STATE OF RHODE ISLAND

PROVIDENCE, SC. **SUPERIOR COURT**

(FILED: October 21, 2024)

NATIONAL DEVELOPMENT GROUP, INC. and APPLEGATE REALTY CO.,	:	
Appellants,	:	
	:	
v.	:	**C.A. No. PC-2023-03528**
	:	
RHODE ISLAND DEPARTMENT OF BUSINESS REGULATION; TOWN OF JOHNSTON, BOARD OF LIQUOR LICENSORS; and 101 BAR AND GRILL d/b/a BAR 101,	:	
Appellees.	:	

DECISION

M. DARIGAN, J. Before this Court is National Development Group, Inc. (NDG) and Applegate Realty, Co.'s (Applegate) (collectively, Appellants) appeal from the Rhode Island Department of Business Regulation's (DBR) Decision issued on June 30, 2023 (Final Decision) upholding the Town of Johnston's Board of Liquor Licensors' (the Board or the Town) decision to grant 101 Bar and Grill d/b/a Bar 101's (Bar 101) application to expand its Class BV liquor license (BV License). Jurisdiction is pursuant to G.L. 1956 § 42-35-15(g). For the reasons set forth herein, Appellants' appeal is denied and DBR's Final Decision is affirmed.

I

Facts and Travel

Bar 101 is a restaurant located at 1478 Atwood Avenue (1478) in Johnston, Rhode Island. (Certified R. (R.) Ex. 22 Hr'g Tr. (Tr. I) 11:7-13, 27:16-18, Mar. 23, 2022.)[1] The building at 1478 is owned by non-party Northeast Ventures, Inc. (Northeast) and contains twenty-four commercial units. *Id.* at 30:20-24, 115:1-2; *see also* R. Ex. 20. (Cicchitelli Aff.) ¶ 4. Appellant NDG owns 1450 Atwood Avenue (1450), which is situated to the left of 1478. (Tr. I at 107:17-23.) 1450 features twelve units with about eight or nine tenants at the time of the parties' hearings before DBR in March 2022. *Id.* at 107:24-108:3. 1400 Hartford Avenue is to the right of 1478, at the corner of Hartford Avenue and Atwood Avenue, featuring one building that is occupied by a CVS and owned by Appellant Applegate. *Id.* at 12:13-24.

A. Bar 101's 2009 BV Liquor License and Expansion

Bar 101 opened in 2009 and through 2021 operated in condominium units 103 and 104 within 1478. *Id.* at 262:9-13, 247:25-248:3. When it opened in 2009, Bar 101 applied for a "BV Liquor License" from the Town, which was granted. (R. Ex. 5 (2009 BV License Application).) In October 2020, Bar 101 acquired a building permit to expand into neighboring unit 105 after the laundry business that had occupied the space permanently closed. *Id.*; Tr. I at 265:15-25. Bar 101 officially opened unit 105 for service in February 2021 as a second dining room to address changes brought on by the COVID-19 pandemic, such as social distancing requirements. (Tr. I at 262:14-19, 266:1-16.)

[1] The exhibits in the Certified Record are not paginated or otherwise identifiable. Some Certified Record exhibits contain multiple numbered and lettered exhibits. For purposes of this Decision, citations will refer to the Certified Record exhibit and name the document referenced. Transcripts and DBR Decisions will be cited by page number and cites to affidavits will be to the numbered paragraph in the document.

Peter Matteo (Matteo), owner of Bar 101, testified that when Bar 101 was expanding into unit 105, it was advised by the Town of Johnston (Town) to apply for a building permit as well as permits for fire, mechanical, and plumbing. (R. Ex. 23 Hr'g Tr. (Tr. II) 150:7-11, Mar. 24, 2023.) He stated that the Town did not inform him that he needed to apply for an expansion of Bar 101's existing BV License or any other permit. *Id.* at 150:12-16. According to Matteo, he believed that Bar 101 had everything necessary to operate in unit 105 based on information he received from the Town. *Id.* at 161:18-23.

B. Parking Disputes and Alleged Criminal Activity

Although 1450 and 1478 are two separate buildings, there is a continuous parking lot between them. (Tr. I at 14:18-25.) 1478 and 1450 each have around forty parking spaces for their respective parking lots. *Id.* at 30:14-24, 108:6-7. Only tenants at 1450, as well as their patrons and contractors, are allowed to use 1450's parking area. *Id.* at 108:15-24. The parking lot at CVS is reserved solely for CVS management, customers, and invitees. *Id.* at 110:21-111:6. A knee-high retaining wall with a fence on top separates the CVS property and parking lot from the parking lot at 1478. *Id.* at 22:1-4, 111:22-112:1.

Christopher Colardo (Colardo), Vice President of NDG and President of Applegate (and General Counsel for both entities), is responsible for evicting any trespasser at both 1450 and CVS. *Id.* at 4:18-21, 108:25-109:4. Colardo testified that no records exist from 2009 through 2019 regarding parking complaints from any of the parties. *Id.* at 167:8-20. Colardo stated that he erected the fence over the knee-high wall between 1478 and CVS after he observed multiple Bar 101 patrons parking in the CVS lot and climbing over the knee-high wall. *Id.* at 112:1-12. NDG hired Metro Security to monitor parking at the end of 2019 following alleged parking encroachments by 1478 tenants—primarily Bar 101 patrons, according to Colardo. *Id.* Colardo

reported that the incidents were observed on video as well as by security guards. *Id.*

On November 8, 2019, Bar 101 received a letter from Appellants' Property Manager Robert Vesey (Vesey), which stated that "vehicles relating to your business, whether employees, patrons, and/or delivery services, are possibly utilizing the parking lots of both adjacent properties (1450 Atwood plaza and CVS Hartford Ave) without consent." (R. Ex. 5 (Vesey Letter).) The letter requested that Bar 101 inform employees, patrons, and delivery services that they are strictly prohibited from parking at 1450 or CVS and stated that vehicles would be subject to towing without notice at the vehicle owner's expense if the practice persisted. *Id.* The letter was also sent to the owner of 1478 and other tenants of 1478. (Tr. I at 114:20-25.)

After receiving the letter, Bar 101 placed four signs in its windows and on its door stating "ATTENTION IF YOU ARE PARKED NEXT DOOR (CVS OR 1450 ATWOOD AVE) PLEASE MOVE YOUR CAR. YOUR VEHICLE WILL GET TOWED!" (Tr. II at 24:2-12; R. Ex. 5 (Bar 101 Posted Signs).) Also, in response to the letter, 1478's owner, Northeast, hired a security company for a limited one-month period. (Tr. II at 13:12-15:13.) Matteo testified that Bar 101 additionally sent employees out from time to time to check the parking lot and asked each party that attended Bar 101 where they parked, requiring that they move their car if it was not parked in the 1478 lot. *Id.* at 12:9-16, 16:11-14. Matteo stated that Bar 101 staff never had to call a towing company to move a patron's vehicle. *Id.* at 16:15-21.

Colardo claimed that the parking issues did not improve after sending the letter to 1478 tenants and that the traffic in the lots increased around 2020. (Tr. I at 117:6-21.) Vesey and Metro Security decided to erect a barrier fence between 1478 and 1450 using cable and steel poles. *Id.* at 121:21-122:25. Colardo stated that the cable could not be left up for twenty-four hours a day between 1478 and 1450 because "[p]eople need to access the property," so the cable

would be put up around 5 or 6 p.m. and Colardo would dispatch someone to unlock the cable at 6 or 7 a.m. *Id.* at 123:4-17. Colardo described the "burden that was placed upon [his] company to hire security, to dedicate management, to go to the property, to sit and analyze and unlock and lock this particular facility." *Id.*

On March 8, 2020, an officer from the Johnston Police Department (the Johnston PD) reported to 1450 after a Metro Security guard stated that an individual who parked in the 1450 lot threatened her by saying he would "blow her away." (R. Ex. 5 (March 2020 Police Report).) Notably, the individual did not go to Bar 101, but instead stated that he parked at 1450 to pick his son up from Base Station VR Lounge at 1478 in order to avoid walking across Atwood Avenue. *Id.* He asserted that the security guard told him very rudely that he could not park at 1450, and he moved his vehicle. *Id.*

According to a private investigation report from PellCorp/Pelletier and Associates, Bar 101 was hosting a birthday party on May 15, 2021 when a Silver Ford F-150 driven by a party attendee drove through the cable wire separating the 1450 and 1478 lots, breaking a cement bollard, overhead canopy, linked chain, and a support wire. (R. Ex. 21 (Private Investigation Accident Report).) The private investigator, who was hired by Colardo, tracked down the driver of the Ford F-150. *Id.* The driver admitted that he drove through and damaged the chain, wire, and post. *Id.* The driver provided the investigator with his license, registration, and insurance information. *Id.*

In June and July 2021, private investigators from Pittman Investigations completed surveillance of Bar 101 for Colardo and NDG concerning the unauthorized use of NDG's property. (R. Ex. 5 (Private Investigation Parking Report).) Pittman Investigations prepared a report which stated that it observed fifty-nine vehicles expelled from 1450 by a security guard

over the course of eight nights, with seven vehicles leaving the area, and forty-six vehicles parking across the street or in the 1478 lot. *Id.* Thirty-nine of the expelled vehicles belonged to patrons of Bar 101. *Id.*

On November 20, 2021, a Metro Security guard was monitoring the lots to document any Bar 101 patrons that were parking in the 1450 or CVS lots. (R. Ex. 21 (Nov. 2021 Incident Transcript); Tr. I at 154:2-13, 155:15-21.) Matteo and his wife, Nicole Matteo (Attorney Matteo), approached the guard and informed her that if she was recording an establishment, she needed a private investigator license or she could be fined. (R. Ex. 21 (Nov. 2021 Incident transcript).) Attorney Matteo proceeded to ask the guard for her driver's license and took pictures of both the license and the guard's vehicle. *Id.* Colardo testified that the security guard quit her job with Metro Security because "[s]he was assaulted. She was harassed. My understanding is she did not want to be in that work environment any longer." (Tr. I at 164:20-22.)

Bar 101 patron Michael Sabitoni attested that he visited Bar 101 in December 2021 and parked in the 1478 lot. (R. Ex. 20 (Sabitoni Aff.) ¶¶ 5, 6.) Sabitoni stated that he collided with a thin cable that was extended across the boundary of 1478 and 1450, but he could not see the cable until after he hit it. *Id.* ¶¶ 7-8. Sabitoni attested that a patrol officer from the Johnston PD visited his workplace and left a business card, and Sabitoni contacted the officer to offer to pay for repairing or replacing the cable. *Id.* ¶ 13. However, Sabitoni reported that he was never contacted by the Johnston PD again or by NDG. *Id.* ¶ 14.

On December 20, 2021, an officer from the Johnston PD responded to 1450 after a report of property damage to the cable wire running between the two parking lots. (R. Ex. 21 (Dec. 2021 Police Report).) The officer reviewed video footage that showed a black GMC Yukon

entering the 1478 lot and driving into the cable wire, forcing it to snap, and warping the welded hook on the bollard. *Id.* The officer noted in the report that the incident did not seem malicious in nature, and it appears that the driver was attempting to maneuver the vehicle in close quarters in order to park and enter Bar 101. *Id.*

Metro Security kept a handwritten log sheet of unauthorized vehicles parking at 1450 from November 2019 through July 2021. (R. Ex. 5 (Handwritten Parking Logs).) Metro Security continued to collect parking violation records electronically for Appellants from September 2021 through February 2022, noting the make and model of vehicles, their license plates, the time of the violations, and whether the vehicle owners complied when told to move their vehicles. (R. Exs. 5, 21 (Parking Violation Logbooks).) Some entries note that the vehicle owners "went to [B]ar 101." *See id.*

However, Bar 101 color-coded the parking records created by Metro Security from November 2019 through February 2022 and found that many of the parking violations were not connected to Bar 101. (R. Ex. 20 (Color-Coded Spreadsheets).) Bar 101's color-coded spreadsheet shows that only eight of 224 incidents from November 2019 through July 2021 were perpetrated by Bar 101 patrons, and several parking violations were committed by patrons of other 1478 businesses, like the vape store and Cayenne Sushi.[2] *See id.*

Vesey attested to various incidents occurring from May 2021 through April 2022 and often captured on camera, including several Bar 101 patrons that drove through the fence erected by Appellants to separate the parking lots; Bar 101 patrons parking at the 1450 lot; Bar 101 patrons interfering with a tow truck towing an unauthorized vehicle parked at 1450; individuals

[2] Colardo testified that many of the parking violation records do not list which business the drivers frequented after parking because Metro Security guards were in the process of learning how to properly document the violations. (Tr. I at 131:2-11.)

drinking alcohol "nips" in the 1450 lot before throwing them on the ground and entering Bar 101; and a Bar 101 delivery vehicle blocking access to 1450. *See* R. Ex. 21 (Vesey Aff.) ¶ 8.

A police report from February 5, 2022 stated that an officer responded to 1450 pursuant to a report regarding possible vandalism of the metal cable separating 1478 and 1450. (R. Ex. 21 (Feb. 2022 Police Report).) The report stated that wire from the cable was strewn on the ground, the cable's lock was missing, and some orange traffic cones were damaged. *Id.* The report noted that "it presently cannot be determined whether it was malicious or intentional." *Id.* Later review of surveillance video showed a GMC vehicle with unknown registration driving through the wire and knocking cones over. *Id.* The case was closed due to lack of evidence. *Id.*

Colardo testified that on March 5, 2022, multiple cars were parked at 1450 and a towing company arrived to remove the vehicles. (Tr. I at 150:1-21; Vesey Aff. ¶ 8.) Colardo reported that Bar 101 patrons left the restaurant and ran through the cable barrier into the 1450 lot to interfere with the tow truck's removal of the vehicle. (Tr. I at 151:6-19.) Colardo stated that the Bar 101 patrons intimidated the tow truck operator and security guards, forcing the tow truck operator to release the car that had been linked to the tow truck apparatus. *Id.* at 151:16-19.

Colardo testified to another incident on March 11, 2022, when a Bar 101 patron returned to his vehicle and found a parking violation sticker. *Id.* at 153:3-10. Colardo stated that video evidence showed the patron approaching the female security guard on duty and shoving the sticker onto her chest. *Id.* at 153:9-16. In a Metro Security incident report, the security guard stated that she was very scared when the patron walked up to her and she could smell alcohol on his breath. (R. Ex. 21 (Mar. 2022 Incident Report).) Additionally, a police report from the same date details a different incident where an individual moved a parking bumper at 1450 to exit the lot after it had been locked for the night. (R. Ex. 21 (Mar. 2022 Police Report).) The officer

found no damage to the bumper and stated that the incident did not meet the criteria for a vandalism charge. *Id.*

Metro Security tow logs show that three vehicles were towed from the 1450 lot between April 15, 2022 and April 30, 2022. (R. Ex. 21 (1450 Apr. 2022 Tow Log).) The tow truck was called for three additional vehicles, but the vehicles left before the tow truck arrived in each instance. *Id.* All drivers of the vehicles were reported as alleged Bar 101 customers. *Id.*

Nicholas Cicchitelli (Cicchitelli), owner and Secretary of Northeast, stated that Northeast has not had any issues with Bar 101 during its tenancy. (R. Ex. 20 (Cicchitelli Aff.) ¶ 5.) Cicchitelli attested that "Northeast has never received any complaints concerning Bar 101 from any tenants of 1478 Atwood or tenants of neighboring properties during Bar 101's tenancy." *Id.* Bar 101 produced evidence that it takes action against patrons exhibiting unruly behavior, namely a letter addressed to a patron on August 30, 2022 informing him that he was indefinitely banned from the restaurant after violating its customer behavior policy on August 26, 2022. (R. Ex. 20 (Bar 101 Letter to Patron).)

Nancy DiGiglio (DiGiglio), owner and President of Anyplace Travel of Johnston, Inc. (Anyplace), attested that Anyplace leased a unit from NDG at 1450 from 1992 through 2020, with Bar 101 as its neighbor for almost a decade. (R. Ex. 20 (DiGiglio Aff.) ¶¶ 2, 4-5.) DiGiglio stated that Anyplace employees never had any problems or disagreements with Bar 101, and its patrons were always polite, respectful, and otherwise conscious of their neighbors. *Id.* ¶ 6. DiGiglio further attested that Anyplace never experienced a diminution in business from Bar 101's operations, and customers of Anyplace always had adequate and ample parking at 1450. *Id.* ¶¶ 7-8.

On April 22, 2022, NDG's counsel sent a letter to Matteo, Attorney Matteo, and

Cicchitelli stating that they, along with Bar 101 staff, delivery trucks, and patrons, had continuously trespassed onto the parking lot of 1450. (R. Ex. 20 (PC-2022-04651 Am. Compl., Ex. C, at 1).) The letter stated that it placed the Matteos and Cicchitelli on notice that if any further instances of trespass stemming from the business of Bar 101 occurred, NDG's counsel would file an action against them in their personal capacities, as well as against Bar 101, in Providence Superior Court to obtain a Mandatory Injunction. *Id.* at 1-2.

Matteo sent a letter to Bar 101 staff and management on April 24, 2022 to ensure that they continued to help with the parking situation. (R. Ex. 5. (2022 Letter to Bar 101 Staff).) The letter requested that staff and management ask Bar 101 customers if they were parked at 1450 or CVS, and, if they were, to direct them to move their vehicles. *Id.* The letter further prohibited staff and management from parking at CVS or 1450 while working at or visiting Bar 101 and directed them to remind delivery drivers not to park anywhere other than the 1478 lot during deliveries. *Id.* The letter also directed employees to refrain from speaking to any tenants or security personnel associated with 1450 or CVS. *Id.*

On August 15, 2022, NDG's counsel filed a Public Records Request with the Rhode Island State Police for any records related to Bar 101. (R. Ex. 21 (Records Request).) In response to the request, NDG received records concerning surveillance of individuals allegedly dealing narcotics from September through November 2021. (R. Ex. 21 (RISP Surveillance Aff.) ¶ 85.) One individual was believed to have sold narcotics in various places, including Bar 101 and other restaurants. *Id.* However, no arrests or convictions were made concerning the individual. *Id.*

Johnston PD Chief of Police Mark A. Viera (Chief Viera) confirmed in a letter on March 13, 2023 that a review of police records for the previous three years did not reveal any incidents

involving a significant threat to public safety. (R. Ex. 16 (Police Chief Letter).) Chief Viera wrote that there were no incident reports or arrests in that time frame relating to assault, parking, operating after hours, or loud music at Bar 101. *Id.* He also confirmed that there were no liquor law violations found at Bar 101, including when Johnston PD officers conducted alcohol compliance checks. *Id.* Chief Viera categorized the operations at Bar 101 as "safe and under control." *Id.*

Bar 101 employee Kelsey Lemoine (Lemoine) stated that during her shift on March 10, 2023 she witnessed individuals park their vehicles in the 1478 parking lot and walk over to Cayenne Sushi, a 1450 tenant. (R. Ex. 20 (Lemoine Aff.) ¶¶ 4-5.) Lemoine's statements suggest that the parking issue is universal—patrons of 1478 tenants park in the 1450 lot and patrons of 1450 tenants park in the 1478 lot. *Id.* Lemoine stated that it appeared that there was a party occurring at Cayenne Sushi that day because some individuals were carrying gift bags. *Id.* Lemoine also attested to Bar 101 customers informing her that they saw individuals parking at 1478 and walking next door, and that she did not witness any of the individuals that parked at 1478 enter Bar 101 that day. *Id.* ¶¶ 6-7.

Matteo testified that he also has witnessed customers and delivery trucks for businesses in 1450 park in the 1478 lot. (Tr. II at 113:15-20.) Matteo described the proximity of 1450 tenant Cayenne Sushi to the 1478 lot and explained that delivery trucks park in the 1478 lot regularly to access Cayenne Sushi's front door. *Id.* at 113:21-24. Matteo recounted an incident where a Cayenne Sushi delivery truck parked in the 1478 lot, blocking a vehicle from exiting the property. Bar 101 provided multiple photographs of delivery vehicles for 1450 tenants blocking the exit to 1478, as well as parking directly in front of Bar 101. (R. Ex. 20 (Bar 101 Delivery Truck Pictures).) Matteo testified that he does not inform the drivers that they are trespassing on

1478 because he recognizes that "[t]hey're just doing their job." (Tr. II at 118:12-15.)

Bar 101 suggested that a fence or barrier be placed between the properties and stated that the owner of 1478, Cicchitelli, was willing to erect a structure between 1478 and 1450 along the property lines. *See* Tr. I at 23:19-25; Cicchitelli Aff. ¶ 10. Bar 101 produced a Class 1 Survey for the purpose of evaluating a potential barrier. (Tr. I at 15:23-16:7; R. Ex. 20 (Class 1 Survey).) Because both lots have separate entrances, a barrier would not prevent vehicles from accessing either 1478 or 1450 separately—it would stop vehicles from traveling between the two lots. (Tr. I at 15:12-22.) Matteo believed that a fence would help in preventing patrons of 1478 and 1450 from parking in the incorrect lots because it would indicate that it is not a continuous lot; however, Colardo asserted that a barrier would not work due to the way that the properties are configured. *Id.* at 228:14-18; Tr. II at 68:11-20.

In March 2023, Colardo testified that the parking situation had "gotten a little bit different," stating that "[i]t's a little bit better, but I—there are still violators there. There are violators from the bar." (Tr. I at 165:16-22.) Colardo stated that the situation was better despite the fact that Metro Security stopped their services in May 2022 because "[t]hey were constantly getting harassed by Bar 101 patrons" and Colardo did not hire another security agency because it was too expensive. *Id.* at 165:3-15. Matteo also testified that the parking situation was getting better, "[m]eaning that, you know, there's less people parking there. Because, you know, just feedback that we're getting when we ask customers . . . would be, like, yes, we're parked there; move your car. Now we're going to, you know, consistently know they're not parking there." (Tr. II at 23:18-24.)

C. Bar 101's BV Liquor License Renewal and Subsequent Litigation

On September 15, 2021, NDG filed an anonymous complaint about Bar 101's BV License, stating that Bar 101 failed to obtain a BV License to serve alcohol in unit 105 and expanded its sales, service, and storage of alcohol beyond units 103 and 104 without following the proper procedure established by Rhode Island statutes and regulations. (R. Ex. 4 (Anonymous Compl.).) At the Board's October 12, 2021 meeting, it discussed the anonymous complaint and scheduled a show cause hearing regarding Bar 101's BV License to be held at its November 8, 2021 meeting. (R. Ex. 20 (Agreed Statement of Facts and Exhibits).)

On November 2, 2021, NDG filed an objection for the November Board meeting regarding the issuance or renewal of Bar 101's BV License based on its violation of liquor licensing regulations and alleged nuisances or disorderly conduct. (R. Ex. 4 (NDG's Obj. to License Issuance or Renewal).) At the November 8, 2021 Board meeting, the Board held a hearing "to show cause why the BV Full Liquor License should not be suspended or revoked[.]" (R. Ex. 5 (Nov. 8, 2021 Bd. Hr'g Tr.) 22:8-15.) After arguments, the Board continued the issue of the BV License renewal to the Board's meeting scheduled for December 13, 2021. *Id.* at 65:22-66:8. The Board additionally allowed Bar 101 to continue operating under its BV License until the meeting, despite the BV License's expiration on December 1, 2021. *Id.* at 66:10-67:15.

NDG filed an appeal with DBR on November 10, 2021, challenging the Board's actions pursuant to G.L. 1956 § 3-7-21. (R. Ex. 4 (DBR Order, Dec. 9, 2021).)[3] On December 3, 2021, NDG moved to stay the Board's November 8, 2021 decision, and requested that DBR order Bar 101 to close operations in unit 105. *Id.* DBR issued an order on December 9, 2021, declining to rule on NDG's Motion for Stay and Cease and Desist Order or its appeal of the Board's decision

[3] Bar 101 filed a Motion to Intervene in the appeal on November 16, 2021, and the motion was granted on November 17, 2021. (R. Ex. 4 (DBR Order, Dec. 9, 2021).)

to continue the issue of BV License renewal, holding the motion in abeyance pending the Board's decision at its December 13, 2021 meeting. *Id.*

In the meantime, Bar 101 filed a Motion to Clarify with the Board on November 29, 2021, requesting that the Board clarify that the BV License and other associated licenses were valid for units 103, 104, and 105 at 1478. (R. Ex. 4 (Bar 101's Motion to Clarify).) NDG filed an objection to Bar 101's Motion to Clarify, arguing that Bar 101 was illegally operating in unit 105 without a license and requesting that the Board deny Bar 101's license renewal; shut down operations in unit 105; and condition a license renewal for units 103 and 104 on a "security plan" acceptable to all neighbors of Bar 101. (R. Ex. 4 (NDG's Obj. to Bar 101's Mot. to Clarify).)

At its December 13, 2021 meeting, the Board approved the Motion to Clarify, affirming the service of liquor in unit 105, and granted the renewal of Bar 101's BV License, denying all objections submitted by NDG. (R. Ex. 5 (Dec. 13, 2021 Bd. Hr'g Tr.) 30:10-21, 33:22-34:8.)[4] Applegate joined NDG in filing an appeal with the DBR pursuant to § 3-7-21 on December 15, 2021 regarding the Board's December 13, 2021 decision to renew Bar 101's BV License. (R. Ex. 21 (DBR Order, Dec. 23, 2021).) On December 23, 2021, DBR found that Appellants did not have standing to appeal the Board's decision regarding the renewal of the license, but that the matter could proceed regarding the applicability of Liquor Regulation 230 RICR 30-10-1 § 1.4.27 to Bar 101's use of unit 105 under DBR's jurisdiction pursuant to G.L. 1956 § 3-2-2. *Id.* Appellants and Bar 101 agreed to resolve the matter through stipulated facts and briefs before DBR. *Id.*

Appellants, the Board, and Bar 101 filed briefs with DBR and completed oral arguments at a hearing on April 27, 2022. (R. Ex. 5 (First Decision).) While DBR's decision was pending,

[4] The Board additionally renewed Bar 101's entertainment license at the December 13, 2021 meeting. (R. Ex. 5. (Dec. 13, 2021 Bd. Hr'g Tr.) 34:19-35:5.)

Bar 101 applied for a patio license (Patio License), which would allow Bar 101 to place six tables in front of the restaurant for outdoor seating and service from May 1, 2022 through October 15, 2022. (R. Ex. 7 (May 9, 2022 Bd. Hr'g Tr.) 2:10-14, 18:24-19:2.) On May 9, 2022, NDG objected to Bar 101's application for the Patio License. (R. Ex. 21 (NDG Obj. to Patio License).) The Board heard the application on the same day and granted Bar 101's Patio License. (R. Ex. 7 (May 9, 2022 Bd. Hr'g Tr.) 18:22-19:12.) Appellants then appealed the Board's decision to grant Bar 101's application for a Patio License to DBR on May 12, 2022. *See* R. Ex. 15 (DBR Order, June 8, 2022).

On May 17, 2022, DBR issued a Decision (First Decision) consolidating Appellants' three appeals and finding that Bar 101 violated 230 RICR 30-10-1 § 1.4.27 by expanding into unit 105 without filing for or receiving approval from the Board pursuant to G.L. 1956 § 3-5-17. (First Decision at 19.) The Hearing Officer found that the Board had no legal basis to grant Bar 101's Motion for Clarification and remanded the matter back to the Board. *Id.* The First Decision ordered that Bar 101 must cease and desist from using unit 105 to sell or serve alcohol and stated that if Bar 101 "still desires to use unit 105 as part of its licensed premises, it must make such a request to the Board in accordance with § 1.4.27, and the Board must comply with the Regulation and follow the process set forth in . . . § 3-5-17 for a hearing." *Id.* at 19-20.

After learning of the First Decision, Bar 101 stopped serving alcohol in unit 105. (R. Ex. 20 (Bar 101 Compliance Photos); Tr. II at 168:17-169:12.) Bar 101 also filed an application with the Board on May 23, 2022 to expand its BV License to include unit 105. (R. Ex. 20 (2022 BV License Application).) On June 8, 2022, DBR dismissed Appellants' appeal relating to the Patio License because the regulatory requirements that Bar 101 failed to follow in expanding into unit 105 did not apply to seasonal expansions and therefore Appellants had no standing. (DBR Order,

June 8, 2022 at 6-7.)

The Board granted Bar 101's application for a BV License expansion on June 13, 2022, voting 4-0 in favor of the expansion. (R. Ex. 4 (June 13, 2022 Bd. Hr'g Tr.) 36:19-37:11.) On June 16, 2022, Appellants appealed the Board's grant of the license expansion to DBR pursuant to §§ 3-7-19(a) and 3-7-21(a), and 230 RICR 30-10-1 § 1.4.27(c). (R. Ex. 1. (Notice of Appeal).) Appellants also filed a Motion for Stay and Cease and Desist Order pending their appeal on June 20, 2022. (R. Ex. 3 (Appellants' Mot. for Stay and Cease and Desist Order Pending Appeal).)

On July 20, 2022, the DBR Hearing Officer recommended granting Appellants' Motion to Stay the grant of Bar 101's license expansion and that Bar 101 be ordered to immediately cease and desist from using unit 105 for the sale, service, or storage of liquor pending the outcome of the appeal. (R. Ex. 10 (DBR Director's Order, July 29, 2022).) On July 29, 2022, DBR's Director modified the Hearing Officer's recommended Order regarding Appellants' Motion for Stay and denied Appellants' motion, stating that Appellants had not made the required showing that it would prevail on the merits or suffer irreparable harm, and encouraging the parties to continue in their efforts to resolve their parking and trespass issues. *Id.*

The parties presented DBR with their arguments regarding the Board's granting of Bar 101's license expansion at a hearing on March 23 and 24, 2023. *See* Tr. I; Tr. II. DBR's Final Decision was issued on June 30, 2023, upholding the Board's decision to grant Bar 101's BV License expansion application for unit 105. *See* Final Decision.

On July 24, 2023, Appellants timely filed an appeal from the Final Decision to the Superior Court. *See* Appellants' Compl.[5]

II

Standard of Review

Review of administrative decisions "'is confined to a determination of whether there is any legally competent evidence to support the agency's decision,' . . . and further, whether the decision was otherwise occasioned by error of law." *Tierney v. Department of Human Services*, 793 A.2d 210, 212-13 (R.I. 2002) (quoting *Environmental Scientific Corporation v. Durfee*, 621 A.2d 200, 208 (R.I. 1993)). "In reviewing an administrative agency's decision, the Superior Court shall not 'substitute its judgment for that of the agency as to the weight of the evidence on questions of fact.'" *Wayne Distributing Co. v. Rhode Island Commission for Human Rights*, 673 A.2d 457, 459 (R.I. 1996) (quoting § 42–35–15(g)).

Pursuant to § 42-35-15(g), a court reviewing an administrative appeal may

> "affirm the decision of the agency or remand the case for further proceedings, or it may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:
>
> "(1) In violation of constitutional or statutory provisions;
>
> "(2) In excess of the statutory authority of the agency;
>
> "(3) Made upon unlawful procedure;
>
> "(4) Affected by other error or law;
>
> "(5) Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
>
> "(6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion."

[5] Separately from the ongoing litigation regarding the liquor license, NDG filed an action against Peter Matteo, Nicole Matteo, and Bar 101 on July 28, 2022, alleging trespass, tortious interference, negligence, and nuisance stemming from the ongoing parking dispute. *See* Docket, *National Development Group, Inc. v. 101 Bar & Grill, Inc. et al.*, No. PC-2022-04651. The Complaint was later amended to include a count pursuant to G.L. 1956 § 9-1-2 for alleged injuries from Bar 101's illegal expansion of its liquor license. *Id.*; R. Ex. 20 (PC-2022-04651 Am. Compl.).)

III

Analysis

A. Issues of Fact

"The factual findings of the administrative agency are entitled to great deference." *Champlin's Realty Associates v. Tikoian*, 989 A.2d 427, 437 (R.I. 2010). "In reviewing the decision of an administrative agency, the Superior Court is limited to 'an examination of the certified record to determine if there is any legally competent evidence therein to support the agency's decision.'" *Johnston Ambulatory Surgical Associates, Ltd. v. Nolan*, 755 A.2d 799, 804-05 (R.I. 2000) (quoting *Barrington School Committee v. Rhode Island State Labor Relations Board*, 608 A.2d 1126, 1138 (R.I. 1992)). "When an administrative agency both hears evidence and issues a final decision, . . . a reviewing court should 'reverse factual conclusions of administrative agencies only when they are totally devoid of competent evidentiary support in the record.'" *Environmental Scientific Corporation*, 621 A.2d at 209 (quoting *Milardo v. Coastal Resources Management Council*, 434 A.2d 266, 272 (R.I. 1981)). "Legally competent evidence is indicated by the presence of 'some' or 'any' evidence supporting the agency's findings." *Id.* at 208.

The agency at issue in this matter is DBR. "It has long been established that the role of the Liquor Control Administrator in Rhode Island is that of a 'superlicensing board' with a broad and comprehensive power of review." *Green Point Liquors, Inc. v. McConaghy*, No. PC-2002-2837, 2004 WL 2075572, at *4 (R.I. Super. Aug. 10, 2004) (quoting *Hallene v. Smith*, 98 R.I. 360, 364, 201 A.2d. 921, 924 (1964)). "This authority derives in part from the general supervisory authority in matters related to liquor licensing that is vested in DBR through § 3-2-2, which states that 'the department has general supervision of the conduct of the business of

manufacturing, importing, exporting, storing, transporting, keeping for sale, and selling beverages.'" *Id.*

1. Sufficient Findings of Fact

"Detailed and informed findings of fact are a precondition to meaningful administrative or judicial review." *JCM, LLC v. Town of Cumberland Zoning Board of Review*, 889 A.2d 169, 176 (R.I. 2005). "According to . . . § 42–35–12, agencies are required to state with particularity the substantive findings of fact that support the conclusions of law." *Economy Auto Sales, Inc. v. Rhode Island Motor Vehicle Dealers' License Commission*, No. 1984-1832, 1984 WL 559282, *2 (R.I. Super. Sept. 10, 1984). "'The rationality of an agency's decision must encompass its fact findings, its interpretation of the pertinent law, and its application of the law to the facts as found.'" *Sakonnet Rogers, Inc. v. Coastal Resources Management Council*, 536 A.2d 893, 896 (R.I. 1988) (quoting *Arrow Transportation Co. v. United States*, 300 F. Supp. 813, 817 (D.R.I. 1969)).

Appellants argue that the Hearing Officer's findings of fact were perfunctory in nature rather than detailed and informed. (Appellants' Am. Br. in Supp. of its Appeal (Appellants' Am. Br.) 61.)

Bar 101 states that Appellants' argument that the Final Decision is devoid of supporting factual findings is conclusory. (Bar 101's Responsive Br. in Opp'n to Appellants' Appeal (Bar 101's Br.) 21.) Bar 101 asserts that the Final Decision thoroughly summarizes the evidence presented by all parties at pages three through nine, as well as presenting the Hearing Officer's findings of fact in bullet-point fashion at pages twenty-seven and twenty-eight. *Id.* Bar 101 argues that the Discussion section of the Final Decision is also replete with detailed factual findings that the Hearing Officer explained in connection to her legal determinations. *Id.*

The Town asserts that this Court must use a deferential standard in reviewing the Final Decision and find that the Hearing Officer outlined legally competent evidence on the record to justify her legal conclusions. (Town's Responsive Br. in Opp'n to Appellants' Appeal (Town's Br.) 9.) The Town argues that the Hearing Officer reviewed, weighed, and addressed the evidence highlighted in Appellants' Amended Brief and ultimately found that Bar 101's alleged activities did not rise to disorderly conduct. *Id.* at 9-10.

DBR argues that upon review of the certified record and the thoughtful, carefully drafted Final Decision, no reasonable person could agree with Appellants' conclusions that the Hearing Officer failed to properly consider the evidence presented. (DBR's Responsive Br. in Opp'n to Appellants' Appeal (DBR's Br.) 10.) DBR asserts that there is ample substantial evidence and logically explained rationale provided by the Hearing Officer to support upholding the Board's granting of Bar 101's expanded BV License. *Id.* at 13.

The Final Decision totals twenty-nine pages, with pages three through nine stating the "Material Facts and Testimony" of the case. (Final Decision at 3-9.) This section reviews the testimony from the March 2023 hearings at length, along with exhibits related to issues or events the witnesses discussed during testimony. *Id.* The Hearing Officer further provides a summarized "Findings of Fact" section at pages twenty-seven and twenty-eight that detail the procedural events of the case and the parties' actions during the various ongoing applications and appeals before the Board and DBR. *Id.* at 27-28.

The "Discussion" section of the Final Decision addresses the parking dispute at pages twelve through twenty-one, including extensive references to exhibits provided by Appellants such as police reports, affidavits, and recorded parking violations. *Id.* at 12-21. The Hearing Officer also refers to Bar 101's exhibits that countered Appellants' evidence and claims

regarding the parking dispute. *Id.* Pages twenty-one through twenty-six discuss Bar 101's unauthorized expansion, considering testimony from the hearing, arguments from the parties, and actions taken by the Town and Bar 101 during the proceedings leading up to the Final Decision. *Id.* at 21-26. Finally, pages twenty-six through twenty-seven address the alleged criminal activity at Bar 101, specifically referencing evidence submitted by Appellants regarding the police surveillance of a Bar 101 patron. *Id.* at 26-27.

Not only does the Final Decision include a factual background and a findings of fact section, but each issue addressed in the Hearing Officer's analysis is supported by evidence pulled from the record. The evidence evaluated and discussed in the Final Decision is balanced, comprised of exhibits and testimony from both parties. This Court finds that the Hearing Officer properly presented detailed and informed findings of fact that were stated with particularity in supporting the legal conclusions within the Final Decision.

2. Clearly Erroneous

"'[A]n administrative decision can be vacated if it is clearly erroneous in view of the reliable, probative, and substantial evidence contained in the whole record.'" *Power Test Realty Company Limited Partnership v. Coit*, 134 A.3d 1213, 1225 (R.I. 2016) (quoting *Environmental Scientific Corporation*, 621 A.2d at 208). As the Court will discuss below, the Final Decision is not clearly erroneous in view of the reliable, probative, and substantial evidence contained in the whole record.

i. Substantial Evidence

The Rhode Island Supreme Court has defined "substantial evidence" as "'such relevant evidence that a reasonable mind might accept as adequate to support a conclusion and means an amount more than a scintilla but less than a preponderance.'" *Newport Shipyard, Inc. v. Rhode*

Island Commission for Human Rights, 484 A.2d 893, 897 (R.I. 1984) (quoting *Caswell v. George Sherman Sand & Gravel Co.*, 424 A.2d 646, 647 (R.I. 1981)).

Appellants argue that the Final Decision is not supported by substantial evidence because the evidence submitted by Bar 101 is not adequate to justify the Hearing Officer's conclusions; the only evidence supporting the Final Decision, if any, amounts to less than a scintilla; and the overwhelming evidence presented by the Appellants constitutes the only truly substantial evidence. (Appellants' Am. Br. 61.) Appellants claim that the Hearing Officer found that Bar 101's operations did not disturb neighboring businesses based upon irrelevant arguments and ignored substantial evidence of admitted trespass violations and property damage. *Id.* at 63. Appellants further assert that the Hearing Officer ignored substantial evidence of illegal alcohol sales and alleged criminal activity on the premises. *Id.* at 66.

Bar 101 states that Appellants' arguments that the evidence in the record does not support the Final Decision fail to recognize that the Superior Court must give extreme deference to the findings and conclusions of administrative bodies. (Bar 101's Br. 19.) Bar 101 asserts that three rounds of review are at play with an increasing level of deference for each appeal: the Town completing the first round of review, followed by the DBR as the second round of review, and the Superior Court now reviewing the record for a third round. *Id.* Bar 101 argues that the weight and credibility of the evidence offered by the parties is not for the Court to judge. *Id.* at 20.

DBR states that the Hearing Officer was "intimately aware" of all the issues and circumstances of Appellants' allegation against Bar 101 and the Town, as well as the defenses to those allegations, because she reviewed thousands of pages of evidentiary exhibits, conducted multiple hearings, handled prior appeals, and issued both the First Decision and the Final Decision. (DBR's Br. 12.) DBR asserts that Appellants presented no reliable evidence to support

its allegations of criminal activity beyond inconclusive police reports, innuendo, and speculation. *Id.* at 17.

Appellants present mere conclusory statements that the evidence supporting the Final Decision "if any, amounted to less than a scintilla,"[6] and that Bar 101 presented no substantial evidence in contrast to Appellants' exhibits and testimony, which they categorize as the "only truly substantial evidence[.]" (Appellants' Am. Br. 61.)

In the proceedings before the DBR, Bar 101 presented over seven hundred pages of exhibits, including some exhibits that refute Appellants' claims, such as spreadsheets that analyze Appellants' parking violation records and affidavits from a tenant of 1450 attesting to positive experiences with Bar 101. *See* R. Ex. 20. Bar 101 also presented two witnesses at the hearing (in addition to Matteo's testimony) who attested to Bar 101's safety and good reputation as patrons of the restaurant. *See* Tr. I; Tr. II. Additionally, the Hearing Officer reviewed hundreds of pages of the Town's official record. *See* R. Ex. 5.

Appellants undoubtedly presented substantial evidence as well, with their own extensive testimony from Colardo at the hearing and eight hundred pages of exhibits, along with video and audio recordings. *See* Ex. 21; Tr. I.

Importantly, in weighing the evidence, the Hearing Officer did not ignore the evidence presented by Appellants; instead, she did not find that the parking issue rose to the severe levels of disorderly conduct claimed by Appellants, nor did she find that the potential criminal activity of a patron justified denying Bar 101 a liquor license when no convictions or arrests had been made. (Final Decision at 21.) The Hearing Officer did find that Bar 101 operated without a license in unit 105 in violation of § 3-5-21 and § 1.4.27, but Appellants are not satisfied with the

[6] Black's Law Dictionary defines a "scintilla" as "a spark or trace." Black's Law Dictionary (12th ed. 2024).

imposed sanctions. *Id.* at 28.

Appellants assume that the Hearing Officer ignored their evidence because they disagree with her factual determinations. Although voluminous, Appellants' evidence of parking issues and other incidents did not meet the threshold of disorderly conduct or criminal activity at Bar 101 when weighed by the Hearing Officer. The Hearing Officer *did* rely upon substantial evidence from Appellants, as well as Bar 101 and the Town, in forming her decision, she just did not weigh the evidence in the manner that Appellants proffered at the hearing and in their briefs. Upon reading the Final Decision and the extensive record as a whole, it is obvious that the Hearing Officer relied on much more than a "trace" of evidence to support her legal conclusions. Accordingly, Appellants' assertion that the Final Decision is not based on substantial evidence must fail.

ii. Legally Probative Information

"An administrative agency may not base a finding or determination on information that is not legally probative." *Wood v. Ford*, 525 A.2d 901, 903 (R.I. 1987). Legally probative information is based exclusively on evidence and judicially cognizable matters that are officially noticed. *Rhode Island Consumers' Council v. Smith*, 111 R.I. 271, 300-01, 302 A.2d 757, 774 (1973).

Appellants argue that the Hearing Officer impermissibly based her findings on information that is not legally probative. (Appellants' Am. Br. 63.) Appellants use the example of Bar 101's color-coded spreadsheet and tally of the number of trespassing vehicles in Appellants' parking violation records that were attributed to Bar 101 patrons, asserting that the tally is incorrect and that the Hearing Officer ignored pertinent evidence in the record by relying on Bar 101's color-coded spreadsheet. *Id.* Appellants further assert that the Hearing Officer

ignored the substantial evidence of admitted trespass violations and property damage, choosing to rely on nonprobative evidence. *Id.*

Bar 101 argues that the evidence considered by the Hearing Officer regarding the parking violations is not Bar 101's attorneys' analysis as Appellant claims. (Bar 101's Br. 22.) Bar 101 asserts that its exhibits addressing the parking violation records are just color-coded versions of Appellants' own exhibits showing which entries are attributed to Bar 101 patrons. *Id.* Bar 101 notes that although Colardo states that he instructed his surveillance team to record only Bar 101 customers and therefore all entries must be deemed to relate to Bar 101, the Hearing Officer was reasonable in concluding that the Metro Security surveillance team may not have followed his instructions and recorded incidents related to non-Bar 101 customers. *Id.*

The Town asserts that the record contains legally competent evidence in support of the Final Decision to uphold the Town's grant of the license expansion. (Town's Br. 10.) The Town argues that the fact that there is evidence on the record of less-than-ideal behavior is insufficient to warrant a finding of disorderly conduct. *Id.* at 11. The Town notes that the occasional and limited trespass by patrons on neighboring parking lots may constitute a private dispute but does not rise to a public nuisance. *Id.* The Town asserts that the record shows Appellants themselves have trespassed multiple times on Bar 101's parking lot during hours of operation. *Id.*

DBR states that the Hearing Officer did consider competent evidence relating to parking violations committed by Bar 101 patrons, but the violations and other incidents of disruptive behavior do not rise to the level of disorderly conduct as used in the enforcement of § 3-5-23. (DBR's Br. 13.) DBR asserts that the Hearing Officer considered evidence from Appellants regarding parking violations as well as counterevidence from Bar 101, but Appellants failed to show that the parking situation actually hinders or harms the operations at 1450. *Id.* at 15-16.

DBR argues that there is no evidence to show that Bar 101 patrons are solely responsible for trespassing on the 1450 lot owned by NDG nor that *any* trespass or disruptive behavior caused by Bar 101 patrons occurred on the CVS property owned by Applegate. *Id.* at 15 (emphasis added).

Appellants assert that the security guards recording parking violations were specifically tasked with reporting on the parking habits of Bar 101 patrons, so every driver in violation without a business specifically attributed would presumably be a Bar 101 patron. (Appellants' Am. Br. 63.) However, Appellants' own evidence shows that Metro Security guards reported that multiple unauthorized vehicles parking at 1450 were customers of the "vape store," the "start my diet store," "KFC," "the arcade," "top nails," and the "atomic salon." (R. Ex. 21 (Parking Violation Records).) Given the numerous violations committed by customers of other 1478 businesses, it would be difficult to assume that every parking violation without information listed regarding which business the driver entered was perpetrated by a Bar 101 patron.

Colardo's testimony that the Metro Security guards were fine-tuning their information collecting process and eventually focused parking violations reports on Bar 101 customers does not match with the records, which show that the security guards were reporting violations from customers of other 1478 businesses, like the vape store, as late as February 11, 2022. *Id.*; Tr. I at 131:2-11. Appellants did not provide parking violation records after March 2022, and Metro Security ended its employment with Appellants in May 2022. *See id.* Moreover, Appellants' insistent fixation on the parking patterns of Bar 101 patrons is concerning when many of the recorded incidents of unauthorized parking are perpetrated by customers of other businesses at 1478.

The Hearing Officer uses three full pages to sort through legally probative evidence

submitted by both Appellants and Bar 101 pertinent to the parking issues at 1478, 1450, and CVS. *See* Final Decision at 14-16. Then, she cites the standard for disorderly conduct pursuant to § 3-5-23 as defined in *A.J.C. Enterprises, Inc. v. Pastore*, 473 A.2d 269 (R.I. 1984), and proceeds to explain her analysis and the weight of the evidence. *Id.* at 16-21. The Hearing Officer discusses parking scenarios that could rise to disorderly conduct, like trespasses on residential streets and blocking residents, patrons, fire lanes, entrances, or exits. *Id.* at 18. The Hearing Officer notes that there is no evidence that drivers parking in lot 1450 to visit 1478 were committing any of these offenses. *Id.*

The Final Decision further finds that there is no evidence of parking congestion or reports from 1450 tenants that their patrons could not park. *Id.* It refers to Bar 101's exhibit featuring pictures of open parking spaces in front of 1478 on St. Patrick's Day—a popular day for visiting venues like Bar 101. *Id.* The Hearing Officer found no evidence of screaming, noise, or fighting—just some incidences of confrontations with tow truck drivers and security guards. *Id.* "[T]his poor behavior twice in two (2) years is not an ongoing nuisance to the neighborhood." *Id.* at 19.

Most importantly, the Hearing Officer lists evidence presented of three incidences of property damage, confrontations between the Matteos and Metro Security guards, and consumption of alcohol nips in the 1450 lot, determining that they were not disorderly conduct "in the context of liquor licensing."[7] *Id.* at 19. The Final Decision states that there is no evidence that the drivers who damaged property were drunk from over-service or that their driving was

[7] There was one instance of public urination in the 1478 parking lot. *See* Vesey Aff. ¶ 8 ("Bar 101 patron exited Bar 101 and walked to the side of 1478 Atwood Avenue building and urinated in public around 10pm."). However, the Final Decision noted that "[o]bviously, such an issue that is ongoing would fall under *A.J.C. Enterprises*. But there was no evidence that it was more than once." (Final Decision at 19.)

connected to Bar 101. *Id.* It also recognizes that the individuals drinking nips consumed them before they were patrons of Bar 101 and that they were not intoxicated upon leaving the restaurant. *Id.*

That the Hearing Officer extensively considered and applied legally probative evidence from both parties regarding the parking issues at 1478 and 1450 cannot reasonably be questioned. The Hearing Officer clearly examined exhibits from Appellants and counter exhibits from Bar 101 before establishing the legal standard for disorderly conduct in the context of liquor licensing using *A.J.C Enterprises* and directly applying the law to her factual findings. Her analysis included an explanation of the absence of certain types of behavior or incidents that *would* rise to disorderly conduct. Although an indirect form of evaluating legally probative evidence, it is warranted to compare examples from other cases that meet the legal standard and discuss the shortcomings of the evidence presented in the current case.

This Court finds that the parking issue was decided using legally probative evidence and declines to reweigh evidence already assessed by the Hearing Officer. *See Bunch v. Board of Review, Rhode Island Department of Employment and Training*, 690 A.2d 335, 337 (R.I. 1997) ("A judicial officer does not weigh the evidence upon which findings of fact are based but merely reviews the record in order to determine whether there is legally competent evidence to support the administrative decision.")

3. Credibility of Witnesses

A court reviewing an agency decision "may not substitute its judgment for that of the agency with respect to the credibility of witnesses or the weight of the evidence on questions of fact." *Kachanis v. Board of Review, Department of Employment and Training*, 638 A.2d 553, 555-56 (R.I. 1994) (citing *Costa v. Registrar of Motor Vehicles*, 543 A.2d 1307, 1309 (R.I.

1988)).

Appellants argue that the Hearing Officer made no findings of credibility as to the live testimony of Appellants' corporate witness, Colardo, and therefore this Court should deem his testimony as credible. (Appellants' Am. Br. 65.) Bar 101 states that there is no suggestion that the Hearing Officer did not deem Colardo's testimony credible; rather, she declined to find that the activities that he testified to rose to a level of nuisance. (Bar 101's Br. 23.) The Town asserts that the Court must defer to the Hearing Officer's evidentiary findings and the weight of credibility given on the record, including the credibility of witnesses. (Town's Br. 9.) DBR does not argue a position regarding the credibility of witnesses beyond stating that the Court "'may not substitute its judgment for that of the agency with respect to credibility of the witnesses[.]'" (DBR's Br. 8 (quoting *Town of South Kingstown v. Rhode Island Department of Business Regulation*, No. PC-2012-3551, 2012 WL 6756205, at *3 (R.I. Super. Dec. 20, 2012).)

There is no indication in the Final Decision that the Hearing Officer did not deem Colardo credible. *See* Final Decision. In fact, the Hearing Officer used a large portion of his testimony in the Material Facts and Testimony section. *Id.* at 3-5. The Hearing Officer also used Colardo's testimony in the Discussion section while evaluating the facts involved in the parking dispute between the parties. *Id.* at 20-21, at n.19. The Final Decision indicates that the Hearing Officer weighed Colardo's testimony alongside the testimony of other witnesses and various exhibits and did not find in favor of Appellants' arguments regarding issues that Colardo testified about, like parking and alleged criminal activities. *See Environmental Scientific Corporation*, 621 A.2d at 203 ("The weight to be given to any evidence rests with the sound discretion of the hearing officer.").

This Court defers to the Hearing Officer regarding the credibility of witnesses and finds

that the Hearing Officer determined Appellants' corporate witness to be credible before weighing his testimony among other factors.

B. Issues of Law

While this Court must defer to the agency with regard to findings of fact, questions of law "are not binding upon the court and may be reviewed to determine what the law is and its applicability to the facts." *Narragansett Wire Co. v. Norberg*, 118 R.I. 596, 607, 376 A.2d 1, 6 (1977). "Although [the] Court is the final arbiter of questions of statutory construction, it is also true that '[the Court] give[s] deference to an agency's interpretation of an ambiguous statute that it has been charged with administering and enforcing, provided that the agency's construction is neither clearly erroneous nor unauthorized.'" *Rossi v. Employees' Retirement System of the State of Rhode Island*, 895 A.2d 106, 113 (R.I. 2006) (quoting *Arnold v. Rhode Island Department of Labor and Training Board of Review*, 822 A.2d 164, 169 (R.I. 2003)).

1. Clear Errors of Law

Section 3-5-23(b) provides:

> "If any licensed person permits the house or place where he or she is licensed to sell beverages under the provisions of this title to become disorderly as to annoy and disturb the persons inhabiting or residing in the neighborhood, or permits any gambling or unlawful gaming to be carried on in the neighborhood, or permits any of the laws of this state to be violated in the neighborhood, in addition to any punishment or penalties that may be prescribed by statute for that offense, he or she may be summoned before the board, body, or official that issued his or her license and before the department, when he or she and the witnesses for and against him or her may be heard. If it appears to the satisfaction of the board, body, or official hearing the charges that the licensee has violated any of the provisions of this title or has permitted any of the things listed in this section, then the board, body, or official may suspend or revoke the license or enter another order."

"The word 'disorderly' as used here contemplates conduct within premises where liquor is

dispensed under a license that causes either directly or indirectly conditions in the neighborhood in annoyance of or disturbing to the residents thereof." *Cesaroni v. Smith*, 98 R.I. 377, 384, 202 A.2d 292, 296 (1964). A liquor licensee

> "assumes an obligation to supervise the conduct of its clientele so as to preclude the creation of conditions within the surrounding neighborhood which would amount to a nuisance to those who reside in the area. This burden, we have said, is 'onerous,' but it is part of the continuing responsibility assumed by the licensee upon receipt or renewal of a license." *A.J.C. Enterprises, Inc. v. Pastore*, 473 A.2d 269, 275 (R.I. 1984) (citing *Cesaroni*, 98 R.I. at 383, 202 A.2d at 296).

Appellants argue that the Hearing Officer misapplied and misinterpreted the law of nuisances because evidence of business interruption or annoyance of a particular tenant does not need to exist to constitute a nuisance. (Appellants' Am. Br. 64.) Appellants claim that Bar 101 created a nuisance per se by violating several statutes pertaining to trespass, vandalism, injury to boundary markers, breaking of windows, defacing business or commercial property, and illegal sale of alcohol on unlicensed property. *Id.* In their Reply Brief, Appellants, as well as DBR in its Brief, argue that the Hearing Officer, applied an improper standard of proof by stating that proof of nuisances must be offered by neighboring tenants before a claim of actionable nuisance can be asserted by abutting landowners and property managers. (Appellants' Reply Br. in Supp. of its Appeal (Appellants' Reply Br.) 3.)

Bar 101 argues that the Hearing Officer did not misapply the law, stating that she used § 3-5-23(b), which all parties agree is the applicable statute. (Bar 101's Br. 22.) Bar 101 emphasizes the discretionary nature of the statute, which states that the Board or Hearing Officer "may suspend or revoke the license or enter another order" if they find a violation of § 3-5-23(b). *Id.* at 23. In its Sur-Reply Brief, Bar 101 asserts that the Hearing Officer did not use Appellants' claimed "evidentiary standard," nor did the Final Decision indicate that the lack of testimony

from neighboring tenants was dispositive. (Bar 101's Sur-Reply Br. in Opp'n to Appellants' Appeal (Bar 101's Sur-Reply Br.) 2-3.)

The Town asserts that the Hearing Officer determined that Appellants' complaints did not rise to the level of disorderly conduct in the context of the liquor licensing statute, consistent with the Rhode Island Supreme Court in *State v. Lead Industries Association Inc.*, 951 A.2d 428 (R.I. 2008). (Town's Br. 11.) The Town asserts that Appellants are clearly seeking relief for a private dispute that is not within the Board's licensing jurisdiction, DBR's appellate jurisdiction, or this Court's jurisdiction under the current appeal. *Id.* The Town claims that Appellants have cloaked a private property dispute under the guise of a public licensing complaint. *Id.*

DBR argues that courts do not look to criminal statutes when considering disorderly conduct for purposes of Title 3, but rather evaluate claims of disorderly conduct pursuant to § 3-5-23. (DBR's Br. 14.) DBR asserts that the Hearing Officer compared and contrasted the facts of this case to prior administrative liquor decisions, concluding that there was no evidence that the parking infringements or other behaviors complained about rose to the level of disorderly conduct in the context of a liquor licensing statute. *Id.* at 16.

The Hearing Officer used *A.J.C. Enterprises, Inc.* as a touchstone in the Final Decision for determining disorderly conduct. In *A.J.C. Enterprises*, the Rhode Island Supreme Court examined the extensive testimony of individuals who appeared before the administrator, noting that multiple witnesses "testified at length concerning the increase in noise, parking congestion, litter, public urination, patrons either screaming, intoxicated, or pugnacious, as well as an increase in various other activities, all of which disrupted the neighborhood's established way of life." *A.J.C Enterprises, Inc.*, 473 A.2d at 274.

A.J.C. Enterprises cites two other cases that assess disorderly conduct at licensed

establishments, *Manuel J. Furtado, Inc. v. Sarkas,* 118 R.I. 218, 373 A.2d 169 (1977) and *Edge-January, Inc. v. Pastore*, 430 A.2d 1063 (R.I. 1981). In *Furtado*, the Rhode Island Supreme Court affirmed a local licensing board's finding that disorderly conduct occurred outside of the licensee club and the board's subsequent revocation of the club's liquor license. *Furtado*, 118 R.I. at 225, 373 A.2d at 172. At the town hearing, police officers testified to incidents on the club's premises over a one-week span from October 24 through November 2, 1973, including three shots fired outside the club that left a woman with a leg wound; blood all over the sidewalk after a fight outside the club; seven arrests of individuals who exited the club bearing baseball bats leaving one person bleeding badly after a blow from the aforementioned bats; and a search of the establishment that uncovered weapons, needles, and syringes on the floor. *Id.* at 220-21, 373 A.2d at 170. The Court found that there was evidence in the record to show support of the administrator's decision finding that the club owner had allowed the premises to become disorderly so as to annoy and disturb people inhabiting or residing in the neighborhood pursuant to § 3-5-23. *Id.* at 225, 373 A.2d at 172.

Similarly, in *Edge-January, Inc.*, the Rhode Island Supreme Court reviewed two companion cases involving the denial of liquor license renewal applications for establishments in close proximity to one another in Pawtucket called The Edge and January's. *See Edge-January, Inc.*, 430 A.2d at 1063. At a city hearing

> "the chief of the Pawtucket police department testified to fights and other incidents at petitioner's establishments that required police response on numerous occasions. Essentially, the neighbors testified that there was excessive noise in the area, that young people urinated on their property, that people drank beer in cars that were parked illegally in front of said property, and that people smashed bottles and generally littered the neighborhood. Some neighbors testified that they were often awakened by the loud yelling and the tooting of automobile horns that occurred around closing time at petitioner's establishments. All of the neighbors

> testified that the problems outlined had been going on for a number of years." *Id.* at 1064.

The Court rejected the licensee's testimony and arguments that the disturbances may have been created by neighboring establishments licensed to sell liquor in the area. *Id.* at 1066. It affirmed the trial justice's determination that there was legal, competent evidence from which it could be reasonably inferred that the establishments generated disorderly activities and disruptive incidents in the neighborhood. *Id.*

In addition to *A.J.C. Enterprises*, the Final Decision addressed other DBR decisions that Appellants cited in support of their position*: Pasha Lounge, Inc. d/b/a Pasha Hookah Bar v. City of Providence, Board of Licenses*, DBR No. 15LQ022 (4/4/16) and *The Vault Lounge, LLC v. City of Providence, Board of Licenses*, DBR No. 17LQ014 (7/12/18) and (4/19/18). (Final Decision at 20.) The Final Decision stated:

> "Both decisions relied on *A.J.C. Enterprises*. In *Vault*, there was ongoing evidence of parking by the licensee's patrons in a private parking lot across the street from the licensee that was clearly marked as private. It was not an open adjoining lot to the licensed premises. There was evidence of said patrons being loud, listening to music, drinking, and of prostitution late at night so as to disturb the neighbors. In *Pasha*, the licensee was having unlicensed entertainment (which it stopped), and there were ongoing noise issues and continuing public urination (though not necessarily from the licensee)." *Id.*

Comparing the evidence before the DBR in this case with the examples from *A.J.C. Enterprises* and several previous DBR cases, the Hearing Officer decided that neither the parking infringements nor any other behavior presented rose to the level of disorderly conduct or a nuisance in the context of the liquor licensing statute. *Id.* at 21 ("Unlike in *A.J.C. Enterprises*, in this matter, there was no evidence of noise, parking congestion, litter, public urination, or of patrons either screaming, being intoxicated, or pugnacious."). The Final Decision states that the

evidence presented comprised of various incidents spanning from late 2019 through part of 2022, with no evidence showing parking issues for the past year. *Id.* Further, the Final Decision notes that some evidence indicated a recent improvement in the parking issues. *Id.*

In reviewing the Final Decision, this Court may not consider "whether the evidence was strong or weak, direct or circumstantial[.]" *Edge-January, Inc.*, 430 A.2d at 1065. "Rather, the test on review is whether or not there is any legal evidence or reasonable inferences therefrom which support the decision." *Frat House, Inc. v. Voccola*, No. PC-1989-0921, 1989 WL 1129417, at *2 (R.I. Super. July 19, 1989). This Court finds that the Final Decision does not contain clear errors of law. Instead, it lays out the appropriate case law and statutory language to determine fact patterns that amount to disorderly conduct. Then, it compares the evidence on the record to behaviors and events previously held as disorderly conduct, and uses reasonable inferences to support the conclusion that the parking issues and other incidents alleged by Appellants are not disorderly conduct according to § 3-5-23(b) or Rhode Island Supreme Court precedent.

2. License Approval and Sanctions

When reviewing an agency decision, a "Superior Court justice [is] not permitted to decide whether the [agency] chose the appropriate sanction but instead to determine whether the [agency's] finding . . . was supported by any competent record evidence." *Rocha v. State Public Utilities Commission*, 694 A.2d 722, 726 (R.I. 1997); *see also City of Warwick v. DeAngelis*, No. PC-04-3354, 2005 WL 957731, *3 (R.I. Super. Apr. 19, 2005) ("Since any penalty or sanction is a part of the decision-making process, it is reviewed in the same manner that this Court reviews any agency decision."). Additionally, the First Circuit Court of Appeals "held that 'an agency's choice of sanction is not to be overturned unless the reviewing court determines it is unwarranted

in law or without justification in fact.'" *Broad Street Food Market, Inc. v. U.S.*, 720 F.2d 217, 220 (1st Cir. 1983) (quoting *Kulkin v. Bergland*, 626 F.2d 181, 184 (1st Cir. 1980)).

According to 230 RICR 30-10-1 § 1.4.27:

> "A. All licenses granted or issued must identify a premise for operation under the license. The licensed premises is that portion of the licensee's property owned, leased or controlled by the licensee, on which or from which alcoholic beverage may be sold, served or stored. It shall be defined by the licensee at the time the application (new or renewal) is filed and finally determined by the approval of the local licensing board.
>
> "B. In addition, every applicant is required to submit to the local licensing board and keep current an accurate drawing of the licensed premises outlining and giving dimensions of the area which is actually the subject of the license. Any sale, service or storage of alcoholic beverages outside the licensed premises is a violation.
>
> "C. Once the licensed premise is established, any expansion thereafter shall require a hearing as prescribed in R.I. Gen. Laws § 3-5-17 and the approval of the local licensing board. A decrease in the area of the licensed premises requires notification to the local licensing board and filing of a revised drawing. Any notice of a decrease in the area shall not require a public hearing."

Section 3-5-17 requires that

> "[b]efore granting a license to any person under the provisions of this chapter and title, the board, body or official to whom application for the license is made, shall give notice by advertisement published once a week for at least two (2) weeks in some newspaper published in the city or town where the applicant proposes to carry on business, or, if there is no newspaper published in a city or town, then in some newspaper having a general circulation in the city or town. Applications for retailer's Class F, P and Class G licenses need not be advertised. The advertisement shall contain the name of the applicant and a description by street and number or other plain designation of the particular location for which the license is requested. Notice of the application shall also be given, by mail, to all owners of property within two hundred feet (200') of the place of business seeking the application. The notice shall be given by the board, body or official to whom the application is made, and the cost of the application

> shall be borne by the applicant. The notices shall state that remonstrants are entitled to be heard before the granting of the license, and shall name the time and place of the hearing. At the time and place a fair opportunity shall be granted the remonstrants to make their objections before acting upon the application; provided that no advertisement or notice need be given pursuant to this section when a license holder applies for a temporary seasonal expansion of an existing liquor license."

Appellants argue that Bar 101 operated illegally out of unit 105 for a period of over one year, which constituted a common nuisance as a matter of law. (Appellants' Am. Br. 57.) Appellants assert that the Hearing Officer failed to assess any meaningful penalty to Bar 101 despite their illegal use of unit 105. *Id.* Appellants argue that Bar 101 is unfit for any license due to the negative impacts of Bar 101's "illicit operation" in unit 105 on its neighbors. *Id.* at 57-58. Appellants assert that Bar 101 intentionally disregarded liquor control laws and is unable to control parking, trespassing, or property damage on neighboring properties. *Id.* at 59. Appellants state that the Hearing Officer was obliged to halt, prevent, rectify, or punish violations of Rhode Island liquor laws and regulations. *Id.* at 60.

Bar 101 argues that the Hearing Officer reiterated her finding that its expansion into unit 105 without applying for an expansion was a violation of § 1.4.27. (Bar 101's Br. 13.) Bar 101 asserts that the Hearing Officer considered whether the violation supported overturning the Board's approval of Bar 101's BV License, noting that Bar 101 is expected to know statutory and regulatory requirements for a liquor license, but also recognizing that Bar 101 stopped serving liquor immediately following the First Decision. *Id.* Bar 101 states that the Hearing Officer considered the full circumstances of the situation, including Bar 101's pre-existing liquor license and limited use of unit 105. *Id.* at 14.

The Town argues that the issue before the DBR was an appeal of the Board's decision to approve a service area expansion of a liquor license, limiting the Hearing Officer's review to

standards under Title 3 regarding liquor licensure. (Town's Br. 7.) The Town asserts that the Appellants' requested relief asks the Court to either revoke Bar 101's license or drown Bar 101 in sanctions and conditions to the point of going out of business, despite the fact that the issue at hand is an appeal of a mere service area expansion. *Id.* at 15. The Town states that this Court is bound to the same limited scope in reviewing the Hearing Officer's findings. *Id.*

DBR argues that this is ultimately an appeal of Bar 101's approval to expand its liquor operations into unit 105. (DBR's Br. 10.) DBR asserts that, although there was an entire appeal that predated this matter on similar issues, the current administrative appeal before the Court is not a second chance to relitigate every appeal Appellants have ever filed before the DBR. *Id.* DBR states that this appeal is focused on the actions of the Town and the Final Decision by DBR to uphold the approval of Bar 101's expansion into unit 105. *Id.*

First, this Court takes some pause when reviewing the manner in which the Board handled Bar 101's liquor licensing issues. It is concerning that the Board (and the Town generally) had knowledge of the expansion into unit 105 and never alerted or warned Bar 101 of its obligation to apply for an expanded BV License, but rather "consented" to the noncompliant use. Then, after NDG's complaint, the Board permitted Bar 101 to continue to serve liquor in the expansion into unit 105 despite the requirements under § 1.4.27 for notice and a hearing pursuant to § 3-5-17. Only after the First Decision, which stated that Bar 101 must make the license expansion request pursuant to § 1.4.27 and § 3-5-17, did Bar 101 follow the proper procedure and properly apply for an expansion on May 23, 2022.

Despite the Board's troubling approach in addressing Bar 101's operations in unit 105, the matter before the Hearing Officer in the Final Decision was limited to a review of the Board's June 13, 2022 grant of Bar 101's BV License expansion. In the Final Decision, the

Hearing Officer established a discretionary standard in reviewing the Board's decision.[8] (Final Decision at 22.) The Final Decision walks through the Town's arguments justifying the Board's decision, including the Town's knowledge of and consent to Bar 101's noncompliance; the Appellants' appeals allegedly changing the jurisdiction for interpreting regulations to the DBR rather than the Board; and claimed exemptions for nonconforming use due to COVID-19 pursuant to G.L. 1956 § 45-24-46.5. *Id.* at 23-24. The Hearing Officer classified these arguments as "the Town's attempt to rationalize its apparent indifference to [§ 1.4.27 of] the Regulation," and clarified that the issue at hand was whether Bar 101's noncompliance with the regulations supports overturning the Board's grant of the expansion. *Id.* at 25.

The Hearing Officer stated that Bar 101 was not causing disorderly conduct, so the Board's grant of the expansion could not be overturned on that basis. *Id.* at 26. The Final Decision acknowledged that Bar 101 expanded for eleven months without a hearing from February 2021 through December 2021, but stipulated that "this is not a situation where an unlicensed entity just served alcohol without obtaining a liquor license." *Id.* The Hearing Officer noted that Bar 101 did not open a separate entity in a new building to serve alcohol and claim its license covered both buildings. *Id.* The Hearing Officer observed that Bar 101 served in unit 105 "which is connected to the original licensed premises" and "the evidence is that [unit 105] was only used about once a week" during the eleven months of noncompliance. *Id.*

Ultimately, the Final Decision states that Bar 101's inability to use unit 105 pursuant to the cease and desist order in May and June 2022 could serve as a penalty in the form of a license

[8] "In light of the broad discretion given to the Board, the undersigned only reviews the Board's decision for evidence to support it. The Board's decision need not be unassailable but rather there must be evidence to support the Board's decision. Therefore, the issue is whether there was competent evidence to support the Board's discretionary decision to grant the expansion of license on June l3, 2022." (Final Decision at 22.)

suspension. *Id.* Under § 3-5-21(a)(2), suspension of a license is a valid sanction for a license holder's violation of any applicable rule or regulation. The Hearing Officer did impose a sanction on Bar 101 for violating 230 RICR 30-10-1 § 1.4.27: "the time that unit 105 was unable to be used when it was subject to the cease and desist order in May and June, 2022 can serve as a penalty for [Bar 101's] noncompliance with the Regulation." *Id*.

The Hearing Officer properly considered competent evidence supporting the Board's decision using a deferential standard and upheld the grant of the expanded license accordingly.[9] This Court defers to the Hearing Officer, finding that the sanction was supported by competent evidence and authorized by statute. *See Pakse Market Corp. v. McGonaghy*, No. PC-2001-0927, 2003 WL 1880122, at *3 (R.I. Super. Mar. 14, 2003) ("the Superior Court is not permitted to decide whether an agency chose the appropriate sanction in a given case because to do so is an act substituting the court's judgment for that of the agency").

C. Arbitrary and Capricious

An agency decision is arbitrary or capricious when it is "characterized by an abuse of discretion." *Barrington School Committee*, 608 A.2d at 1138. "While the scope of review under the 'arbitrary and capricious' standard is narrow and a court is not to substitute its judgment for that of the agency, the agency nevertheless must examine the relevant data and articulate a satisfactory explanation for its action." *Motor Vehicle Manufacturers Association of the United*

[9] "The granting or denying of such licenses is in no sense an exercise of the judicial process. On the contrary it is purely administrative. In performing that function the board act as agents of the legislature in the exercise of the police power. After all jurisdictional requirements of the statute are met, it is a matter of discretion whether or not they shall grant the license and this court has no control over their decision." *Board of Police Commissioners of City of Warwick v. Reynolds*, 86 R.I. 172, 176, 133 A.2d 737, 740 (1957).

States, Inc. v. State Farm Mutual Automobile Insurance Company, 463 U.S. 29, 30-31 (1983).

The First Circuit Court of Appeals identifies an agency action as arbitrary and capricious when the agency "'relies on improper factors, fails to consider pertinent aspects of the problem, offers a rationale contradicting the evidence before it, or reaches a conclusion so implausible that it cannot be attributed to a difference of opinion or the application of agency expertise.'" *Littlefield v. U.S. Department of the Interior*, 85 F.4th 635, 643 (1st Cir. 2023), *cert. denied sub nom. Littlefield v. U.S. Department of the Interior*, 144 S. Ct. 1117 (2024) (quoting *Boston Redevelopment Authority v. National Park Service*, 838 F.3d 42, 47 (1st Cir. 2016)).

Appellants argue that the Hearing Officer relied on improper factors unintended by the Legislature, like the effects of illegal parking trespasses on neighboring properties. (Appellants' Am. Br. 62.) Appellants assert that the Hearing Officer entirely failed to consider the illegal nature of repeated trespasses on and damage to properties neighboring Bar 101. *Id.* Appellants further argue that the Hearing Officer failed to properly consider important aspects of the problem, including the illegality of each and every trespass; that nuisances per se arose from months of statutory liquor sales violations in unit 105; and that Bar 101 failed to investigate and enforce security measures to curtail the repeated presence of a criminal element on the premises. *Id.*

Bar 101 argues that the nuisance per se statute that Appellants want to apply in this case, G.L. 1956 § 11-30-1, is explicitly restricted to defining conduct pursuant to chapter 30 of title 11 and chapter 1 of title 10. (Bar 101's Br. 21.) Bar 101 asserts that title 3 does not vest DBR with authority to adjudicate criminal statutes. *Id.* Bar 101 maintains that Appellants cannot insert criminal statute definitions into the liquor control statute in order to make title 3 say something that it does not. *Id.*

The Town asserts that neither DBR nor the Board have the jurisdiction to adjudicate criminal allegations. (Town's Br. 12.) The Town categorizes the alleged criminal conduct and negative behavior as a red herring that asks the Court to exceed its jurisdiction. *Id.* The Town argues that if the Appellants want the Court to opine on alleged criminal matters and alleged negative behavior, the appeal of a licensing renewal is not the correct avenue to pursue a claim of relief. *Id.* at 13.

DBR argues that Appellants' references to criminal statutes are misplaced because liquor control laws follow their own jurisprudence and title 3, including § 3-5-23. (DBR's Br. 14.) DBR asserts that courts do not look to criminal statutes to determine whether conduct on a licensee's premises rises to the level of disorderly conduct. *Id.* DBR states that there is an absence of any reliable or conclusive evidence on the record that would support Appellants' assertion that Bar 101 is associated with criminal actors or condones criminal activity on the premises. *Id.*

As established above, the Hearing Officer did not rely on improper factors in issuing the Final Decision; she evaluated the evidence on the record and applied the appropriate case law and statutory language, often comparing the facts before her to fact patterns from previously decided cases. Contrary to Appellants' assertions, the Hearing Officer did consider the trespass and property damage presented by Appellants, but did not find that it amounted to disorderly conduct. As far as the "illegal nature" of these actions that Appellants believe the Hearing Officer failed to examine, DBR is restricted to the application of liquor control laws in reviewing a liquor licensing board's decision and does not possess the authority to adjudicate criminal allegations.

While DBR may consider criminal convictions in evaluating a decision by a liquor licensing board, it cannot convict a licensee of a crime during its review. *See Chernov*

Enterprises, Inc. v. Sarkas, 109 R.I. 283, 288, 284 A.2d 61, 64 (1971) ("[A] proceeding under the laws regulating the sale of alcoholic beverages is entirely separate and distinct from a criminal prosecution for the same offense."); *see also Der Hagopian v. Pastore*, No. 1980-1321, 1981 WL 386452, * 1 (R.I. Super. Nov. 18, 1981) ("[A] proceeding before the State Liquor Control Administrator relating to suspension of a liquor license for permitting the licensed premises to become disorderly was administrative in nature and not criminal.") (citing *Cesaroni*, 98 R.I. at 381, 202 A.2d at 295).

Appellants are adamant that Bar 101 is connected to criminal activities based on a surveillance report that describes a narcotics dealer who was observed sitting inside Bar 101 in September 2021. (RISP Surveillance Aff. ¶ 85.) Appellants accuse the Hearing Officer of failure to consider these criminal activities and Bar 101's subsequent lack of response to the surveillance report. In actuality, the Hearing Officer devoted an entire subsection to addressing this alleged criminal activity. *See* Final Decision at 26-27. She stated that a liquor licensee is accountable for violations of law that occur on and outside its premises pursuant to *Vitali v. Smith*, 105 R.I. 760, 254 A.2d 766 (1969). *Id.* at 27.

The Hearing Officer additionally referenced *Tel Aviv, LLC d/b/a Tel Aviv v. City of Providence, Board of Licenses*, DBR No. DBR 16LQ015 (12/8/16), a previous DBR case where the bar manager was selling drugs inside licensee and police discovered drugs on his person during a search. *Id.* She subsequently contrasted *Tel Aviv* with the target of police surveillance, who may have sold drugs in various public places. *Id.* Additionally, the Final Decision states that "[u]nlike in *Tel Aviv*, there were no arrests or convictions for drug dealing in relation to anyone working or patronizing [Bar 101]." *Id.* The Final Decision properly considered the surveillance report and determined that there was no basis to deny the license expansion application on

alleged criminal activity. *Id.*

In the Final Decision, the Hearing Officer examined all the relevant data and provided satisfactory explanations for the action of upholding the Board's grant of Bar 101's license expansion. This Court finds that the Final Decision is not arbitrary and capricious such that it is characterized by an abuse of discretion.

IV

Conclusion

For all of the foregoing reasons, the appeal by Appellants National Development Group, Inc. and Applegate Realty Co. from the Department of Business Regulation's June 30, 2023 Final Decision is **DENIED** and the Final Decision is **AFFIRMED**. In light of this, Appellants are not entitled to any relief requested in their Complaint. Counsel shall submit the appropriate order for entry.

RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE:	**National Development Group, Inc., et al. v. Rhode Island Department of Business Regulation, et al.**
CASE NO:	**PC-2023-03528**
COURT:	**Providence County Superior Court**
DATE DECISION FILED:	**October 21, 2024**
JUSTICE/MAGISTRATE:	**M. Darigan, J.**
ATTORNEYS:	
For Plaintiff:	**James P. Marusak, Esq.**
For Defendant:	**Stephen J. Macgillivray, Esq.** **Joshua W. Nault, Esq.** **Sara Tindall-Woodman, Esq.** **Dylan B. Donley, Esq.** **Julissa Arce, Esq.**