STATE OF NEW JERSEY
DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL
744 Broad Street, Newark, N. J.

BULLETIN 418 AUGUST 5, 1940.

1. NEWARK ORDINANCE RE FEMALE EMPLOYEES - APPLICATION BY TAVERN OWNERS' ASSOCIATION FOR HEARING DENIED - ORDINANCE APPROVED EX PARTE.

July 24, 1940

Ralph A. Villani, Esq.,
9 Clinton Street,
Newark, N. J.

Dear Mr. Villani:

I have carefully considered the application which you have filed on behalf of the City Proper Tavern Owners' Association, a group of Newark tavernkeepers, for a hearing on the question whether I should grant approval to the following ordinance which the Newark Board of Commissioners adopted on July 10, 1940:

"AN ORDINANCE TO REGULATE FEMALE EMPLOYES ON PREMISES LICENSED FOR THE SALE OF ALCOHOLIC BEVERAGES.

"THE BOARD OF COMMISSIONERS OF THE CITY OF NEWARK DO ORDAIN:

"1: No female employed on any premises licensed for the sale of alcoholic beverages under a plenary retail consumption license shall accept any food or drink, alcoholic or otherwise, at the expense of any customer or patron.

"2: No plenary retail consumption licensee shall permit, allow, or suffer any female employed on the licensed premises to accept any food or drink, alcoholic or otherwise, at the expense of any customer or patron.

"3: No employee of a Plenary retail consumption licensee shall permit, allow or suffer any female employed on the licensed premises to accept any food or drink, alcoholic or otherwise, at the expense of any customer or patron.

"4: No employer of any female employed on premises licensed under a plenary retail consumption license, or his employee or employees, shall permit, allow or suffer any female employed on the licensed premises to accept any food or drink, alcoholic or otherwise, at the expense of any customer or patron.

"5: Any person who shall violate any of the provisions of this ordinance shall upon conviction thereof, forfeit and pay a fine not exceeding One Hundred Dollars ($100.00), or be imprisoned for a period not exceeding thirty (30) days, or both, in the discretion of the court imposing the same.

"6: This ordinance shall take effect immediately, subject to passage and publication according to law.

PEARCE R. FRANKLIN
M. ELLENSTEIN
JOS. M. BYRNE, JR.
VINCENT J. MURPHY

THE BOARD OF COMMISSIONERS OF THE CITY OF NEWARK, N.J."

The Alcoholic Beverage Law provides that a municipal governing body may, by ordinance, "subject to the approval of the (State) Commissioner first obtained, regulate the conduct of any business licensed to sell alcoholic beverages at retail" in the municipality. See R. S. 33:1-40, as modified by P.L. 1939, c. 234.

There is no requirement that the State Commissioner, before granting approval of any such regulation, must first hold any hearing to determine whether he should grant or deny approval.

In the present case I see no necessity or reason for any such prior hearing. The Newark ordinance in question provides, in brief, that female employees working on plenary retail consumption licensed premises in Newark shall not accept "any food or drink, alcoholic or otherwise, at the expense of any customer or patron." Such regulation is a firm and, in my opinion, wholly reasonable measure to eliminate the evil of the so-called "clip joint", where the female employees of a plenary retail consumption licensee, playing on the natural attraction of the sexes, seek to induce male patrons into purchases of food or drink, or both, at the not inconsiderable expense of the patron, and the further evil that such companionship will, whether these female employees be prostitutes or not, serve as fertile ground for ripening into immoral conduct.

Our State Supreme Court has already held, in Hoboken v. Goodman, 68 N. J. L. 217 (1902), that the total prohibition of all female employees at liquor places is a reasonable police measure. It follows, in my opinion, that a regulation, short of such total prohibition and calculated to limit the conduct of such employees so as to prevent the above mentioned evils, is likewise reasonable.

The experience of this Department corroborates the reasonableness of such a regulation. At the present time I am contemplating a like type of State-wide regulation and am very interested in seeing whether the Newark regulation will prove to have sufficient teeth to eliminate the above twin evils.

The only objection which the City Proper Tavern Owners' Association's application makes against the ordinance (aside from the general allegation that the ordinance is "arbitrary, unreasonable, discriminatory and contrary to law") is that it goes overfar since it prevents female employees who are engaged as bona fide entertainers at liquor establishments from accepting any invitation for food or drink at a patron's expense even when such patron is a friend.

This objection is trifling. Were an exception to be made in the ordinance exempting these entertainers from its ban, a gap would be opened in the regulation which might well defeat its effectiveness, since in every instance of alleged violation the defendant might readily claim that the female employee was actually a bona fide entertainer who was merely being treated by a friend.

It would seem ludicrous to open such a gap merely to spare bona fide entertainers the alleged inconvenience of being unable to eat or drink at a friend's table at the friend's expense. Moreover, I cannot see where tavernkeepers have standing to complain of this alleged inconvenience in personal liberty of their female employees.

In this same connection, the further argument may perhaps suggest itself that the regulation, in prohibiting female employees from accepting food or drink from even female as well as male patrons, unreasonably overshoots the mark. However, here too it is conceivably a wise precaution not to limit the ban to merely dining or drinking at the expense of the male patron since such a limitation would open the possibility of subterfuge whereby it could be claimed that the soliciting female employee who joins a party of both sexes was really the guest of one of the women in the party. Certainly I cannot say that such a precaution must be viewed as necessarily unreasonable.

In view of the foregoing, application of the City Proper Tavern Owners' Association is denied. Enclosed is copy of my letter of even date which I am today sending to the Newark Board of Commissioners, approving the regulation ex parte. Such approval, however, is subject to reconsideration in any particular case which may come before the Department involving violation of the ordinance, and is further subject to reconsideration on petition alleging proper cause therefor, such as, for example, that conditions have changed since the granting of the approval, or experience has shown that the regulation operates unreasonably.

As to the alternate types of regulation which the City Proper Tavern Owners' Association suggests in lieu of the present regulation, such proposals must be made to the Newark Board of Commissioners and not to the State Commissioner of this Department. It is that Board, and not the Commissioner, which adopts municipal regulations in Newark. I cannot rewrite the municipal regulations which must be submitted to me for approval, but may merely pass on them as they are actually enacted.

Very truly yours,
E. W. GARRETT,
Acting Commissioner

2. AGE, RESIDENCE OR CITIZENSHIP - MORAL TURPITUDE - FACTS EXAMINED - CONCLUSIONS.

July 24, 1940

Re: Case No. 332

Applicant, who lacks the requisite five years' residence in this state, has applied to this Department for permission to be employed by a liquor licensee.

His fingerprint returns disclose, contrary to a sworn statement that he had never been convicted of a crime, that he was arrested on December 18, 1937 and charged with ownership of an unregistered still and possession of illicit alcoholic beverages, as a result of which he was found guilty and sentenced to a jail term of six months.

At the hearing applicant denied all connection with the still and stated that he was convicted on the false testimony of the real owner of the still. However, a conviction cannot be collaterally attacked in this proceeding. Re Case No. 308, Bulletin 383, Item 2.

Without determining whether this conviction for illicit liquor activity since Repeal involves moral turpitude, a non-residence permit, issuance of which is a discretionary function, should be withheld from one who has committed such an offense and has thus stamped himself as unfit to be employed by a liquor licensee in this state. Re Case No. 280, Bulletin 326, Item 8.

It is recommended that application for permit be denied.

Samuel B. Helfand,
Attorney.

APPROVED:
E. W. GARRETT,
Acting Commissioner.

3. APPELLATE DECISIONS - TURNER v. WALPACK.

RUTH TURNER,)
Appellant,) ON APPEAL
-vs-) CONCLUSIONS
TOWNSHIP COMMITTEE OF THE TOWNSHIP OF WALPACK,)
Respondent)

Mackerley & Friedman, Esqs., by Peter Friedman, Esq., Attorney for Appellant.
Thomas M. Hurley, Esq., Attorney for Owner of Premises in Question.
Donald Fuller, Russell Heater and Lee Rosenkrans, Township Committeemen, for Respondent.

This appeal is from the denial of a plenary retail consumption license for 1939-40 for premises on Walpack-Flatbrookville Road, Walpack Township.

In March 1940, the month before appellant's application was filed, respondent adopted a resolution to limit plenary retail consumption licenses in the Township to the then (and still) existing number of three. Such quota was defective on its face since the Alcoholic Beverage Law requires that all quotas adopted after July 1, 1937 must be by ordinance. R. S. 33:1-40; Pergola v. Jamesburg, Bulletin 398, Item 6.

However, when appellant's application came up for consideration at respondent's meeting in April 1940, respondent introduced an ordinance to adopt a legally effective quota of three consumption licenses in the Township, and in good faith laid the application over pending adoption of such ordinance. At its next meeting, viz., in May 1940, respondent (by vote of 2-1) actually adopted the ordinance and thereupon denied the application.

Respondent's action in thus holding over the application pending enactment of the ordinance was not erroneous. A municipality may validly, as here, when application is made for an additional license, immediately set about to reduce its then technically defective quota to effective form, carry the application until such change is accomplished and thereupon deny the application. For a similar doctrine see Franklin Stores v. Elizabeth, Bulletin 61, Item 1; Forest Hill Boat Club v. Cinnaminson, Bulletin 372, Item 7; Italian American Citizens Club v. Greenwich, Bulletin 392, Item 9 (and cases therein cited).

Hence the denial of appellant's license must be affirmed unless the quota is unreasonable (1) as applied to the Township at large or (2) in its application to appellant and the vicinity in question. Schuttenberg v. Keyport, Bulletin 327, Item 3; Ford v. Ridgewood, Bulletin 347, Item 3.

As to (1): The Township is seven or eight miles long and varies in width from three to five miles. It is described by the respondent's chairman as a scenic municipality whose year-round population of two hundred or thereabouts is "possibly tripled" during the summer and the hunting and fishing seasons. There are only the three plenary retail consumption and no other type of liquor licenses in the Township.

Although the Township is sizable in area, and although the evidence further shows that one of respondents three Committeemen and also various residents in the Township (but not, so far as appears, a majority of such residents) are opposed to the quota, nevertheless I cannot, in view that the Township has but a sparse population (even during the summer and the hunting and fishing seasons), say that a quota of three consumption licenses is necessarily unreasonable for the Township as a whole.

True, four consumption licenses were in existence in the Township from July 1939 to January 1940. However, the fourth such license was then voluntarily surrendered. Hence, experience with these four licenses actually supports (in view of such voluntary surrender) the reasonableness of the present quota of three.

As to (2): Appellant's premises are in an unofficial section in the north of the Township also known as Walpack. This section, with a normal population of thirty persons, is apparently the most developed part of the Township, there being, within a quarter-of-a-mile radius of appellant's premises, some twelve or fourteen residences, a church, a school, and also a plenary retail consumption establishment some four or five hundred yards away.

There is no evidence that this nearby licensed place is actually inadequate to meet the liquor needs of the vicinity. Although appellant claims that she intends to operate a vacationers' hotel at her premises and that, having lived in Hudson County for many years, her patronage will consist of persons in her "following" from that county and New York City, such falls far short of establishing that public necessity or convenience require that her place also be licensed in this vicinity.

However, appellant points out that the premises in question were licensed from Repeal until April 1940; that, in fact, the nearby licensee was originally located at these premises, having transferred to his present site on that date; that appellant thereupon became a tenant at and made her application for the premises in question. She claims that such premises cannot be successfully

operated without a liquor license and that it is now inequitable to deny such license for them.

A lessee or owner of premises gains no right to a liquor license for such premises merely because a previous tenant held license there. Although failure to issue a new license to a subsequent tenant may result in hardship to that tenant or the owner, nevertheless where, in the question of issuing liquor licenses, private and public interests conflict, the latter must necessarily prevail. Rainbow Grill v. Bordentown, Bulletin 245, Item 4; Ninety-One Jefferson Street, Passaic, Inc. v. Passaic, Bulletin 255, Item 9; Brost v. East Amwell, Bulletin 304, Item 1; Smith v. Winslow, Bulletin 334, Item 1. Richmond Realty Corp. v. Plainfield, Bulletin 411, Item 1. Hence the Township's quota, duly adopted by respondent as a reasonable public measure, here prevails over any alleged hardship to appellant or her landlord.

The action of respondent is, therefore, affirmed.

E. W. GARRETT,
Acting Commissioner.

Dated: July 24, 1940.

4. RULES GOVERNING SIGNS AND OTHER ADVERTISING MATTER - APPLICATION TO EXTERIOR SIGNS BEARING MANUFACTURERS', WHOLESALERS' OR TRADE NAMES ATTACHED TO SAME BUILDING BUT NOT DISPLAYED IN CONNECTION WITH A RETAIL LICENSED PREMISES.

July 26, 1940

Pete & Domenick's, Inc.,
Jersey City, N. J.

Gentlemen:

Kindly refer to our previous correspondence of June 3, 1940, regarding the sign to advertise Pete & Domenick's, Inc., and Utica Club Beer, proposed to be painted on the exterior wall of 58 Sip Avenue, Jersey City.

We have letter under date of June 5, 1940 from Mr. Frank Nunzio, 696 Newark Avenue, Jersey City, your sign man, stating that the proposed sign is to be wholly paid for by Pete & Domenick's, Inc., which information has been verified by Mr. Anthony DiDomenico, your treasurer, verbally to our investigators.

It is generally permissible for retailers to advertise on exterior signs provided the advertising matter is acceptable and in conformance with the rules. But it is not permissible to include in such signs the name, brand or trade-mark of any manufacturer or wholesaler of any alcoholic beverage (Regulations No. 21, Rule 2, Pamphlet Rules, page 67), whether the sign is paid for wholly by the retailer or in whole or in part by the manufacturer or wholesaler and regardless of whether it is attached to the exterior of the licensed premises or removed therefrom. The ruling on this is in Re Greenfield, Bulletin 86, Item 13.

The sign, as proposed, will not be permissible. If, however, you wish to submit a new layout, eliminating all reference to any manufacturer or wholesaler, I shall be glad to consider it.

I am sending a copy of this letter to Mr. Nunzio.

Very truly yours,
E. W. GARRETT,
Acting Commissioner.

5. APPELLATE DECISIONS - HINDIN v. EGG HARBOR.

SAMUEL HINDIN,)

Appellant,)

-vs-) ON APPEAL CONCLUSIONS

TOWNSHIP COMMITTEE OF THE TOWNSHIP OF EGG HARBOR and WILLIAM A. MORLEY,)

Respondents)

- - - - - - - - - - - - - - - - - - -

Samuel Hindin, Pro Se.
Clarence B. Dixon, Esq., Attorney for Respondent Township Committee.
Frank S. Farley, Esq., by Julius Waldman, Esq., Attorney for Respondent William A. Morley.

This appeal is from the issuance of a plenary retail consumption license on May 9, 1940, by the Egg Harbor Township Committee to William A. Morley for the balance of the 1939-40 term for premises at Fire and Delilah Roads in the Township, and also from renewal of such license for the current (1940-41) term.

Appellant's grounds of appeal are (1) that the original 1939-40 license was issued in excess of the then existing Township quota, and (2) that, in any event, Morley is unfit to hold a liquor license.

As to (1): When Morley's 1939-40 license was granted (May 9, 1940), the then existing quota of twenty-five plenary retail consumption licenses for the Township was already filled, Morley's license being the twenty-sixth. Hence that license, being in excess of the quota, was erroneously issued.

However, on June 24, 1940 respondent adopted an amendatory ordinance raising the quota to twenty-six. Such increase, although enacted after the present appeal was filed, shall, in accordance with rulings heretofore made in like cases, be deemed corrective action retroactively validating the issuance of Morley's 1939-40 license. See Re Livelli, Bulletin 235, Item 14; Re Knox, Bulletin 240, Item 1. As to the 1940-41 license, such, having been granted after the quota was increased to twenty-six, was, in so far as the local quota is concerned, validly issued.

As to (2): Appellant bases his claim that Morley is personally unfit for a liquor license substantially, if not wholly, on the decision in Hindin v. Egg Harbor Township, Reynolds and Eberle, Bulletin 399, Item 1, where, on appeal, a plenary retail consumption license issued in July 1939 to Reynolds and Eberle was in April 1940 set aside because it appeared, from Morley's testimony and other evidence on such appeal, that Morley was actually operating under that license and that Reynolds and Eberle had obtained the license merely as a "front" for him.

The question whether any applicant shall be deemed sufficiently trustworthy to obtain a municipal liquor license lies within the discretion of the local issuing authority. See Lewis v. Orange et als., Bulletin 268, Item 3; Griffin v.

Rutherford et al., Bulletin 376, Item 3. Perhaps, had Morley's application been made to me, I might well have deemed him unworthy of a liquor license. However, I cannot say that respondent, knowing the decision in the above mentioned appeal and apparently wishing nevertheless to entrust him with one of the Township's liquor licenses and hence give him "another chance", is necessarily unreasonable.

The action of respondent is, therefore, affirmed.

However, it does not follow that Morley may, by such affirmance, thus be escaping penalty for his alleged misconduct. For, although such misconduct may not be sufficient to characterize respondent's willingness to give Morley a "second chance" as unreasonable, nevertheless, if such misconduct has occurred, it warrants disciplinary action against him. In view that Morley's testimony in Hindin v. Egg Harbor Township, Reynolds and Eberle, supra, lends support to the charge of such misconduct, I am directing that disciplinary proceedings be instituted forthwith by this Department against him. The fact that Morley may have already been indirectly penalized by reversal of the Reynolds-Eberle license does not stand in bar of such proceedings, although it may perhaps be considered in meting out penalty in the case.

E. W. GARRETT,
Acting Commissioner.

Dated: July 29, 1940.

6. DISCIPLINARY PROCEEDINGS - CUT RATE SIGN - 3 DAYS' SUSPENSION ON PLEA OF GUILT.

In the Matter of Disciplinary Proceedings against LAZAROFF'S PHARMACY, INC., 244 Broadway, Newark, N. J., Holder of Plenary Retail Distribution License D-183, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.	CONCLUSIONS AND ORDER

Samuel B. Helfand, Esq., Attorney for the State Department of Alcoholic Beverage Control.
Lazaroff's Pharmacy, Inc., by William Lazaroff, Secretary and Treasurer.

The licensee has pleaded guilty to a charge of displaying a sign reading "Cut Rate Drugs - Liquors" on the exterior of its licensed premises, in violation of Rule 3 of State Regulations 21.

The usual penalty for this violation is five days. By entering this plea in ample time before the date fixed for hearing, the Department has been saved the time and expense of proving its case. The license will, therefore, be suspended for three days instead of five days.

Accordingly, it is, on this 31st day of July, 1940,

ORDERED, that Plenary Retail Distribution License D-183, heretofore issued to Lazaroff's Pharmacy, Inc. by the Municipal Board of Alcoholic Beverage Control of the City of Newark, be and the same is hereby suspended for a period of three (3) days, effective August 5, 1940, at 3:00 A.M. (Daylight Saving Time).

E. W. GARRETT,
Acting Commissioner.

7. SEIZURES - CONFISCATION PROCEEDINGS - PROPERTY FORFEITED.

In the Matter of the Seizure on June 10, 1940 of approximately 1215 gallons of wine from Gerardo DiGuglielmo, at 15 Rowland Street, Newark, New Jersey.	Case No. 5772 ON HEARING CONCLUSIONS AND ORDER

Harry Castelbaum, Esq., Attorney for Department of Alcoholic Beverage Control.

No other appearances.

On June 10, 1940 investigators of this Department found and seized the property described in Schedule "A" in the cellar of DiGuglielmo's home at the above address.

At the time of the seizure DiGuglielmo admitted that, in October 1939, he had manufactured the seized wine for himself and a number of friends and relatives. He admitted also that he had manufactured the wine without obtaining a license or permit.

No one appeared at the hearing herein to contest forfeiture of the seized property.

It is determined that the seized wine and containers are unlawful property under R. S. 33:1-1 (i and y), and should be forfeited under R. S. 33:1-66.

Accordingly, it is ORDERED that the seized property, more particularly described in Schedule "A", be and the same is hereby forfeited, and that it be retained for the use of hospitals and State, County and municipal institutions, or destroyed in whole or in part at the direction of the Commissioner.

E.W. GARRETT,
Acting Commissioner.

Dated: July 31, 1940.

SCHEDULE "A"

23 - 50-gallon barrels of wine
1 - 25-gallon barrel of wine
40 - 1-gallon jugs of wine

8. ENFORCEMENT DIVISION ACTIVITY REPORT FOR JULY, 1940.

To: E. W. Garrett, Acting Commissioner.

ARRESTS: Total number of persons - - - - - - - - - - - - 26
Licensees - 0 Non-licensees - 26

SEIZURES: Stills - total number seized- - - - - - - - - - 14
Capacity 1 to 50 Gallons- - - - - - - 9
Capacity 50 Gallons and over- - - - - 5

Motor Vehicles - Total number seized- - - - - 3
Trucks - 1 Passenger cars - 2

Alcohol
Beverage Alcohol- - - - - - - - - - - - - 3 Gallons

Mash - total number of gallons- - - - - - 3615

Alcoholic Beverages
Beer, Ale, etc. - - - - - - - - - - - - - - 35 Gallons
Wine- - - - - - - - - - - - - - - - - - - -806 "
Whiskies and other hard liquor- - - - - 60 "

RETAIL INSPECTIONS:
Licensed premises inspected - - - - - - - - 1348
Illicit (bootleg) liquor- - - - - 7
Gambling violations - - - - - - - - 1
Sign violations - - - - - - - - - 19
Unqualified employees - - - - - - - 225
Other mercantile business - - - - 11
Disposal permits necessary- - - - 8
"Front" violations- - - - - - - - 9
Improper beer markers - - - - - - - 6
Other violations found- - - - - - 2

Total violations found- - - - - - - - - 288
Total number of bottles gauged- - - - - 12606

STATE LICENSEES:
Plant Control inspections completed - - 92
License applications investigated - - - 17

COMPLAINTS:
Investigated and closed - - - - - - - - 218
Investigated, pending completion- - - - 231

LABORATORY:
Analyses made - - - - - - - - - - - - - - 73
Alcohol and water and artificial coloring cases - - - - 21
Poison and denaturant cases - - - - - - 0

Respectfully submitted,

S. B. White,
Chief Inspector.

9. APPELLATE DECISIONS - NOVELTY BAR, INC. v. NEWARK.

Novelty Bar, Inc.,
Appellant,
-vs-
Municipal Board of Alcoholic Beverage Control of the City of Newark and Grant Lunch Corp.,
Respondents.

On Appeal

CONCLUSIONS

David Endler, Esq., Attorney for Appellant.
Joseph B. Sugrue, Esq., Attorney for Respondent Board.
Daniel G. Kasen, Esq. and Kanter & Kanter, Esqs., Attorneys for Respondent, Grant Lunch Corp.

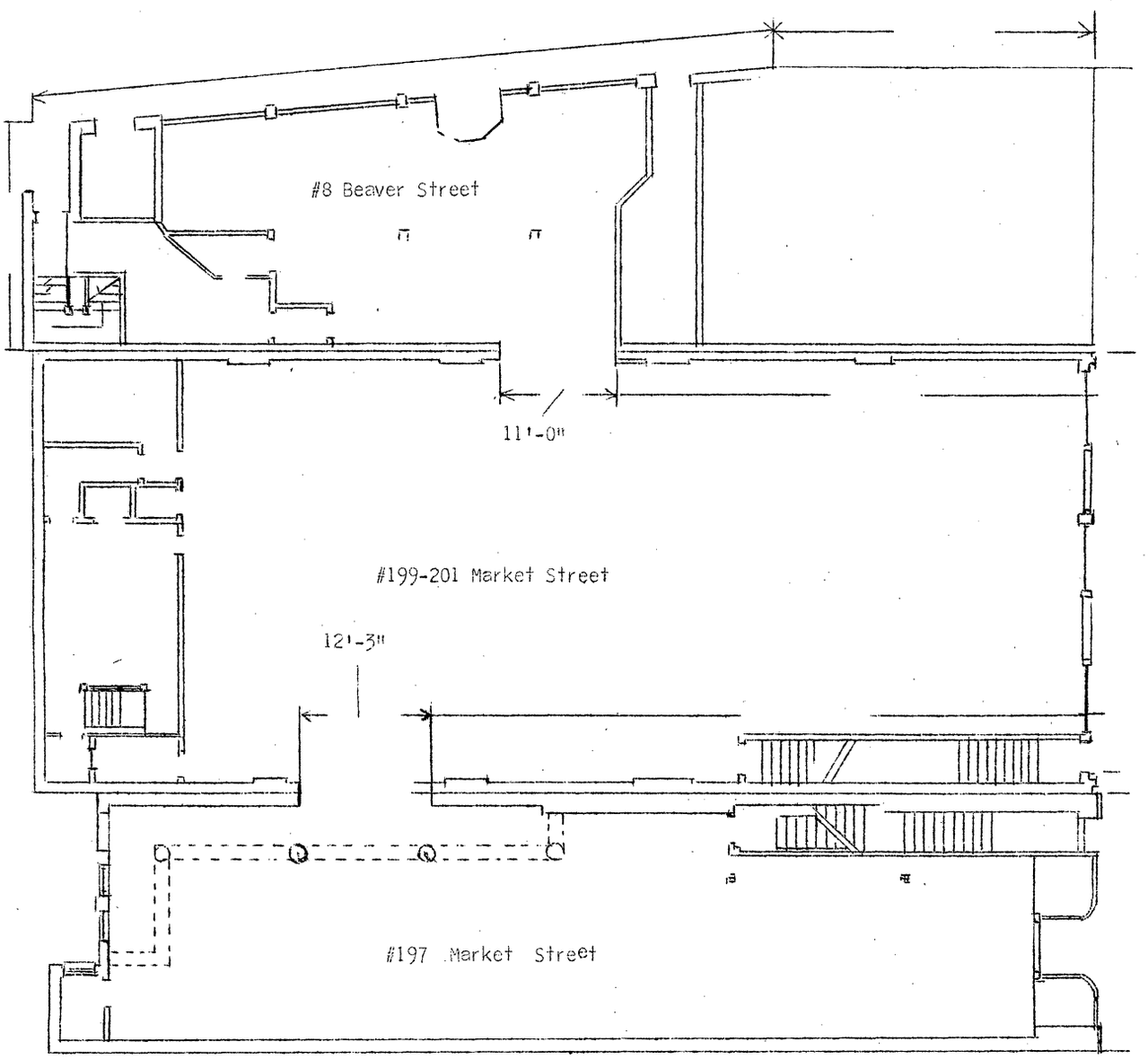
This appeal is from the action of the Newark Board of Alcoholic Beverage Control in granting transfer, during the past fiscal year, of plenary retail consumption license then held by Grant Lunch Corp. from 199-201 Market Street and 6-8 Beaver Street to 197-199-201 Market Street and 6-8 Beaver Street, Newark, such transfer in effect adding 197 Market Street to the previously licensed premises of the Grant Lunch Corp.

Appellant, a nearby plenary retail consumption licensee on Market Street, contends that, since the newly added premises at 197 Market Street are in a building separate from the original premises at 199-201 Market Street and 6-8 Beaver Street, the resultant combined premises may not be deemed a single business establishment and hence may not be covered by a single license; that, therefore, the transfer of the Grant Lunch Corp.'s license to cover all such premises is invalid.

The building in which the newly added premises are located stands alongside the original premises on Market Street, with the building walls flush against each other.

The Grant Lunch Corp., in filing its application with the Newark Board on February 4, 1940 for the present transfer, submitted therewith a proposed plan for an archway four feet in width through those building walls to connect the respective interiors. Hearings by the Board were held on the application on February 29th and March 14th, 1940, appellant being the only objector. Between those dates the Board's three members inspected the premises, two on one occasion and the third a day or two later. Since such members apparently indicated that the proposed four-foot archway would not be satisfactory, the Grant Lunch Corp. prepared a new sketch for an archway eight feet wide and nearer the front, which sketch was before the Newark Board at its March 14th meeting when it granted the application for transfer.

At the hearing on appeal the Grant Lunch Corp. presented a third sketch proposing an archway twelve feet three inches in width. Under such sketch the floor plan of the total premises is as follows:


#8 Beaver Street
11'-0"
#199-201 Market Street
12'-3"
#197 Market Street

It should be noted, from this sketch, that - although appellant makes no point of the fact - the originally licensed premises (199-201 Market Street and 6-8 Beaver Street) were and are comprised of space in two adjoining buildings connected by an archway eleven feet wide through adjoining building walls.

As was said in Re Dodd, Bulletin 241, Item 8:

> "Where ... separate buildings constitute the premises sought to be licensed, separate licenses will in general be necessary. The reason is that generally speaking each building will constitute a separate place of business. For each specific place of business (R.S. 33:1-26; Control Act, Sec. 23), a separate license is required. But it does not necessarily follow that merely because there are separate buildings, separate licenses will be necessary. The buildings may be so arranged and operated that they could be said to constitute a single place of business within the meaning of the statute."

I visited the licensed premises today and find that a large archway, which appears to be at least twelve feet in width, is now in existence between the buildings known as 197 and 199-201 Market Street, so that the public may freely pass from one part of the licensed premises to the other parts thereof.

It adequately appears that, with the twelve-foot three-inch archway between 197 and 199-201 Market Street and the already existing eleven-foot archway between 199-201 Market Street and 6-8 Beaver Street, the entire premises will be freely accessible throughout to the public and that the place will constitute a single business establishment. There is nothing to show that it will be operated otherwise.

The case is substantially on all fours with New Jersey Licensed Beverage Association et al vs. Camden et al, Bulletin 215, Item 5, and Samuels' Pharmacy Inc. vs. Newark et al, Bulletin 381, Item 6, where, in similar circumstances, it was ruled that the premises were single and hence could be covered by one license. As illustrated by those decisions, it is of no moment that, in the instant case, there will be several separate entrances into the combined premises of the Grant Lunch Corp., or that the various buildings are owned by different persons, or that the licensed premises occupy only the first floor of such buildings, with the upper floors (with separate entrance into the street) devoted to other businesses.

Were a contrary conclusion to be reached, the common instance of a restaurant or a tavern with several adjoining rooms communicable with each other by ordinary doorway with a main entrance into one room and subsidiary entrance into one or more of the others would require multiple licenses. Such result would be unwarranted and at variance with the business custom and accepted belief that such a place is a single establishment.

In view of the foregoing, there is no merit to appellant's contention that the combined premises of the Grant Lunch Corp. will not constitute a single place of business.

Nor is there merit to its contention that this case must be decided only on the basis of the two sketches that were before the Newark Board. Since appeals to the State Commissioner are heard de novo (Rule 6 of State Regulations No. 14), the Grant Lunch Corp.'s third sketch, submitted at such hearing, may properly be considered in reaching a determination in the case. Appellant, the only objector to the transfer, has been given full opportunity to show whether, with such newly proposed archway, the combined premises will nevertheless constitute individual establishments. Cf. Paszek vs. Newark, Bulletin 266, Item 7; Sidney's Inc. et al vs. Newark, Bulletin 296, Item 10; Neuberger vs. Walpack et al, Bulletin 345, Item 5.

The Newark Board apparently granted the application for the transfer without condition, and the license certificate was endorsed to include the new premises. Such procedure was improper. In granting the application the Board, in view that alterations were proposed, should have imposed the special condition that the transfer shall not become effective until such alterations be actually made. See Re Murphy, Bulletin 389, Item 11.

However, this defect, going only to procedure, is not a sufficient reason for setting aside the transfer of the license. The alterations have been made and the license has been renewed for the current fiscal year to cover the entire premises.

Accordingly, the action of the Newark Board, in granting the application of the Grant Lunch Corp. for transfer of its license, is affirmed. If, at any time in the future, it appears that the entire premises are not operated as a single place of business, proceedings to revoke the license will be instituted.

E. W. GARRETT,
Acting Commissioner.

Dated: August 2, 1940.

10. APPELLATE DECISIONS - MASCIA v. WATERFORD.

JOSEPH MASCIA,

Appellant,

-vs-

TOWNSHIP COMMITTEE OF THE TOWNSHIP OF WATERFORD,

Respondent

ON APPEAL
CONCLUSIONS

E. George Aaron, Esq., Attorney for Appellant.
Norman Heine, Esq., Attorney for Respondent.
Frank M. Lario, Esq., Attorney for Objectors.

Appellant appeals from the denial of a plenary retail consumption license for the period expiring June 30, 1940, for premises located at White Horse Pike and Atco Lake, Township of Waterford, Camden County.

Respondent denied the license for the reason that there are sufficient licenses in the Township to take care of local and transient trade.

Appellant's premises, which are known as the Betsy Ross Tavern, is a one-story building containing a large dining room and kitchen and five rooms used as living quarters by appellant and his family. The building is located on a forty-eight acre tract, containing a lake and picnic grounds.

The evidence shows that the section of White Horse Pike which runs through the township is about a mile and one-half in length; that the township has issued six consumption licenses for premises located on the White Horse Pike, one of which has been issued for premises known as White Way Hotel, which is located only fifty feet away from the Betsy Ross Tavern. The township is sparsely settled and it can scarcely be contended that another license is needed to take care of the needs of the residents of the township.

Appellant contends, however, that a license is required to take care of the needs of transient trade and that respondent had previously granted licenses for both the White Way Hotel and the Betsy Ross Tavern. While there is testimony that the White Horse Pike is one of the principal highways between Atlantic City and Philadelphia, it would seem that the six existing places are amply sufficient to take care of the needs of the transient trade. The license previously granted for premises known as the Betsy Ross Tavern was held by the husband of Mrs. Riper, who is now the licensee operating the White Way Hotel. At that time Mr. Riper also held a license for the White Way Hotel and operated the Betsy Ross Tavern as an annex to the hotel. The Betsy Ross Tavern has not been operated as a licensed premises since the Spring of 1939. The fact that respondent issued separate licenses to White Way Hotel and Betsy Ross Tavern when they were operated under common ownership is not sufficient to show that it abused its discretion in refusing to grant a license to appellant, who opened his restaurant in May 1940. Appellant has not sustained the burden of proof in showing that respondent acted in an arbitrary or unreasonable manner.

The action of respondent is, therefore, affirmed.

E. W. GARRETT,
Dated: August 2, 1940. ACTING COMMISSIONER.

11. DISCIPLINARY PROCEEDINGS - PREMISES OPEN DURING PROHIBITED HOURS - 3 DAYS ON CONFESSION OF GUILT.

In the Matter of Disciplinary Proceedings against AUGUST SEIFRIED, 525 Springfield Ave., Newark, N. J., Holder of Plenary Retail Consumption License C-601, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.	CONCLUSIONS AND ORDER

Samuel B. Helfand, Esq., Attorney for the State Department of Alcoholic Beverage Control.
August Seifried, Pro Se.

The licensee has pleaded guilty to a charge of being open after prohibited hours on Sunday, June 30, 1940, in violation of Section 1 of Ordinance 3930 adopted by the Board of Commissioners of the City of Newark on December 21, 1938.

The usual penalty for this violation is five days. By entering this plea in ample time before the date fixed for hearing, the Department has been saved the time and expense of proving its case. The license will, therefore, be suspended for three days instead of five days.

Accordingly, it is, on this 1st day of August, 1940,

ORDERED, that Plenary Retail Consumption License C-601, heretofore issued to August Seifried by the Municipal Board of Alcoholic Beverage Control of the City of Newark, be and the same is hereby suspended for a period of three (3) days, effective August 5, 1940, at 3:00 A.M. (Daylight Saving Time).

E. W. Garrett

Acting Commissioner.