

manner so it requested the Department modify its decision to allow it to close at 1:00 a.m. pending the Board's decision.

The undersigned is treating this Motion as a motion for reconsideration as allowed by Section 12.9 of 230-RICR-100-00-2 *Rules of Procedure for Administrative Hearings* ("DBR2"). Pursuant to Section 2.11 of DBR2, the Board had ten (10) days to file an objection to said Motion. In light of the time constraints, the undersigned will issue an order based on said Motion without waiting the ten (10) days. It is within the hearing officer's discretion if a hearing should be held. A hearing is not needed and a decision can be made on the Motion.

II. Jurisdiction

The Department has jurisdiction over this matter pursuant to R.I. Gen. Laws § 42-14-1 *et seq.*, R.I. Gen. Laws § 3-2-1 *et seq.*, R.I. Gen. Laws § 3-5-1 *et seq.*, R.I. Gen. Laws § 3-7-1 *et seq.*, R.I. Gen. Laws § 42-35-1 *et seq.*, and DBR2.

III. Issue

Whether the Motion should be granted.

IV. Standard of Review

Section 12.9(A) of DBR2 states as follows:

At any time after the issuance of a final order of the Director, any Party may, for good cause shown, by motion petition the Director to reconsider the final order. The petitioner shall file his/her motion within twenty (20) days of the issuance of the final order and shall set forth the grounds upon which he/she relies. The Director may grant the motion for reconsideration within his/her discretion and shall order such relief as he/she deems appropriate under the circumstances.

In *In Re Denisewich*, 643 A.2d 1194 (R.I. 1994), the Court found that a quasi-judicial body with authority similar to those exercised by state agencies had the inherent power and was obligated to reconvene to consider testimony only recently made available.

See also *Perrotti v. Solomon*, 657 A.2d 1045 (R.I. 1995). In both of those cases, new evidence came to light that had the possibility of changing the outcome of the initial decisions by the administrative bodies so it was proper to re-open the cases.

In addition to case law, the Department has previously addressed the standard to be met in a Motion for Reconsideration with the Department as follows:

The public policy rational behind this procedure is not to provide the Respondent a new hearing, but to address specific errors in the consideration of factual or legal issues that the Respondent may raise. Factual grounds raised by Respondent may not be general conclusory statements but must be specifically detailed and cite to the relevant portions of the administrative record. Likewise, legal grounds may not be general conclusory statements but must cite to specific legal cases or legal principles that upon which the Respondent relies. It is also appropriate in many cases for the Respondent to include a memorandum of law. *In the Matter of Louis Annarummo*, DBR No. 99-L-0069 (8/5/02).

V. Discussion

The Department's remand decision was issued last week. The Board will hear this matter this week; though, it did not hear it on Monday as preferred by the Appellant. There is no reason to suppose that the Board will not issue a decision this week, but if it is not ready to issue a decision this week, the Appellant may ask the Board to modify its hours as the matter has been remanded to the Board for reconsideration after testimony from the Appellant.


The Appellant did not present any new evidence to the Department, but rather voiced a concern the Board will not be able to make a timely ruling on this matter. The purpose of the remand is for the Board to hear testimony and from that be able to make an informed decision regarding the back parking lot issue. The reduction of hours was due to the fact no evidence of what steps had been taken by the Appellant to address the back parking lot had been introduced at hearing. There are no grounds to revisit the hours of operation prior to the Board hearing the remand which has been scheduled for this week.

VI. Conclusion

Based on the foregoing, the undersigned recommends that the Respondent's Motion be denied.

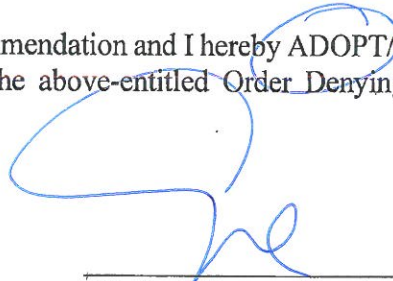
As recommended by:

Date: 4/24/18


Catherine R. Warren
Hearing Officer

I have read the Hearing Officer's recommendation and I hereby ADOPT/REJECT the recommendation of the Hearing Officer in the above-entitled Order Denying Motion to Stay/Reconsider Decision.

Date: 4/24/18


Elizabeth 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 THE APPROPRIATE TERMS.

CERTIFICATION

I hereby certify on this 24 day of April, 2018 that a copy of the within Order was sent by electronic delivery and first class mail, postage prepaid, to the following: Mario Martone, Esquire, City of Providence Law Department, 444 Westminster Street, Suite 220, Providence, R.I. 02903 Mmartone@providenceri.com, Peter Petrarca, Esquire, Petrarca & Petrarca, 330 Silver Spring Street, Providence, R.I. 02904, peter330350@gmail.com, and Louis A. DeSimone, Jr., Esquire, 703 West Shore Road, Warwick, R.I. 02889 ldatty@gmail.com and by hand-delivery to Maria D'Alessandro, Deputy Director, Department of Business Regulation, Pastore Complex, 1511 Pontiac Avenue, Building 69-1, Cranston, R.I. 02920.

