

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF BUSINESS REGULATION
1511 PONTIAC AVENUE, BUILDING 69
CRANSTON, RI 02920**

IN THE MATTER OF:	:	
	:	
JAMESTOWN BEER HOLDINGS LLC	:	DBR No. 19-LQ-020
	:	
	:	
Application for a Manufacturer's (Brewery) License	:	
	:	

DECISION AND ORDER

I. Introduction

On or about April 29, 2019, Jamestown Beer Holdings LLC (the "Applicant") submitted an application (the "Application") to the Department of Business Regulation ("Department") for a manufacturer's (brewery) license with respect to the premises located at 34 Narragansett Avenue, Jamestown, Rhode Island (the "Premises")¹. On or about July 15, 2019, the Applicant submitted the required documents to complete its Application. On July 17, 2019, the Director of the Department issued an "Order Appointing Hearing Officer and Providing Notice of Hearing" scheduling a hearing for August 14, 2019, and appointing the undersigned as Hearing Officer to conduct the hearing and make a recommendation of decision in the above captioned matter pursuant to R.I. Gen. Laws §§ 42-6-8 and 42-35-1 et seq. and the Department's *Rules of Procedure for Administrative Hearings* 230-RICR-100-00-2 (the "Rules of Procedure").

In accordance with the general public notice requirements of R.I. Gen. Laws § 3-5-17, an advertisement was published in the *Jamestown Press* on July 25, 2019, and August 1, 2019,

¹ When initially submitted, the Applicant selected the brewpub manufacturer license on the electronic Application but thereafter informed the Department and confirmed that it was applying for a manufacturer's (brewery) license.

notifying all interested persons of the scheduled hearing. As documented by certified mailing receipts, the Applicant complied with the abutter notice requirements of R.I. Gen. Laws § 3-5-17 upon sending notice by certified mail on July 24, 2019, to thirty-six (36) abutters, i.e. owners of property within a 200 foot radius of the Applicant's Premises.

On the afternoon of August 13, 2019, the Department received, by email, an objection to the Application. In the email, the sender (the "Objecting Party") states that he and his mother own a house and a vacant parcel of land, respectively, in Jamestown and that they had received letters regarding the Application² ³. A hearing was held as scheduled on August 14, 2019. The Applicant's sole members/managers, Thomas McNiff and William Tuttle, attended the hearing. A copy of the Objecting Party's objection was provided to the Applicant on August 14, 2019. No property abutters or other parties appeared at the hearing to object or otherwise comment on the Application.

II. Jurisdiction

The Department has jurisdiction over this matter pursuant to R.I. Gen. Laws §§ 3-5-1 *et seq.* and 3-6-1 *et seq.*, and R.I. Gen. Laws §§ 42-14-1 *et seq.* and 42-35-1 *et seq.*

III. Issue

Whether the Application should be granted and a manufacturer's (brewery) license issued to the Applicant pursuant to R.I. Gen. Laws §§ 3-5-14.1 and 3-6-1.

² The abutter notices sent by the Applicant include notices to the Objecting Party.

³ Section 2.15(F) of the Rules of Procedure provides that "any Person who is not a Party to a proceeding may, in the discretion of the Hearing Officer, be permitted to make oral or submit written statements on any issues relevant to the proceeding."

"While providing certain entitlements to notice and opportunity for public comment, R.I. Gen. Laws § 3-5-17 does not in itself elevate abutters or neighbors to the status of 'parties' to an administrative proceeding. Abutters and/or neighbors only become full parties to the proceeding if they seek and are granted 'intervener' status pursuant to [Section 2.23 of the Rules of Procedure]." *In the Matter of: PBH Jamestown Vineyards, LLC d/b/a Jamestown Vineyards*, DBR No. 13LQ068 (10/25/2013), pg. 2, footnote 1.

IV. Material Facts and Testimony

At the hearing, the Hearing Officer reviewed the Application in its entirety in order to determine if it meets the requirements under Title 3 of the Rhode Island General Laws and the Department's *Liquor Control Administration Regulations* 230-RICR-30-10-1 (the "Liquor Regulations"). The review of the Application confirmed that the following requirements had been satisfied and were in compliance with Title 3 and the Liquor Regulations: (1) the Applicant is a Rhode Island limited liability company, in good standing and authorized by the Rhode Island Secretary of State to transact business in Rhode Island consistent with R.I. Gen. Laws § 3-5-10(a)(1) and (2); (2) the Applicant submitted a copy of its federal Brewer's Permit authorizing the Applicant's operation as a brewery at the Premises pursuant to Section 1.4.40 of the Liquor Regulations; (3) identification of hours of operation was provided in accordance with Section 1.4.40; (4) the Applicant submitted a tax affidavit consistent with R.I. Gen. Laws § 5-76-2⁴; and (5) the Applicant submitted satisfactory criminal history record checks in accordance with R.I. Gen. Laws § 3-5-10(b)(1) (requiring that all officers and directors of a corporate beverage license holder be suitable persons, within the discretion of the body issuing the license) and § 3-5-10(d) (granting the Department the authority to deny applications of persons who have criminal records or who have records of repeated violations of Title 3)⁵.

Additionally, per Department policy, the Hearing Officer determined that the Applicant had submitted appropriate zoning and fire inspection certificates of compliance from the Town of Jamestown with respect the Premises. The zoning certificate dated July 9, 2019, states that the

⁴ The Applicant also submitted a letter of good standing from the Rhode Island Division of Taxation.

⁵ Following the review of items that had satisfied the statutory and regulatory application requirements as of the hearing, the only open items were for the Department to conduct an inspection of the Premises and for the Applicant to pay the prorated license fee prescribed by R.I. Gen. Laws § 3-6-1 and CLR 8, Section 1.4.45(D) of the Regulations. The inspection was conducted on August 20, 2019, and the results were satisfactory to the Department. The prorated license fee was paid on that same date.

Premises are located in the “Commercial Downtown” zoning district. Mr. McNiff provided testimony at the hearing confirming the location of the Premises on Narragansett Avenue in Jamestown. Mr. McNiff also testified that there were many other commercial businesses located on Narragansett Avenue, including numerous restaurants and other establishments that serve liquor. Mr. McNiff confirmed that the Applicant has no interest in any Rhode Island retail liquor license.

Mr. McNiff testified that the Applicant’s sales would be conducted only from the licensed Premises and that the Applicant would comply with the service parameters set forth in § 3-6-1. He also confirmed that the Applicant would maintain secure storage of its business records. Mr. McNiff also testified that the Applicant’s intended hours of operation were Tuesday through Sunday 12:00 noon until 8:00 p.m., that there is parking in the area for the Premises and that the Applicant had obtained parking approval from the Town of Jamestown as part of the zoning approval process. Additionally, Mr. McNiff testified that the Applicant has procured trash removal service and that the Applicant will comply with any local requirements regarding trash disposal.

The Objecting Party’s email objection to the Application was made a part of the record. In the email, the Objecting Party states: “We object to this license do [sic] to the noise that will be created in the back of the building from bottles and other activities that would occur in the evening that would disrupt the occupants. The days and hours of the sale of alcohol are not noted and night time use will be a disturbance. Another licensed premises near our street would add to existing traffic and disturbance from noise levels at night including rubbish removal. We have owned these properties for over 70 years and this license will disturb the quality of life and bring down our property value. This is unsuitable to the surrounding area.”

V. Discussion

“The right, power, and jurisdiction to issue manufacturer’s and wholesaler’s licenses are solely in the [D]epartment.” R.I. Gen. Laws § 3-5-14.1. The statutory and regulatory application requirements for a manufacturer’s (brewery) license are set forth in § 3-6-1, § 3-5-17 and Sections 1.4.3 and 1.4.40 of the Liquor Regulations. At the hearing, the Hearing Officer determined that the Applicant had satisfied all but two such statutory and regulatory application requirements.⁶ The Objecting Party did not counter such determination. The crux of their objection is they claim that the Premises are not a suitable location for the operation of a brewery.⁷

To the extent Title 3 does not “specif[y] the criteri[a] to be used by the licensing authority in making its decision,” the licensing authority is vested with “considerable discretion” to consider any relevant information in rendering a decision. *Ribiero v. Pastore*, 1983 R.I. Super. LEXIS 218 at 5 (R.I. Super. 1983). Objections as to the suitability of a manufacturer applicant’s location are “typically satisfied upon submission of the application with evidence of a completed fire safety inspection and local zoning approvals.” *In the Matter of: PBH Jamestown Vineyards, LLC d/b/a Jamestown Vineyards*, at pg. 9. In this case, the Applicant provided satisfactory certificates of both fire safety inspection and zoning approval from the Town of Jamestown.⁸ Where an

⁶ See footnote 5. The two open requirements – inspection and payment of the prorated license fee – were satisfied on August 20, 2019.

⁷ Note that although R.I. Gen. Laws § 3-5-17 affords abutters a right to be notified of the hearing on an application for a § 3-6-1 manufacturer’s license and to provide objection and/or comments for the Hearing Officer to consider, neither § 3-5-17 or any other provision of Title 3 or the Department’s rules or regulations or its decisions provide a right of legal remonstrance with respect to such manufacturer’s license. See *In the Matter of: PBH Jamestown Vineyards, LLC d/b/a Jamestown Vineyards*, at pg. 4.

⁸ The Applicant also provided a certified copy of a unanimous approval by the Jamestown Town Council on June 17, 2019, for issuance of a brewpub manufacturer license/retail to the Applicant. The certified copy also reflects May, 2019, approvals by the Chief of Police, Fire Chief, Water and Sewer Clerk and Tax Collector of the Town. Since the Applicant decided to pursue a manufacturer’s (brewery) license instead of a brewpub license; see footnote 1; this approval of the Town Council was not required for the within Application for a § 3-6-1 license. However, the Hearing Officer takes public notice of this document as indication of the Council’s and other local approvals for the grant of a manufacturer liquor license at the Premises.

Applicant provides satisfactory evidence of the town/city's zoning and fire inspection approvals, the Department will not decline to issue a license based solely on the opinion of neighbors that, despite having all necessary approvals, the location is unsuitable to the surrounding area. *Id.* at 10. In addition to the local approvals, the Applicant's principal testified that there are many other commercial businesses in the surrounding area, including restaurants and bars that serve alcohol. The Objecting Party alleges that issuing the license to Applicant may result in noise, additional traffic and other disruption in the surrounding area. However, these claims are not supported by any evidence. Moreover, the testimony by the Applicant as to its hours of operation, availability of and local parking approval, trash removal procurement, and intended compliance with applicable laws counter the Objecting Party's assertions.

VI. Findings of Fact and Conclusions of Law

1. The facts contained in Sections I, IV and V are incorporated herein as findings of fact.
2. Pursuant to R.I. Gen. Laws §§ 3-5-14.1 and 3-6-1, the Department is authorized to issue a manufacturer's (brewery) license.
3. The Applicant has satisfied the statutory and regulatory application requirements for a manufacturer's (brewery) license under Title 3 and the Liquor Regulations.
4. The notice requirements under R.I. Gen. Laws § 3-5-17 have been satisfied by Applicant's publication of a notice of application and hearing in the *Jamestown Press* on July 25, 2019 and August 1, 2019, and by evidence of certified mailings to property abutters.
5. The objection submitted by the Objecting Party failed to demonstrate a basis to deny the Application for a manufacturer's (brewery) license to the Applicant under § 3-6-1.

VII. Recommended Decision

For the reasons stated herein, the undersigned Hearing Officer recommends that the Application of Jamestown Beer Holdings LLC for a manufacturer's (brewery) license be granted and a license issued pursuant to R.I. Gen. Laws §§ 3-5-14.1 and 3-6-1. Nothing in this Decision and Order should be construed as exempting the Applicant or the Premises from compliance with all applicable federal, state and local laws.

Dated: 8/20/19

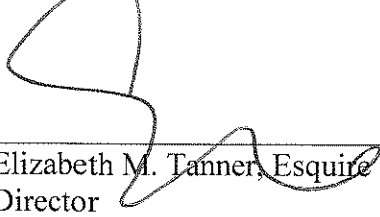

Pamela J. Toro
Hearing Officer

ORDER

I have read the Hearing Officer's recommended Decision and Order in this matter, and I hereby take the following action with regard to the recommended Decision and Order:

ADOPT
 REJECT
 MODIFY

Dated: 8/21/19


Elizabeth M. Tanner, Esquire
Director

NOTICE OF APPELLATE RIGHTS

THIS DECISION CONSTITUTES A FINAL ORDER OF THE DEPARTMENT OF BUSINESS REGULATION PURSUANT TO R.I. GEN. LAWS § 42-35-12. PURSUANT TO R.I. GEN. LAWS § 42-35-15, THIS ORDER MAY BE APPEALED TO THE SUPERIOR COURT SITTING IN AND FOR THE COUNTY OF PROVIDENCE WITHIN THIRTY (30) DAYS OF THE MAILING DATE OF THIS DECISION. SUCH APPEAL, IF TAKEN, MUST BE COMPLETED BY FILING A PETITION FOR REVIEW IN SUPERIOR COURT. THE FILING OF THE COMPLAINT DOES NOT ITSELF STAY ENFORCEMENT OF THIS ORDER. THE AGENCY MAY GRANT, OR THE REVIEWING COURT MAY ORDER, A STAY UPON APPROPRIATE TERMS.

CERTIFICATION

I hereby certify on this 21st day of August, 2019, that a copy of the within Decision and Order and Notice of Appellate Rights was sent by e-mail and first-class mail, postage prepaid to:

Jamestown Beer Holdings LLC
Attn: Thomas McNiff and William Tuttle,
Co-Managing Members
34 Narragansett Avenue
Jamestown, RI 02835
Thomas.mcniff@gmail.com

John B. Walsh
6707 Bestwood Court
San Diego, CA 92119-1534
John.b.walsh@navy.mil