimination and the filing of charges by the licensee against them.

During the interlude, the boys had time to reflect, consult with parents, and one of them, with an attorney hired by the family. Both stated they now wished to have the opportunity to testify and were doing so of their own free will.

I find no impropriety was committed by allowing their testimony to be heard the second evening. One must not lose sight of the fact that these hearings are administrative and fact-finding in nature.

I conclude that the appellant has failed to sustain its burden of establishing that the action of the Committee

was erroneous and should be reversed, as required by N.J.A.C. 13:2-17.6.

It is, therefore, recommended that the action of the Committee be affirmed, the appeal herein be dismissed, and the suspension be reimposed.

CONCLUSIONS AND ORDER

No Written Exceptions to the Hearer's Report were filed by the parties pursuant to N.J.A.C. 13:2-17.14.

Having carefully considered the entire record herein, including the transcript of testimony submitted pursuant to N.J.A.C. 13:2-17.8, the exhibits, the written summation of appellant and the Hearer's Report, I concur in the findings and recommendations of the Hearer and adopt them as my conclusion herein.

Accordingly, it is on this 5th day of August, 1980,

ORDERED that the action of the Township Committee of the Township of Wyckoff be and the same is hereby affirmed, and the appeal be and is hereby dismissed; and it is further

ORDERED that my Order of January 19, 1978 staying the subject suspension pending determination of the appeal, be and is hereby vacated; and it is further

ORDERED that Plenary Retail Consumption license #0270-33-001-001 issued by the Township Committee of the Township of Wyckoff to Brownstone Inn, Inc., t/a Brownstone Inn, for premises 625 Wyckoff Avenue, Wyckoff, be and the same is hereby suspended for three (3) days commencing 2:00 A.M. on Wednesday, August 20, 1980 and terminating 2:00 A.M. on Saturday, August 23, 1980.

Joseph H. Lerner
Director

3. APPELLATE DECISIONS - TY-DAN CORPORATION v. CHERRY HILL.
#4462

TY-DAN CORPORATION, t/a	:	
WINNERS CIRCLE,	:	
Appellant,	:	CONCLUSIONS
	:	AND
v.	:	ORDER
TOWNSHIP COUNCIL OF THE TOWNSHIP	:	
OF CHERRY HILL,	:	On Appeal
Respondent	:	
-----	:	

Joseph Strimber, Esq., Attorney for Appellant
Maury K. Cutler, Esq., Attorney for Respondent.

Initial Decision Below

Hon. J. Roger Persichilli

Dated: July 18, 1980

Received: July 24, 1980

Appellant appealed from the action of the Respondent, Township Council of the Township of Cherry Hill, which, by resolution dated March 10, 1980, suspended Appellant's Plenary Retail Consumption License #0409-33-042-002 for premises located at 9 Grove Street, Cherry Hill for fifteen days, in consequence of a finding of guilt to a charge alleging a sale of alcoholic beverages to a minor, in violation of N J.A.C. 13:2-23.1.

Upon Appeal and Answer filed, the matter was referred for hearing to the Office of Administrative Law. At the said hearing, the parties entered into a "Consent Order" whereby it was agreed that the action of the Respondent in suspending the subject license for fifteen (15) days shall be affirmed, and the suspension shall become effective commencing "September 1, 1980 through September 15, 1980".

The Administrative Law Judge thereupon recommended that the Appeal be dismissed "with prejudice". However, he failed to recommend that the action of the Respondent be affirmed. This is a necessary procedural requirement.

I, therefore, concur in the Conclusion of the Administrative Law Judge except as hereinabove modified and adopt his recommendations.

Accordingly, it is on this 5th day of August, 1980,

ORDERED that the action of the Respondent, Township Council of the Township of Cherry Hill be and the same is hereby affirmed, and the appeal herein be and the same is hereby dismissed; and it is further

ORDERED that my Order of March 19, 1980, staying the suspension pending determination of the appeal, be and the same is hereby vacated; and it is further

ORDERED that the Plenary Retail Consumption License #0409-33-042-002 issued by the Township Council of the Township of Cherry Hill to Ty-Dan Corporation, t/a Winners Circle, for premises at 9 Grove Street, Cherry Hill, be and the same is hereby suspended for fifteen (15) days, commencing 3:00 A.M. on Monday, September 1, 1980 and terminating 3:00 A.M. on Tuesday, September 16, 1980.

IN THE MATTER OF)	<u>INITIAL DECISION</u>
TY-DAN CORPORATION t/a)	OAL DKT. NO. ABC 1959-80
WINNERS CIRCLE,)	AGENCY DKT. NO. APP. 4462
Appellant)	MUN. REV. 7540
v.)	
TOWNSHIP COUNCIL OF THE)	
TOWNSHIP OF CHERRY HILL,)	
Respondent)	

APPEARANCES:

Joseph Strimber, Esq., on behalf of Ty-Dan Corporation, Appellant

Maury K. Cutler, Municipal Prosecutor, Township of Cherry Hill, on behalf of the Respondent

BEFORE THE HONORABLE J. ROGER PERSICILLI, A.L.J.:

The matter, sub judice, is an appeal from the action of the Township Council of the Township of Cherry Hill, Respondent, which, by Resolution No. 80-3-11, resolved that the Appellant's license be suspended for fifteen (15) days commencing at 3 a.m. on March 24, 1980 for premises located at 9 Grove Street, Cherry Hill, New Jersey. The six (6) page Resolution, dated March 10, 1980, identifies the Appellant's Plenary Retail Consumption License No. as 0409-33-042-001.

Notice and Petition of Appeal were served on March 19, 1980 to Joseph H. Lerner, Director, Division of Alcoholic Beverage Control, Department of Law and Public Safety. On March 19, 1980, the Director ordered that the suspension period be stayed pending the determination of the appeal. This Order identifies the Retail Consumption License No. as 0409-33-042-002. An answer was filed on behalf of the Township Council of the Township of Cherry Hill and the matter was transmitted to the Office of Administrative Law for determination, as a contested case, pursuant to N.J.S.A. 52:14F-1, et seq.

On June 5, 1980, the parties appeared before the undersigned in Courtroom #4A, Camden County Court House, Camden, New Jersey. Prior to the commencement of the hearing, a prehearing conference was conducted and the parties amicably resolved all disputed matters, evidenced by the attached Consent Order which is incorporated herein by reference.

Accordingly, it is ORDERED that the appeal now pending before the Division of Alcoholic Beverage Control be and the same is hereby DISMISSED WITH PREJUDICE.

This recommended decision may be affirmed, modified or rejected by the **DIRECTOR OF THE DIVISION OF ALCOHOLIC BEVERAGE CONTROL, JOSEPH H. LERNER**, who by law is empowered to make a final decision in this matter. However, if Joseph H. Lerner does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I HEREBY FILE my Initial Decision with **JOSEPH H. LERNER** for consideration.

4. APPELLATE DECISIONS - AVON-WALL, INC. v. WALL.

#4454
 AVON-WALL, INC., t/a
 THE STATION HOUSE,
 Appellant, : On Appeal
 vs. : CONCLUSIONS
 TOWNSHIP COMMITTEE OF THE : AND
 TOWNSHIP OF WALL, : ORDER
 Respondent. :

 Healy and Weinstein, Esqs., by Daniel J. Healy, Esc., Attorneys for Appellant.
 Mangini, Gilroy and Cramer, Esqs., by John Jay Mangini, Esq., Attorneys for Respondent.

Initial Decision Below

Hon. Richard L. Voliva, Jr., Administrative Law Judge

Dated: July 10, 1980

Received: July 10, 1980.

BY THE DIRECTOR:

No written exceptions to the Initial Decision were filed pursuant to N.J.A.C. 13:2-17.6.

The Administrative Law Judge properly found no substance to appellant's contention that the amendment of the ordinance to reduce the hours of sale was discriminatory as to appellant because it was a small operator, and that the said amendment should have been limited to the Sea Girt Inn which was a more substantial licensed operator. Such an amendment would have clearly been arbitrary and discriminatory.

The appellant's financial interests must be subservient to the greater public good. As the Court stated in Dal Roth v. Division of Alcoholic Beverage Control, 28 N.J. Super. 246-255 (App. Div. 1953) "Restrictive liquor regulations may and oftentimes do result in individual hardships. However, where larger social interests justify a restrictive policy, private individual interests must give way." See also Lyons Farms Tavern, Inc. v. Newark, 55 N.J. 292 (1970); cf. A's Inn, Inc. v. Deal, Bulletin 2139, Item 3; Smith v. Bosco, 66 N.J. Super 165, (App. 1961); Nordco, Inc. v. State, 43 N.J. Super 277, 288 (App. Div. 1957).

The testimony indicates that one of the primary purposes for amending this ordinance was to reduce traffic problems and incidents of

driving while under the influence of alcohol as well as incidents of overcrowding at licensed establishments as a result of an influx of patrons from establishments in surrounding communities which have a 2:00 a.m. closing time. The amendment to reduce the closing hour from 3:00 a.m. to 2:00 a.m. thus has a salutary social purpose which has overriding consideration to any financial detriment which may potentially be upon the appellant.

The Administrative Law Judge failed to recommend the affirmance of the respondent's action. I shall amend the Initial Decision's recommendation to that effect.

Having carefully considered the entire record herein including the transcript of testimony, the exhibits and the Initial Decision, I concur in the findings and recommendations of the Administrative Law Judge as hereinabove amended, and adopt them as my conclusions herein.

Accordingly, it is, on this 14th day of August, 1980,

ORDERED that the action of the respondent, Township Committee of the Township of Wall, be and the same is hereby affirmed, and the appeal herein be and is hereby dismissed.

JOSEPH H. LERNER
DIRECTOR

AVON-WALL CORP., T/A)	<u>INITIAL DECISION</u>
THE STATION HOUSE)	OAL DKT. NO. ABC 0748-80
v.)	DIVISION OF ALCOHOLIC BEVERAGE
TOWNSHIP OF WALL, A MUNICIPAL)	CONTROL DKT. NO. 4454
CORPORATION)	

APPEARANCES:

Healy and Weinstein, Esqs., by Daniel J. Healy, Esq., on behalf of Avon-Wall Corp.

Mangini, Gilroy and Cramer, Esqs., by John Jay Mangini, Esq., on behalf of the Township of Wall

BEFORE THE HONORABLE RICHARD L. VOLIVA, JR., A.L.J.:

This matter concerns the appeal by Avon-Wall Corp., trading as The Station House (hereinafter "The Station House"), appellant, from the adoption of Ordinance No. 37-1979 by the Township Committee of the Township of Wall (hereinafter the "Committee" or "Township"), respondent, revising and limiting the hours of sale of alcoholic beverages. The appeal was transmitted to the Office of Administrative Law for a determination pursuant to N.J.S.A. 52:14F-1, et seq. The matter was heard and the record closed on June 4, 1980.

On December 12, 1979, the Committee passed Ordinance No. 37-1979, which revised the general ordinances controlling the hours of sale of alcoholic beverages. The hours of sale between May 15 and October 15 were revised from a prohibition against sale on any weekday between the hours of 3:00 a.m. and 7:00 a.m., or on Sundays between 3:00 a.m. and 12:00 noon, to on any weekday between the hours of 2:00 a.m. and 7:00 a.m., or on Sundays between 2:00 a.m. and 12:00 noon (last drink served at 2:00 a.m. and last patron out at 2:30 a.m.). The Station House appealed the adoption of the ordinance pursuant to N.J.S.A. 33:1-41.

The authority to determine the hours of sale of alcoholic beverages is firmly vested within the local governing body pursuant to N.J.S.A. 33:1-40. Walinski v. Mayor and Council, Gloucester City, 25 N.J. Super. 122, 131 (Ch. Div. 1953). A challenge to specific provisions of such an ordinance may be made to the Director of the Division of Alcoholic Beverage Control pursuant to N.J.S.A. 33:1-41. Blanck v. Mayor and Borough Council of Magnolia, N.J. Super. 306, 311 (App. Div. 1962), rev'd and remanded 38 N.J. 484 (1962), appeal after remand D'Amico v. Blanck, 85 N.J. Super. 297 (App. Div. 1964), certif. den. sub nom. 43 N.J. 448 (1964). The issue on appeal is whether there was an abuse of discretion by the Committee in the establishment of the 2:00 a.m. closing as opposed to 3:00 a.m., i.e., whether such action was arbitrary or unreasonable. id., 73 N.J. Super. at 312. It must be shown that the purpose in the adoption of the ordinance was the product of an impermissible reason and not in the public welfare. id., 38 N.J. at 495.

The Station House offered the testimony of Richard C. Maloney, owner, General Manager and Secretary. He purchased and began operating The Station House on or about July 1, 1978. He specifically choose to locate in Wall Township because of the 3:00 a.m. closing time and paid \$40,000 in excess of what he would have had to pay to locate in one of the neighboring towns where there was a 2:00 a.m. closing time. Mr. Maloney attended a caucus meeting and five public hearings conducted by the Committee prior to adoption of the ordinance. He asked questions of and spoke to the Committee in opposition to the proposed ordinance. At the caucus meeting, he recalled Councilman Rash make a statement that the only reason the proposal had been made was because of the Sea Girt Inn, operated by James Byrne. Apparently, complaints had been made by tenants of the Barbara Lynn Apartments, which are immediately adjacent to the Sea Girt Inn. At a subsequent public hearing Mayor Carson made a statement that the proposed ordinance was a matter between Mr. Byrne and the people of the Barbara Lynn Apartments. The Sea Girt Inn is a much larger and entertainment oriented establishment, as opposed to the operations conducted at The Station House. Mr. Maloney contends it was unfair to include all the various types of licensed premises under the same ordinance.

Lt. Leo Kubaitiz and Sgt. Robert Clawson of the Wall Township Police Department testified concerning the increases in traffic, patronage at licensed premises, the number of accidents, the number of deaths by auto and the number of police calls to licensed premises, which occurred subsequent to 2:00 a.m., when licensed premises in adjoining towns closed, and prior to the adoption of the subject ordinance. The purpose of this testimony was to support the Committee's adoption of the amendment to the ordinance. However, it was not established that this information was submitted to or considered by the Committee when it adopted the ordinance. Therefore, the testimony has no relevance in the matter.

The essence of the argument of The Station House is that the Committee considered only problems emanating from the operation of the Sea Girt Inn and, unfairly restricted the operations of licensed premises whose operations are substantially different and which have posed no threat to the public welfare. Assuming, arguendo, that the complaints stemming from the operation of the Sea Girt Inn were the primary factor considered by the Committee in determining to restrict the hours of sale of alcoholic beverages to 2:00 a.m., this does not establish an abuse of discretion by the Committee, nor that its action was arbitrary or unreasonable. If such reason was the primary purpose, the adoption of the amended ordinance was in the public interest. Although one might argue with the significance of the public interest to be protected, there was no proof that the basis of the ordinance was founded upon impermissible reasons. Further, it was Mr. Maloney's testimony that he and others made statements to the Committee in opposition to the proposed ordinance, and there apparently were other comments made to the Committee, aside from those divulged in the record. It must be assumed the Committee gave consideration to these positions.

The appellant's argument concerning the disparate treatment of small licensed premises has no merit. The appellant was willing to be regulated by the previous ordinance together with the larger premises and opposition was only voiced following adoption of the amendment. There has been no showing that the inclusion of all licensed premises under the same ordinance is unfair or unreasonable. It can easily be envisioned that an attempt to distinguish between licensed premises according to size and other reasons for purposes of regulating the hours of sale would constitute an abuse of discretion.

After consideration of the entire record in this matter, I FIND that:

1. On December 12, 1979, the Committee adopted Ordinance No. 37-1979 amending the hours of sale of alcoholic beverages at licensed premises. The hours of sale were changed from a prohibition against sales on weekdays between 3:00 a.m. and 7:00 a.m., and on Sundays between 3:00 a.m. and 12:00 noon, to on weekdays between 2:00 a.m. and 7:00 a.m., and on Sundays between 2:00 a.m. and 12:00 noon.
2. The Station House is located in Wall Township.
3. The Committee considered complaints made by tenants of the Barbara Lynn Apartments concerning the operation of the Sea Girt Inn. The Committee was also made aware of opposition by Mr. Maloney and others to the proposed amendment.

I CONCLUDE that The Station House has not shown the subject ordinance was adopted as a result of an abuse of discretion by the Committee and was otherwise arbitrary or unreasonable.

Therefore, I ORDER that the appeal of Avon-Wall Corp., trading as The Station House be DISMISSED.

This recommended decision may be affirmed, modified or rejected by the **DIRECTOR OF THE DIVISION OF ALCOHOLIC BEVERAGE CONTROL, JOSEPH H. LERNER**, who by law is empowered to make a final decision in this matter. However, if Director Lerner does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I HEREBY FILE my Initial Decision with **DIRECTOR LERNER** for consideration.

5. STATE LICENSES - NEW APPLICATIONS FILED

Kilmer Beverages Inc.
Corner Routes 528 & 539
Plumsted Twp., PO New Egypt, N. J.
Application filed November 2, 1981 for
place to place transfer of a state
beverage distributor's license from
429 Joyce Kilmer Avenue, New Brunswick, N. J.

South Avenue Beverages Inc.
404 South Avenue
Westfield, New Jersey
Application filed November 9, 1981
for state beverage distributor's license.


Joseph H. Lerner
Director