

IN THE MATTER OF THE	*	BEFORE THE ALCOHOLIC
APPLICATION OF THOMAS JOSEPH	*	BEVERAGE HEARING BOARD
QUICK ON BEHALF OF THE LOFT	*	FOR
WINE & SPIRITS, LLC, t/a THE LOFT	*	HOWARD COUNTY, MARYLAND
WINE & SPIRITS, FOR A NEW CLASS	*	
CLASS A-1 BEER, WINE, AND LIQUOR	*	Case No.: 18-31
7-DAY OFF-SALE LICENSE	*	

DECISION AND ORDER

The Board of License Commissioners for Howard County, Maryland (the “Liquor Board”), pursuant to Rule 1.02(A) of the Liquor Board Rules and Regulations, has delegated the authority to hear and decide cases to the Alcoholic Beverage Hearing Board for Howard County, Maryland (the “Hearing Board”).

On July 24, July 26, and August 7, 2018, the Hearing Board heard the application of Thomas Joseph Quick (“Applicant”), on behalf of The Loft Wine & Spirits, LLC, t/a The Loft Wine & Spirits (“The Loft”), for a new Class A-1 Beer, Wine, and Liquor 7-day off-sale license and refillable container permit for a 9,930-square foot package goods store located at 8855 McGaw Road, Columbia Maryland 21045. The hearing was properly advertised and the property posted pursuant to the Alcoholic Beverages Article of the Annotated Code of Maryland.

The Applicant was represented by Thomas Meachum, Esquire. Steven Wise, Esquire, representing The Perfect Pour, appeared in opposition to the application. Several other individuals appeared, some in support and some in opposition. Board member Charlie Sung recused himself from the case.

All the documents on file were incorporated into the record by reference, including the records from the 2012 and subsequent applications before the Boards for a license at

8855 McGaw Road.

SUMMARY OF TESTIMONY

July 24, 2018 Public Hearing

Meg Boyd was sworn and testified that she is in support of this application because of the convenience of having a liquor store next to a grocery store and because of her support for the applicant in this case. Ms. Boyd testified that Mr. Quick is very involved in the community and she supports him in this proposed business.

Julie Hickey was sworn and testified that she supports Mr. Quick and that she believes approval of this application would provide one-stop shopping for groceries and alcohol, which would save time and be efficient.

David Rowlett was sworn and testified in support, stating that it would be in the County's best interests to support this business. Mr. Rowlett testified that this location would feature local products and the larger space would allow Mr. Quick to expand his inventory and keep costs competitive.

Wayne Clarke was sworn and testified that the proposed store would be convenient to his work and would probably be more affordable than other liquor stores in the area. Mr. Clarke testified that he shops at Mr. Quick's current liquor store, Cindy's Skylight Liquors ("Cindy's") and that Mr. Quick provides good customer service, prices, value, atmosphere, and a great selection.

Gloria Larkin was sworn and testified that she supports this proposal as well as the Quick family. She testified that she values the one-stop shopping concept and it would serve the community and benefit East Columbia and local brewers.

Nikki Marlatt-Young was sworn and testified that she frequents Cindy's and their

store is always immaculate with a well-maintained parking lot and building. She said that Mr. and Mrs. Quick are good business owners and neighbors in the Elkridge area, and that the proposed liquor store will benefit the Columbia area.

Other supporters of the application who were in the audience stood up to show their support for the application.

Tom Quick, 100% owner and sole licensee for The Loft, was sworn and testified that he wants the opportunity to lease space for a new liquor store at the proposed location. Mr. Quick testified that the proposed store will be 9,930 square feet and will be a premier liquor store offering an innovative shopping experience in Howard County without putting other liquor stores out of business.

Mr. Quick described his background and testified that he has been the current owner and operator of Cindy's Skylight Liquors for the last 15 years, however, he needs more room to expand his business, and in April of 2014, he hired a commercial real estate agent to negotiate a lease with Wegmans, who will be the landlord, to open a new liquor store.

Mr. Quick testified that he has lived in Howard County for over 23 years and is a registered voter. He stated that, based on experience, he believes having a liquor store near a grocery store would be beneficial to his business. He testified that he is alcohol awareness certified, is a registered voter and has never had any alcohol violations. Mr. Quick testified that he gives extensive training to his employees, and offers them employee benefits and excellent working conditions. Mr. Quick stated that he offers health insurance, paid vacation, and a retirement account with company match to his employees, and stated that he gives back to the community and non-profits with donations and support.

Mr. Quick testified that he wants this proposed liquor store to be clean and organized

with wide aisles and no clutter. He submitted the following exhibit into the record:

Applicant's Exhibit No. 1 – floorplan for The Loft

Mr. Quick testified that the entrance to the proposed liquor store is located on the second floor of the parking garage and that there will be no access to the grocery store from the liquor store. He testified that the aisles will be 5-1/2 to 6 feet wide and displays will be short to provide an openness to the store.

Mr. Quick testified that there will be a wine room that is temperature controlled for high-end wine as well as a permanent alcohol tasting station for wine. He will have a 15-foot cooler to allow customers to have a wide range of cold choices and will offer products not currently available at other liquor stores. Mr. Quick testified that he will offer wine growlers or tap wine, similar to beer, and will offer a huge selection of wine and beer at great prices. He testified that all wine will be stored at appropriate temperatures.

Mr. Quick testified that his staff will be knowledgeable and helpful and will be able to explain products to the customers and assist them to their cars with their purchases. He testified that his store will offer a free chilling service for customers and will also offer classes to educate customers about wine and beer.

Mr. Quick offered into evidence 2 petitions: – one signed at Cindy's and one signed at the Wegmans' Grocery Store.

Applicant's Exhibit No. 2 – Petition in support signed by customers at Cindy's Skylight Liquors (250 signatures)

Applicant's Exhibit No. 3 – Petition in support signed by customers from Wegmans

A party in opposition objected to the introduction of the Petitions as evidence. After discussion with counsel, the Board accepted the petitions as exhibits and noted they would

give them the weight they deserved. A Board member asked people in the audience to stand up if they signed the petition and several people stood. Mr. Quick testified that a Wegmans employee collected the signatures from the Wegmans' customers.

Mr. Quick testified that the proposed store will be like no other in Howard County and that he will be offering different products. Mr. Quick testified that under his lease, he is in exclusive possession of the premises and can set hours of operation that may differ from those of Wegmans. He also testified that he is responsible for all repairs. Mr. Quick stated that there are other liquor stores next to grocery stores in Howard County.

Under cross examination by opposition counsel, Steven Wise, Mr. Quick testified that he owns 100% of Cindy's Skylight Liquors, however, will disassociate with Cindy's prior to receiving The Loft license. Mr. Quick stated that he was interested in the Wegmans location and signed a sublease negotiated in 2014 with Wegmans for 10,000 square feet.

Mr. Wise questioned Mr. Quick about the sublease with Wegmans and Mr. Quick stated that the real property taxes would be paid by the landlord. He stated that there were no common area maintenance fees and that Wegmans would cover snow plowing, cleaning the parking lot, and repairs to anything outside of the building and that this was a "full-service lease." Mr. Quick stated that Wegmans will cover utility bills referred to Section 5.3 of the sublease, which provides that the landlord will furnish heating, air conditioning, electric, and water to the premises.

Mr. Quick stated that he is not sure who will bear the cost for liability insurance or property insurance covering store fixtures. Mr. Quick testified that the tenant is responsible for improvements, additions, and the computer system. He stated that Wegmans will own the coolers and other fixtures in the store.

Mr. Quick testified that his business and Wegmans are housed within the same main structure and that there are no other stores. He said that the street address of the proposed store is the same as Wegmans. He stated that bathrooms are not part of the licensed premises because including them would go over the 10,000 square-foot limit for Class A licenses in Howard County. The freight elevator is also not included in the lease area, but is dedicated to his use. He stated that there is shared parking.

Mr. Quick testified that there are no other agreements with Wegmans. There are no advertising agreements and he will be the employer and do the hiring of his employees. He stated that Wegmans did host a meet and greet with him and 100-200 of its best customers.

Referencing the floorplan, Mr. Quick clarified that the location of the store will be on the right side, facing Wegmans. Mr. Quick clarified that the bathrooms are not part of the licensed premises and neither is the hallway to the elevator, which goes to the loading dock. Mr. Quick testified that they will be using that area, however, will not be leasing it.

Questioned by the Board members, Mr. Quick clarified the following:

- The freight elevator is dedicated for his use, but is not exclusive to his use.
- The post office has not given this store a different address from Wegmans.
- The lease covers everything and the cost is approximately \$43 per square foot. The cost of Cindy's Skylight Liquors is approximately \$30 per square foot.
- This lease is a 5-year lease.
- Mr. Quick used a real estate person, Mr. Nevin, to negotiate the lease.
- At Cindy's, they have up to 12 employees, 8 of which are full time and receive health insurance.

Mr. Quick stated that Wegmans and his proposed space are located in the same building, however, they are completely separate entities/businesses and that they will not be

working together. He believes that a liquor store goes well with a grocery store.

Upon Board questioning, Mr. Quick stated that has does not yet have a price list for alcohol to be sold, but he will offer very competitive pricing and quantity deals. He stated that there are thousands of products available for his purchase, however, he will only be purchasing some of the special deals that are available. He stated that generally, when purchasing a product in quantity, you can obtain the lowest price. He stated that Wegmans would have no say in his product line.

Mr. Quick clarified that Science Fiction, LLC, owns the real property that Wegmans is located on and that Wegmans took care of obtaining the appropriate zoning for the liquor store at this location.

Mr. Quick clarified that the existing interior front staircase from Wegmans to the proposed liquor store will be removed. He indicated that there is a back staircase which would be used as a fire exit only.

Mr. Quick stated that his product line will include fine wines which are high end and he will be able to offer a large selection. He stated that he will stock 100% of the products from local Howard County breweries and wineries and that he plans to have wine growlers on the day his store opens.

Upon questioning by the Board's counsel, Mr. Quick clarified and corrected some of his answers on the liquor application, including previous employment and the status of his wife's ownership interest in his current liquor store.

Mr. Quick testified that he has been engaged as a commercial real estate broker since 2015 and this information was not included in his background application as he did not think it was necessary as he was self-employed. He stated that the floorplan was prepared by both

Wegmans and himself and that the vestibule will be closed off when it is time for build out and he is not sure how long that will take.

Mr. Quick stated that he has not talked to Wegmans about club card usage or coordinating sales and that Wegmans shoppers will not be given any special privilege at his store. Mr. Wise asked Mr. Quick about his plans to carry Wegmans brand wine if offered and Mr. Quick stated that he may if it was a good business decision, but that he would purchase it through a distributor.

Due to scheduling issues and upon agreement by the parties, Donald Barrick, an opposition witness, was called out of order. He was sworn and testified that he is a commercial real estate broker for BAF Group on Main Street in Ellicott City and works with businesses and individuals to relocate their businesses. Mr. Barrick testified that he has been in the commercial real estate field since 1984 and has experience negotiating and dealing with commercial and retail and office leases, including leases for liquor and package good stores. The following exhibit was offered and accepted by the Board:

Protestant's Exhibit 1: Resume for Donald Barrick

Mr. Barrick testified that he has reviewed the 2014 sublease between The Loft and Wegmans. He explained that a "triple net" lease is common in the retail industry and is comprised of a combination of rent, along with common area maintenance, real estate taxes, and building insurance. He testified that he has not seen a full-service type of lease used in the retail context and that it is not consistent with a retail environment where things like refrigeration is used, because the landlord would pay for that cost. He stated that according to Exhibit B in the lease, there is some uncertainty as to what fixtures are included. He said that usually a leased area comes as a shell and the tenant puts everything into the space

including shelving, flooring, and coolers, which are substantial expenses. Mr. Barrick testified that a full-service lease is uncommon in commercial retail spaces and he has only seen this type of lease in high-end office leases. Mr. Barrick stated that this lease is an incredible advantage to the tenant - that there is no personal guarantee, no deposit, no first, and last month rent required and the rent is modest.

Pursuant to Board questioning, Mr. Barrick stated that he has represented both tenants and landlords including those related to liquor stores and clarified that there is nothing unlawful about offering a full-service lease agreement.

Mr. Barrick testified that he is not aware if there are separate utility meters for Wegmans and the proposed The Loft or if coolers and fixtures are already on site. Mr. Barrick estimated that from his experience and in researching a database, the price for a full-service lease in this area would be between \$35 and \$58 per square foot, but adding the fixtures to this cost would add an additional \$9 to \$15 per square foot. He testified that the lease was negotiated four years ago and at that time the price for the base rent was a good base rent, but a triple net was not involved in that nor the cost of the build out. The lease also did not include the sharing of costs for the use of the bathroom and corridor.

Mr. Barrick testified that he was not being paid for his testimony and that he has not previously been involved with Wegmans.

At the conclusion of the hearing, the Board requested that the Applicant provide the Master Lease for the property and a representative of Wegmans to testify to the building alterations that would take place to accommodate the proposed liquor store.

July 26, 2018 Public Hearing

On July 26, 2018, the Applicant continued his case. Mr. Thomas L. Fidler, Jr.,

Executive Vice President and principal of MacKenzie Commercial Real Estate Services, was sworn and testified that he has 25 years of experience in the commercial retail industry. He submitted the following exhibits for the record:

Applicant's Exhibit 4 – Professional biography of Thomas Fidler

Applicant's Exhibit 5 – Marketing study packet

Mr. Fidler testified about the marketing study showing results within a 5-mile radius of the proposed store including testimony about other liquor stores located within a 5-mile radius; population growth from 2010-2017; median income; expenditures on food and beverage; employee density; percentage of Wegmans' customers by zip code and projected population growth from 2017-2022.

Mr. Fidler offered into evidence, Exhibit 6, a synopsis of the statistics that went into preparing Exhibit No. 5. After objection by Mr. Wise that the report should have been submitted to the Board in advance of the hearing, pursuant to the prior agreement of the parties, and Mr. Meachum's response that the presentation was not a "report," the following Exhibit was admitted into the record:

Applicant's Exhibit 6 – Demographic and Income Profile

Mr. Fidler testified about consumers, how they shop and the changes over the years related to experience, choice, and convenience. He stated that shoppers are looking for one-stop shopping and the proposed liquor store is a necessary accommodation to the public in the greater Columbia area and he supports the approval of this application. Mr. Fidler explained that concerning the Columbia Wine application for the same space in May 2012, the marketing study was hypothetical at that time as information was not available because Wegmans was not yet open. Mr. Fidler testified that consumers have changed how they shop

and he believes that the Board should consider the need and accommodation criteria.

Mr. Fidler testified that he has seen other “full-service” or “gross” leases that include coolers, and other fixtures. He stated that there is only one electric meter for the entire property and it would be very expensive to break that into two meters. He testified that the public bathrooms are not exclusive to the tenants, they are a shared area.

Mr. Fidler testified on cross that he received proprietary data from Wegmans about its customer demographics.

Protestants’ Case in Chief

Barry Coughlin, owner of The Perfect Pour, was sworn and testified that he is familiar with the terms of the proposed lease and that he pays considerably more at his liquor store. He stated that his lease is a triple net lease and is \$48 per square foot with an additional CAM (common area maintenance) fee of \$9.67 per square foot, plus \$26,000 per year in electric costs. He indicated that coolers and shelving at The Loft probably costs hundreds of thousands of dollars and are included in the lease, but he had to sign a contract to purchase his shelving and coolers separate from his lease.

Mr. Coughlin testified that the proposed liquor store will impact him negatively and be a disadvantage to him as The Loft would have lower operating costs. He also stated that some liquor stores were missing on the list provided by Mr. Fidler of liquor stores within a 5-mile radius from the submit property, which included Owen Brown Liquors, US 1 Liquors, Crestmount, Lark Brown and Mel’s Liquors. Mr. Coughlin submitted the below exhibit into the record:

Opposition’s Exhibit 2 – A list of stores not included in Mr. Fidler’s list of liquor stores in a 5-mile radius.

Mr. Coughlin testified that The Perfect Pour has been in business for approximately 12 years and he has 13 full-time and 4 part-time employees. He offers them a pension plan and vacation, however, does not offer health insurance. Mr. Barry testified that The Perfect Pour offers 3,000 craft beers and he supports breweries from Howard County. He also indicated that his sales have decreased over the past 2 years and there is no need for a new liquor store in the area. On cross, Mr. Coughlin stated that he was not aware of a liquor store that had closed because a new liquor store had opened. He stated that he is near a grocery store called Trader Joe's, and they share a sign with other tenants, but that Trader Joe's is not his landlord.

Mr. Coughlin testified that alcohol consumption has gone down over the last few years and his sales have declined. He stated that he did not believe the transaction between The Loft and Wegmans was "arms-length," citing the unusual benefits in the lease, particularly the provision of coolers, which are very expensive. He said his 12 coolers cost him \$76,000.

Pravin Ponnuri, a concerned citizen and community activist, was sworn and testified that he lives approximately 6 miles from the proposed property and feels that opening a large liquor store in the area could put smaller family-owned liquor stores out of business. He believes there is an over saturation of liquor stores in the vicinity and that children should not be over-exposed to alcohol.

Tom Yates, owner of Petite Cellars, was sworn and testified that he lives about 8-10 miles from the proposed property and feels that Wegmans wants their own liquor store. He referenced the Wegmans in Hunt Valley, in Baltimore County, that is associated with a nearby liquor store that sells Wegmans products and uses Wegmans signage. He alleged that

members of the Wegmans family bought 51% of that liquor store after the license was granted. Mr. Yates believes that the proposed liquor store would be a blatant violation of the State law prohibition of a Class A license being “in conjunction with” a grocery store. Mr. Yates testified that there will be deliveries at the loading dock which is part of Wegmans, which would be a direct violation of the spirit of the law to keep grocery stores at arms length.

Jack Milani was sworn and stated that he is testifying as a Howard County resident but that he is legislative director of the Maryland State Licensed Beverage Association (MSLBA) and owns a liquor license in Baltimore County. Mr. Milani referenced an alcohol and tax report from the Comptroller’s office covering 2012 to 2017, showing a reduction in the quantity of alcohol sold in the State, and stated that he does not see a need for this proposed liquor store. Mr. Milani testified that he has been involved with liquor stores that are owned by grocery stores and has grave concerns that this is a 5-year lease and a possible placeholder for Wegmans. Mr. Milani testified that this is not a normal transaction, that there are no unmet needs, and need was not proven. He said there were five liquor stores that were left out of the presentation by Mr. Fiddler and that in all his years in the business he has never seen a landlord perform a build-out for a tenant.

Ashish Parikh, was sworn and testified that he lives less than 5 miles from the proposed site and believes that convenience is not a priority for a liquor store and restrictions are needed. He testified that all Village Centers in Columbia have a liquor store and they fulfill the needs of the community.

August 7, 2018 Public Hearing

As agreed by the parties, an affidavit was entered into evidence from Detective Mark

Baxter included a report that he prepared showing all liquor stores located within a 6-mile radius. Board Exhibit #1.

Ralph Uttaro, of Rochester, New York, was sworn and testified that he is a representative of Wegmans Food Markets and Senior Vice President of Real Estate and Development and has been with the company for 34 years. He testified that he is familiar with this location and was involved with selecting the site, the land lease, zoning approvals, and design of the store. Mr. Uttaro testified that members of his staff were involved with configuration of the first and second floors and how it would be laid out. Mr. Uttaro testified that additional changes needed to the premises would cost hundreds of thousands of dollars and would take approximately four months to complete, after a building permit was issued.

Mr. Uttaro testified that there are plans to eliminate the current staircase and relocate it to the other side of the building and to build a wall between the liquor store and Wegmans so that there is no physical connection between the two stores. He said that the changes to the 2015 floorplan to eliminate an interconnection between the proposed store and Wegmans was as a result of feedback from the Board and the concern that an interconnection would violate Maryland law. Mr. Uttaro clarified that the only way for the customer to access the liquor store would be to exit Wegmans on the upper level and to go outside to access the entry to the liquor store.

Mr. Uttaro testified that Wegmans does not own the land where their store is located, but has a long-term ground lease on the property. Mr. Uttaro testified that Wegmans was responsible for the local government approvals and constructing the building. He stated that the landlord is Science Fiction, LLC and that Wegmans has no employees that are part of

that LLC. He affirmed that there is no relationship between Wegmans and the proposed liquor store other than a landlord/tenant relationship.

Mr. Uttaro testified that the loading dock area on the side of the Wegmans' building closest to the liquor store will be dedicated, but not exclusively, to deliveries for the liquor store. Deliveries will be received at the loading dock and will come into a shared area of the store, part of the backroom of the Wegmans store, up a freight elevator, thru a corridor, and into the licensed premises. Mr. Uttaro stated that the freight elevator and corridor are not reflected on the floorplan because those areas are not part of the licensed premises. Mr. Uttaro stated that he was not sure about the logistics of how quickly alcohol deliveries would be moved from the loading dock area to the liquor store. He said that the intent was that the loading dock itself would be only for alcohol deliveries, with food store deliveries occurring at other loading docks.

Mr. Uttaro was asked about the address of the Wegmans store and stated that it was 8855 McGaw Road. He said he could not explain the discrepancy of why the sublease refers to 8851 McGaw Road. He said the County usually sets the address and it changes sometimes. Mr. Uttaro stated that he had no control over the address for The Loft and does not know if The Loft would have a separate address from Wegmans.

Mr. Uttaro testified that the floorplan for The Loft was prepared by the Wegmans' design group and that they routinely prepare floor plans for tenants. The Board asked whether Wegmans had paid for any of the costs of bringing the liquor license application. Mr. Uttaro stated that he was not aware of any such payments.

Mr. Uttaro testified that the sublease for a liquor store at this location was drawn up four years ago and there have been no changes in the lease terms, including price, since that

time. He testified that if this application is approved, more money will be spent preparing this location. He stated that he thought the location had less value now that there would be no interconnection between the stores. Mr. Uttaro testified that this will be a full-service lease rather than a triple net lease and will include insurance and taxes. He stated that it would be hard to split taxes and utilities and whenever Wegmans has tenants in a single building they tend not to do triple net leases and they have dozens of other full service leases throughout the chain. Mr. Uttaro clarified that Wegmans' leases to other businesses in shopping centers including Target, Best Buy, TJ Maxx, and about 10% of those businesses have a full-service lease. He stated that if this application is approved, the terms of the lease will not change or be renegotiated. He said that most of their leases for businesses this close in proximity to a Wegmans do not have renewal options.

Mr. Uttaro testified that it is Wegmans' long-term goal for this space to have a tenant that complements their business and he considers wine sales as complementary to their business. He stated that a high-quality wine shop would increase their sales and enhance their business. Mr. Uttaro also testified that there will be no profit sharing between Wegmans and the proposed liquor store and they would have a strictly landlord/tenant relationship. He said that he was not involved in product selection, but thought that some liquor stores with Wegmans' leases carried Wegmans' "proprietary" labels, but clarified that there are no Wegmans branded wine products, although there are some labels that Wegmans has exclusive rights to through distribution channels.

The Board asked whether there are any liquor stores that Wegmans owns. Mr. Uttaro stated that in Virginia, Pennsylvania, and Massachusetts, grocery stores can sell wine and beer and Wegmans hold licenses for that. In New Jersey, Wegmans owns two licenses. The

Board asked about Wegmans involvement with a liquor store at its Hunt Valley location. Mr. Uttaro indicated that a Wegmans' family member was one of the owners of that liquor store but that the two stores, were not operated together in anyway.

Mr. Uttaro testified that this would be a 5-year lease and that they were searching for a high-quality owner and after five years, if this liquor store is not operating well, then the lease would not be renewed and a new operator would be pursued. He stated that there is no intention to sublease any other space on the property to another tenant.

He clarified that the coolers in the liquor store would be owned by Wegmans, not the tenant, and that any fixtures in the space would belong to Wegmans. Mr. Uttaro said he did not know the cost to outfit the store. Mr. Uttaro stated that Exhibit 1 is the floorplan as proposed and even though employees of The Loft would use the bathrooms, the bathrooms are not part of the leased area. Customers would be directed to use the bathrooms located inside the Wegmans supermarket. He said the freight elevator is shared spaced that is dedicated for deliveries to the liquor store, but would be used by Wegmans to get equipment to the mechanical room on the second floor. Mr. Uttaro testified that the area where alcohol is stored would be locked and the back door into the liquor store would also be locked.

Mr. Uttaro testified that Wegmans' lease with Science Fiction, LLC, is a simple ground lease. He indicated that The Loft would be allowed to place a sign in front of its store near their entrance, but not next to the Wegmans' sign.

On cross examination, Mr. Uttaro was asked whether, if the 2014 sublease with The Loft was renegotiated today, the rents would be higher. Mr. Uttaro stated that was not necessarily the case because there is a lot of vacancy in Howard County retail. He said that Mr. Quick has spent a lot of time working on this proposal and Wegmans has been

cooperating with him and there is no need to renegotiate the lease. He said that he was not aware of any discussions regarding a Wegmans' family member eventually becoming an owner of the proposed liquor store and they are committed to a relationship with Mr. Quick.

Mr. Uttaro was asked whether he considered the liquor store's use of the freight elevator to be "in conjunction with" the supermarket, he said no. He acknowledged that the freight elevator was "on the premises" of the supermarket, but that he considered the premises of the liquor store to be the proposed licensed area and that Wegmans had no access to that area. He stated that the elevator area was akin to a mall where there are common passage ways. He said that a common-sense interpretation of the statutory prohibition involved situations where there was a joint operating need or businesses were operating in the same space and here that was not the case. He explained that there is a locked door between the common area and the proposed liquor store area.

Mr. Quick was called to testify in rebuttal. Mr. Quick testified that he has spent approximately \$40,000 to date and hundred of hours on this proposal and expects to spend much more on equipment and inventory and that this is not the sweetheart deal that the opposition suggested. The following additional exhibits were introduced into evidence:

Applicant's Exhibit 8 – Lease negotiations document

Applicant's Exhibit 9a&b – State Comptroller's reports for 2012 and 2017

Applicant's Exhibit 10 – compilation showing gallons per capita from 2012 to 2017

Mr. Quick testified, in rebuttal to Mr. Milani's testimony, that the number of gallons of beer has gone down and they are now selling more wine. He commented on the map showing other liquor stores in the vicinity and feels that this shows a need for a liquor store

in this location. Mr. Quick commented about the “arms length” testimony and stated that there are no other contracts, verbal or written, between him and Wegmans. Mr. Quick testified that he feels that he can recoup the money he is putting into this store in a 5-year period. The following exhibit was submitted into the record:

Applicant’s Exhibit 11 – Decision and Order for JJ Liquors which was approved in November 2017.

Mr. Quick testified that the liquor store will have many shelves where much inventory will be stored and that he is aware that he cannot store inventory on unlicensed premises. Mr. Quick testified that it is his understanding that the issue of “on the premises” is addressed by construction of the wall and by not allowing any internal access to Wegmans by the public. He believes the “in conjunction with” language is not an issue as there is an arms-length transaction with Wegmans and that the liquor store is completely separate from the grocery store and they will not be working together.

Mr. Quick testified that if this application is approved, he would sell Cindy’s as he understands he cannot hold two licenses for a package goods store. It would take some time to sell Cindy’s and build out The Loft.

DECISION

This case presents an issue of first impression for the Hearing Board; whether a liquor store, physically separate from, but located on the second floor of a building that contains a supermarket, which operates as the liquor store’s landlord, implicates the prohibition of MD CODE ANN., ALC. BEV § 4-205(b), which provides:

(b) A local licensing board may not issue a Class A, Class B, or Class D beer license, beer and wine license, or beer, wine, and liquor license for use in conjunction with or on the premises of:

(1) a chain store;

- (2) a supermarket; or
- (3) a discount house.

Based on the evidence presented at the hearing, and for the reasons that follow, the Hearing Board finds that the proposed liquor store does not implicate the prohibitions of § 4-205(b), and the application and Applicant otherwise meet the requirements of State and local law, and, therefore, the license is granted.

FINDINGS OF FACT

1. The Hearing Board finds that Thomas Joseph Quick, on behalf of The Loft Wine & Spirits, LLC, t/a The Loft Wine & Spirits, has applied for a new Class A-1 Beer, Wine, and Liquor 7-day off-sale license and refillable container permit for a 9,930-square foot package goods store located at 8855 McGaw Road, Columbia, Maryland 21045.

2. The Hearing Board finds that State law requires that the Board consider whether the grant of the license is necessary for the accommodation of the public, whether the proposed licensees are fit and proper, the number and location of existing licenses and the potential effect on existing licenses, the commonality or uniqueness of the products and service offered by the applicant's business, and the impact on the welfare of the community if the license were granted. ALC. BEV. § 4-210(a).

3. The Hearing Board finds that the Applicant is a fit and proper person to hold an alcoholic beverage license.

4. The Hearing Board finds that Thomas Joseph Quick has been a Howard County resident for more than two years, is a registered voter, and a 100% shareholder of The Loft Wine & Spirits.

5. The Hearing Board finds that the proposed liquor store would be one of the

largest stores in Howard County and would have an extensive inventory, including high-end wines.

6. The Hearing Board finds that there is not another liquor store in the immediate vicinity of the proposed store.

7. The Hearing Board finds that there was minimal, inconclusive evidence about the impact of the proposed store on existing licensees.

8. The Hearing Board finds that the proposed liquor store will offer convenience for consumers in a heavily trafficked retail area.

9. The Hearing Board finds that the granting of the application is necessary for the accommodation of the public.

10. The Hearing Board finds that the granting of this application, will not unduly disturb the peace and safety of the residents of the neighborhood.

11. The Hearing Board finds that Wegmans is a “supermarket” as that term is used in § 4-205(b).

12. The Hearing Board finds that Wegmans will be the landlord of the proposed liquor store.

13. The Hearing Board finds that the proposed liquor store is physically separate from Wegmans and may only be entered by the public from a separate exterior entrance.

14. The Hearing Board finds that Wegmans has no direct financial interest in the liquor store, nor does Wegmans exercise any management control over the liquor store operations or premises.

15. The Hearing Board finds that Mr. Quick has no direct financial interest in Wegmans.

16. The Hearing Board finds that the proposed license will not be operated “in conjunction with or on the premises of” a supermarket.

CONCLUSIONS OF LAW

1. The Hearing Board concludes that Thomas Joseph Quick, on behalf of The Loft Wine & Spirits, LLC, t/a The Loft Wine & Spirits, has applied for a new Class A-1 Beer, Wine, and Liquor 7-day off-sale license and refillable container permit for a 9,930-square foot package goods store located at 8855 McGaw Road, Columbia, Maryland 21045.

2. The Hearing Board concludes that the Applicant is a fit and proper person to hold an alcoholic beverage license.

3. The Hearing Board concludes that Thomas Joseph Quick meets the requirements of Rules 1.10(S), 1.10(T), and 2.06 of the Liquor Board Rules and Regulations concerning resident agent qualifications.

4. The Hearing Board concludes that, pursuant to the 21st Amendment of the U.S. Constitution and Maryland law, the Board has significant discretion in determining the public “need” for a license. *Bd. of License Comm’rs. For Washington Cty. v. Foxshire Liquors, LLC*, No. 1485, 2016 WL 7079613 (Md. Ct. Spec. App. Dec. 5, 2016); *Shore Stop of Trappe, LLC v. Bd. of Liquor License Comm’rs*, No. 20-C-08-006484, 2009 WL 6046943 (Md.Cir.Ct. Apr. 6, 2009).

5. The Hearing Board concludes that the granting of the application is necessary for the accommodation of the public.

6. The Hearing Board concludes that the granting of this application, under the conditions provided for herein, will not unduly disturb the peace and safety of the neighborhood.

7. The Hearing Board concludes that the facts demonstrate that the proposed liquor store will not be operated “in conjunction with or on the premises of” Wegmans.

8. The Hearing Board concludes that the mere status of a supermarket as a landlord does not implicate the prohibitions of § 4-205(b). Although a lease with revenue sharing provisions might implicate the “in conjunction with” prohibition, that is not the case here. Here, the terms of the lease indicate an “arms-length” transaction, with the proposed liquor store being owned and operated as a completely separate business from Wegmans.

9. The Hearing Board concludes that the term “premises,” as it is used in § 4-205(b), means the area where business activity occurs. Thus, just as the licensed premises of a liquor store is the area where alcohol storage and sales may occur, the premises of a supermarket is the area where the storage and sale of groceries is transacted. Here, alcohol sales and storage and grocery sales and storage will occur on separate premises. Mere proximity is not enough to implicate the prohibition. If it were, numerous liquor stores located in shopping centers near, or adjacent to, supermarkets would be prohibited, and the Board takes notice of the fact that there are numerous shopping centers throughout the State that include a supermarket and a liquor store.

10. Similarly, the Hearing Board concludes that the existence of shared, unlicensed common space is not uncommon and does not implicate the prohibition of § 4-205(b). The transitory movement of alcohol across a public sidewalk or through the common space of a shopping center does not require that those areas be licensed. However, the Board notes that any storage of alcohol in such areas would require that the areas be licensed. Here, the testimony is that there would be no alcohol storage, sales, or service in the common areas. Use of the common areas for alcohol storage, sales, or service would be

a violation of alcoholic beverage law and would subject the license to revocation, as would any combined business activity between The Loft and Wegmans.

ORDER

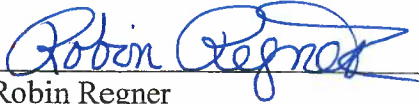
For the foregoing reasons, it is this 20th day of December 2018, by the Alcoholic Beverage Hearing Board of Howard County, **ORDERED**, that the application of Thomas Joseph Quick, on behalf of The Loft Wine & Spirits, LLC, t/a The Loft Wine & Spirits, for a new Class A-1 Beer, Wine, and Liquor 7-day off-sale license and refillable container permit for a 9,930-square foot package goods store located at 8855 McGaw Road, Columbia, Maryland 21045, be and the same is hereby **GRANTED**, subject to the following conditions:

- (a) That the Applicant complies with all State and County laws and regulations; and
- (b) That the Applicant consent to the terms and conditions of this Decision and Order; and
- (c) That Thomas Joseph Quick cease his interest and involvement in Cindy's Skylight Liquors prior to obtaining the license for The Loft; and
- (d) That the construction of the premises be as depicted in the plans and testimony presented at the hearings, including that there be only one public entrance to the proposed liquor store that is completely separate from any entrance to Wegmans and accesses the exterior of the building only, and that there be no interconnection or means of access or egress between the proposed store and Wegmans, except for temporary emergency egress required by law; and
- (e) That final as-built floor plans be submitted to the Hearing Board; and
- (f) That any changes to the lease between The Loft and Wegmans be communicated

- immediately to the Hearing Board along with a copy of the new lease; and
- (g) That no alcohol be present in the common areas of the building unless attended at all times by liquor store employees; and
 - (h) That the Applicant satisfies any requirements necessary to obtain the license by May 31, 2019, unless that deadline is extended by the Board upon good cause shown; and
 - (i) Failure to comply with these conditions shall render this Proposed Decision and Order null and void.

ATTEST:

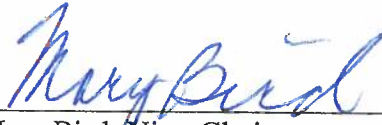
ALCOHOLIC BEVERAGE HEARING
BOARD OF HOWARD COUNTY,
MARYLAND



Robin Regner
Board Administrator

DISSENT

Heather Gaetano, Chairperson

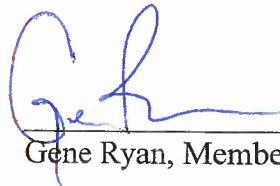


Mary Bird, Vice-Chairperson

REVIEWED BY HOWARD COUNTY
OFFICE OF LAW
GARY W. KUC
COUNTY SOLICITOR



Charles C. Feaga, Member



Gene Ryan, Member



Lewis Taylor, Esquire
Senior Assistant County Solicitor

RECUSED

Charley C. Sung, Member