

**Town of Stoneham
Board of Selectmen
As Liquor Licensing Authority**

**Statement of Reason
G.L. c. 138, sec. 23
Denial of New Beer and Wine Package Store License
Petroleum Group IV, LLC d/b/a Spot Pond Mobil
2 South Street, Stoneham, Massachusetts
(January 21, 2014)**

The Stoneham Board of Selectmen, as the Liquor Licensing Authority, after rehearing and reconsidering the application of Petroleum Group IV, LLC d/b/a Spot Pond Mobil (“Petroleum Group IV) for a New Beer and Wine Package Store License (pursuant to M.G.L. c. 138, sec. 15) to sell wine and malt beverages (hereinafter referred to as “beer and wine”) for off-premises consumption at 2 South Street, Stoneham, Massachusetts at a hearing held on January 7, 2014, voted 5 to 0 to deny the issuance of the requested License. The reasons for the decision are contained herein.

Procedural History

1. On November 19, 2013, the Board of Selectmen (hereinafter also referred to as the “Board”) as the Liquor Licensing Authority¹, voted 3 to 2 for approval of a New Beer & Wine Package Store License to Petroleum Group IV, LLC, d/b/a Spot Pond Mobil, 2 South Street. (The Application of Petroleum Group IV and the plans submitted pursuant thereto (including the internal plan(s) for the inside of the building) by the Applicant are incorporated as part of the record for this Statement of Reasons.) The record of that hearing has been made a part of the record of the subject rehearing/reconsideration of January 7, 2014, as requested by the Applicant, and so held by the Board of Selectmen.

2. On or about November 25, 2013, the Board of Selectmen forwarded Petroleum Group IV’s License Application, as approved by the Board to the Massachusetts Alcoholic Beverage Control Commission (“ABCC”).

3. On December 5, 2013, the Board of Selectmen, wrote the ABCC, stating, in pertinent part, as follows:

At the next meeting [after the above referenced License approval vote] of the Board, held on December 3, 2013, it was voted to request the ABCC return the application to the Board of Selectmen for a re-hearing and reconsideration, scheduled for January 7, 2014. The Board therefore respectfully requests that the ABCC return the license application for rehearing and reconsideration.

(Letter of December 5, 2012 is incorporated as part of the record of this hearing.)

¹ All references hereafter to the Board of Selectmen will refer to the Board in its capacity as the Town of Stoneham Liquor Licensing Authority.

4. On or about December 30, 2013, the ABCC returned, the above referenced Application to the Board of Selectmen with the following notations: “Application Withdrawn – See Letter From Stoneham LLA, Date December 5, 2013”, and “RETURN NO ACTION”. (The ABCC’s return of the Application is incorporated as part of the record of this hearing.)

5. On January 7, 2014, the Board of Selectmen held a duly noticed Public Hearing to re-hear and reconsider the Application of Petroleum Group IV, LLC d/b/a Spot Pond Mobil (“Mobil”) for a New Beer and Wine Package Store License to sell beer and wine at 2 South Street, Stoneham. After closing the public hearing, the Board of Selectmen voted 5 to 0 to deny the issuance of the requested License.

Documents Submitted For And At The Hearing – Appendices

- List of current package store all alcoholic licenses in the Town of Stoneham.
- Map of Stoneham showing locations of package store all alcoholic licenses in Stoneham and listing driving mileage and time from the location of the Spot Pond Mobil station to each package store.
- Memorandum of Robert E. Grover, Director of Public Works/Town Engineer, January 7, 2014.
- Memorandum of Cheryl Noble, Building Inspector, January 7, 2014.
- Memorandum of James McIntyre, Chief of Police, January 7, 2014.
- Photographs submitted by David Ragucci, Town Administrator (taken January 6, 2014).
- Memorandum from Town Clerk to Town Counsel regarding Stoneham population in U.S. Census from 1990 to present.
- Petition from residents living in the area of the Mobil Gas Station opposing the grant of a beer and wine license, submitted for the November 19, 2013 initial hearing (15 signatures).
- Petition – Stoneham Residents Petition (156 signatures) against the sale of beer and/or wine at gas stations. (The Petition references the subject Mobil Gas Station (“across from the Zoo, Friend[l]ey’s Restaurant and the Boys and Girls Club Pool”).)
- Letter from the Stoneham Substance Abuse Coalition, January 7, 2014.

Facts

1. The Spot Pond Mobil is located at 2 South Street, Stoneham, Massachusetts. (Referenced as 614 Main Street in the memorandum of Robert Grover the Director of Public Works/Town Engineer.). The property and building are hereinafter also referred to as the “site”.

2. The Applicant, Petroleum Group IV, LLC, d/b/a Spot Pond Mobil, is a limited liability company, with a sole manager/member, Arthur A. Sordillo, having full ownership of the LLC. Petroleum Group IV owns the franchise at the site and rents the property and building. Mr. Sordillo or a company he owns and controls also owns the Mobil franchise located at 250 Main Street. Petroleum Group IV applied for the subject wine and beer license because, as explained at the hearing of November 19th, business is so competitive for and among gas stations and convenience stores they need to another way to generate and maximize revenue. As such, beer and wine is another way to generate revenue for both maintenance and upkeep (renovate store, new equipment, landscaping, paving/sealcoating, landscaping, snow plowing) and profit.

3. The gas station and convenience store at this location are well kept and operated by the Applicant. Mr. Sardillo, whose company has owned the business for six (6) years, has invested in the building and property, and the results of that investment are both apparent and appreciated by customers and the Town.

4. The premises is located at the intersection of two very busy roads: Main Street (Route 28) and South Street/North Border Road. Main Street is a four lane roadway (two northbound and two southbound lanes). South Street/ North Border Road are one lane (east and west). The roads are busy throughout the day, especially during commuting hours. (South Street/North Border Road averages more than 18,000 vehicles per day, and Main Street (Route 28) averages more than 14,000 vehicles per day. The intersection is very congested and has a significant number of vehicle crashes. (Congestion, particularly during commuter time causes significant queues, impacting operations for through movements and causing drivers to take chances on unacceptable gaps between vehicles in oncoming traffic.) Reported vehicle crashes in or near the intersections of Main Street, South Street and North Border Road to which emergency personnel responded, have, most recently, been, as follows: 2010 – thirteen (13) vehicle crashes; 2011 – nine (9) vehicle crashes; 2012 – eight (8) vehicle crashes; and 2013 – eight (8) vehicle crashes.

5. The 12,720 square foot lot is congested, as it contains a 1,380 square foot, and two gas islands with entrances/exits onto both Main Street (Route 28) and South Street. One gas pump is parallel South Street, and the other gas pump is parallel Main Street. The building has two (2) rooms, one for merchandising (sales – gas and convenience store) and one smaller room for storage.

6. Vehicle access to the site is through driveways on South Street and Main Street. Vehicle access onto and off the site is difficult.

7. There is no area dedicated for vehicles making deliveries to the site.

8. Parking on the site is limited and maneuverability is very difficult. The small size of the site and the difficulty of entering the site makes maneuverability of vehicles on the site even more difficult than would even otherwise occur on a site this small, since vehicles entering do not have the luxury of easily selecting an entrance opening that would allow their gas tank to be on the same side as a pump. The congestion and danger presented by the intersection of the above mentioned roads precludes vehicles from moving to an alternative entrance in order to properly line-up a vehicles gas tank with a pump. Accordingly, vehicles must maneuver once on the site in order to properly position in order to pump gasoline.

9. Because the size of the site is so limited, parking and maneuverability are even more limited in the winter after a snowfall.

10. There are currently five marked parking spaces on the site, two along the north side of the property and three (3) to the right of the convenience store. Parking on the site does not currently comply with the approved site plan by the Board of Selectmen with regard to the location of parking spaces. The approved site plan requires four (4) parking spaces all shown on the right of the building. The current layout has a total of five (5) parking spaces, two of which are tandem to the left of the building and do not meet the five foot (5') setback requirements.

11. An increase in the number of vehicles entering/exiting the site beyond the current convenience store and fueling traffic will make it more difficult for vehicles to safely navigate throughout the site and from and onto adjoining roadways.

12. The grant of a license for the sale of beer and wine would result in increased vehicular traffic to and from the store/site.

13. The area immediately surrounding the site, apart from Friendly's Restaurant and a tile store across Main Street (Route 28) is almost exclusively single family residential, including on Main Street, and on the small residential streets of Wilson Road, Parkway Road, Fairview Road and Gorham Avenue. (This includes a small town house development on the other side of Main Street (Route 28), north of Friendly's and the tile store. Apart from traffic on Main Street (Route 28) and South Street/North Border Road, it is a quiet residential area, which can be contrasted with the other end of Main Street (Route 28) in Stoneham (near Route 128) or certain other areas of Stoneham, all north of Maple Street, which have more retail and commercial businesses and larger apartment and condominium complexes.

14. Diagonally across the intersection from the Spot Pond Mobil are the Boys and Girls Club outdoor pools (formerly operated by the Massachusetts Department of Conservation and Recreation and the Metropolitan District Commission). Minors of a wide range of ages will be using the pools going forward. The Spot Pond Mobile is the only retail store within a convenient walking distance for minors, and as a modern day candy store, will attract minors.

15. The convenience store in which Petroleum Group IV proposes to sell wine and beer is very small , with small aisles and high displays which block the view of the much of the store, including certain areas proposed for display of wine and beer.

16. The distance and average travel time of the Spot Pond Mobil from the five (5) all alcoholic package stores licensed in Stoneham, are as follows:

<u>Establishment</u>	<u>Miles</u>	<u>Minutes</u>
Center Beverage	0.9	2
McDonoughs Liquor	0.9	3
Rapid Liquor	2.0	6
Redstone Liquors	2.1	7
BJs Liquors	3.0	10 ²

17. All the current package stores in Stoneham (all of which have all alcoholic licenses) sell wine, and all the package stores, other than BJs Liquors, sell beer.

Standard For The Board's Decision

1. M.G.L. c. 138, sec. 23 ... The provisions for the issue of licenses and permits hereunder imply no intention to create rights generally for persons to engage or continue in the transaction of the business authorized by the licenses or permits respectively, but are enacted with a view only to serve the public need and in such a manner as to protect the common good and, to that end, to provide, in the opinion of the licensing authorities, an adequate number of places at which the public may obtain, in the manner and for the kind of use indicated, the different sorts of beverages for the sale of which provision is made....

2. A liquor licensing authority is guided in its consideration and decision by the factors set out by the Massachusetts Appeals Court in *Ballarin Inc. v. Licensing Board of Boston*, 49 Mass. App. Ct. 506 (2000).

3. There is not right to a liquor license. A local licensing authority has discretion to determine public convenience, public need, and public good, with respect to whether to grant a license to sell alcoholic beverages.

4. Need in the literal sense of the requirement is not what the statute is about. Rather the test includes an assessment of public want and the appropriateness of a liquor license at a particular location. Consideration of the number of existing licenses in the area and the views of the inhabitants in the area can be taken into account when making a determination, as well as taking into account a wide range of factors-such as traffic, noise, size, the sort of operation that carries the license and the reputation of the applicant.

² While the submission to the Board from Town staff listed the time for the trip to BJs Liquors, based upon Google maps, as being 7 minutes, the Board finds that this is not accurate, and that the trip time from the Spot Pond Mobile would be greater, approximately 10 minutes. The travel time from the Spot Pond Mobil to Center Beverage and McDonoughs Liquor were clocked separately by the Chief of Police as each being two (2) minutes.

5. The opposition of the neighborhood, albeit an important factor for a licensing board to consider, does not convert the exercise of a licensing board's adjudicatory function into a plebiscite.

6. The test of public need includes a combination of the competing interest of the "public want" and the appropriateness of the location.

7. In the case of liquor licenses, town and city boards may exercise judgment about public convenience and public good that is very broad, but it is not untrammelled.

Reasons For Denial of the License

Public need (which includes the public convenience as used herein) and public good (which includes the protection of the common good as used herein) will not be served by the grant of the License to Petroleum Group IV for the sale of wine and beer at the Spot Pond Mobil. Accordingly, taken together with the existing wide and convenient availability of beer and wine to all Stoneham residents, including those residents who live in this "area" of Stoneham, there is not a public need for the grant of the requested beer and wine (package store) license.³ The proposed location and store are not appropriate for the proposed License. More specifically:

1. The size and layout of the Spot Pond Mobil site is too small and congested to adequately or safely provide for an increase in the number of vehicles on the site beyond the current fueling and convenience store use. Current maneuverability on the site is very difficult, and is made even more difficult by the increased need for drivers entering the site try to properly position their vehicles in order to pump gasoline. (Since vehicles entering the site do not have the luxury of easily selecting an entrance opening that would allow their gas tank to be on the same side as a pump. Accordingly, vehicles must maneuver once on the site in order to properly position the vehicle's gas tank in order to pump gasoline.

2. Parking on the site is too limited to adequately serve the needs of customers as would be needed if the license was granted, and space for additional parking is not available. The current failure of the site to comply with its Site Plan approval parking requirement (4 spaces to the right of the store) reflects the very tight locus and what appears to be a judgment, in violation of the Site Plan requirement, to eliminate one space in order provide more room for maneuverability. The two (2) other parking spaces on the site are tandem spaces (one behind the other), which itself creates maneuvering and parking complications and difficulties, and do not meet the Town Zoning Bylaw's five foot (5') set back requirement. The owner of the gas station/convenience store, Arthur Sordillo, forthrightly agreed that the parking issue is a good issue to bring up with his station.

³ The term "area" is in quotes because the concept of area or neighborhood are far less commonly referred to in Stoneham or by Stoneham residents, then occurs elsewhere, because of Stoneham's small geographic area and the resulting fact that residents tend to share experiences, including commercial experiences, at the same Stoneham locations. For instance, in the non-commercial context, all Stoneham residents vote at the same location, the Stoneham Town Hall.

3. The location of the proposed package store, at the intersection of two very busy and congested roads: Main Street (Route 28) and South Street/North Border Road, with a significant number of vehicle crashes does not serve the public need or the public good. In addition to the written submission and testimony of the Chief of Police, the petition of the neighbors referenced the numerous accidents at the intersection.

4. The area immediately surrounding the site is, with the limited exceptions referenced above, almost exclusively single family residential, including on Main Street, and on the small residential streets of Wilson Road, Parkway Road, Fairview Road and Gorham Avenue. It is a quiet residential area, as contrasted with the other end of Main Street (Route 28) in Stoneham (near Route 128) or certain other areas of Stoneham, all north of Maple Street, which have more retail and commercial businesses and larger apartment and condominium complexes. While the availability of a gas station and a convenience store along South Street/North Border has utility, it is not in the public interest to encourage motorists and others to make the Spot Pond Mobil a destination for the purchase of wine or beer. Rather it is in the public interest to encourage persons seeking to purchase wine or beer to go to those areas of Stoneham which are better suited for vehicles and business. The owner of the gas station/convenience store, Arthur Sordillo, forthrightly acknowledged, after stating that the sale of liquor at convenience stores was a new concept, that “he does not have a problem with the neighbors not wanting it, he can understand it.” The grant of a wine and beer license at this location surrounded by the residential area does not serve the public need or the public good.

5. The sale of beer and wine at a convenience store raises, at a minimum, serious concerns and risks regarding minors (person’s under the age of twenty-one) obtaining alcohol. As stated by the Chief of Police, “[b]y its very nature, a convenience store is open to all ages of the general public who wish to purchase consumable goods.⁴ (The owner of the gas station/convenience store, Arthur Sordillo, agreed that the difference between a convenience store and a package store is that you have minors in there. He further stated that “[t]he point he [the Police Chief made was a good point.”) Ordinarily, foot traffic of minors entering a convenience store would not raise concern by a store clerk. Contrast this with the presence of minors in a package store, whose purpose is to predominantly sell alcoholic beverages. Currently, if an individual who appears to be a minor enters a package store, this would immediately be a concern for store personnel and their activity would be heavily monitored. Such sales at a convenience store located at a gas station raises even greater concerns and risks because, as also noted by the Police Chief, “[a]t a convenience store located within a gas station, a clerk’s attention is additionally divided between processing sales of goods and gasoline. Further, store personnel need to be observant of activity taking place outside the store, such as problems at the gasoline pumps. Additional concerns, risks and problems posed at the Spot Pond Mobil, with respect to the availability of wine and beer to minors, arise from the presence of the Boys and Girls Club

⁴ Unlike a more traditional package store, minors much more frequently enter a convenience store, and as such the temptation and likelihood of a minor taking an alcoholic beverage is far greater, even without consideration of the question of the ability and nature of monitoring by store personnel. In addition, as noted by the Stoneham Substance Abuse Coalition children [minors] who enter these locations are often unaccompanied by an adult.

outdoor pools across the intersection⁵, and, as set out by the Chief of Police, the small size of the store and the number/height of display units. For these reasons relating to the availability of beer and wine to minors, the sale of beer and wine at the Spot Pond Mobil does not serve the public need or the public good.⁶

Conclusion

The application of Petroleum Group IV, LLC d/b/a Spot Pond Mobil (“Petroleum Group IV) for a New Beer and Wine Package Store License to sell wine and malt beverages (hereinafter referred to as “beer and wine”) for off-premises consumption at 2 South Street, Stoneham, Massachusetts is denied for the reasons set out above.

⁵ “Close proximity to areas frequent by our youth.” See letter of the Stoneham Substance Abuse Coalition.

⁶ Nothing in this fifth reason set out herein, including the reference to the size of the Spot Pond Mobil or its display’s, should be deemed to imply or construed to mean that a gas station convenience store or other convenience store seeking a beer and wine or other alcoholic license in Stoneham would be found to serve the public need and public good if its location, size of the property or building and/or display were different than as found at the Spot Pond Mobil. This decision applies to this application based on the facts found and further described herein, and is intended as such. Additionally, this Decision (Statement of Reasons) does not address the issue of, or concerns arising from, the question of the likelihood of an individual who makes such a purchase at a convenience store going off to drink and drive, given the impulse nature of purchasing at a convenience store.