

COMMONWEALTH OF MASSACHUSETTS

NANTUCKET, ss

CA. NO. 2375CV00013

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Charles Johnson,

Plaintiff

v.

Filed 05/12/2023

Alcoholic Beverages Control Commission

Town of Nantucket

Town of Nantucket Select Board sitting

as the Local Licensing Authority

Straight Wharf Fish Market, LLC,

Defendants.

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**COMPLAINT for M.G.L. c. 30A Administrative Appeal**

**Parties**

1. Plaintiff Charles Johnson is an abutter of the property in dispute and is an individual who owns real estate located at Old North Wharf, #12, Nantucket MA 02254.
2. Defendant Town of Nantucket is a duly organized town under the laws of Massachusetts.
3. Defendant Select Board of the Town of Nantucket is duly authorized and by the Town of Nantucket and sits as the local licensing authority (the "Local Licensing Authority") for the issuance of liquor licenses.
4. Defendant Straight Wharf Fish Market LLC (the "Applicant") applied for a Beer and Wine license from Town of Nantucket for a restaurant located next door to and abutting Plaintiff's property at 4 Harbor Square, Nantucket, MA 02254, where the buildings on the respective properties are 18 inches apart.
5. Defendant Alcoholic Beverages Control Commission (the "ABCC") is an agency under the Commonwealth of Massachusetts responsible for, among other things, evaluating applications for Beer and Wine Licenses to determine whether such a license should issue.

### **Facts**

6. On April 6, 2023, the Local Licensing Authority held a hearing regarding the application for a Wine and Malt Beverages and Cordials Liquor License (“Wine and Beer License”) by the Applicant. The Local Licensing Authority granted the license same day on April 6, 2023.
7. On April 11, 2023, the ABCC approved the Local Licensing Authority’s decision and approved the Applicant’s application for a liquor license, causing the license to issue.
8. The ABCC’s decision to approve the license was improper because the ACC and the local licensing authority:
  - a. ignored evidence presented regarding the inappropriateness of the license at the existing location;
  - b. ignored the fact that the number of existing dispensaries in Nantucket militated against approving the license;
  - c. disregarded the negative effect that the granting of the license would have on the abutting residences and neighbors;
  - d. ignored traffic, noise, congestion, and parking problems that would be generated by the granting of said license;
  - e. ignored the effect that the granting of the license would have on the abutting residences and neighbors;
  - f. ignored the fact that the nature of the operation, which is the conversion of a retail fish market to a sit-down restaurant with an entertainment license, creates a deleterious effect on the abutting residential neighborhood;
  - g. ignored the applicant’s misrepresentations on the building permit applications as to the nature and scope of the renovations and the use of the premises; and
  - h. ignored the material facts and the legal standards set forth under M.G.L. c. 138 and associated promulgated regulations in approving the license.
9. Plaintiff is aggrieved of the ABCC’s and the Local Licensing Authority’s issuance of the Beer and Wine license to Defendant and as an abutter has standing to appeal the ABCC decision under M.G.L. c. 30 A.

### **Request for Administrative Appeal**

WHEREFORE, Plaintiff hereby appeals the ABCC’s April 11, 2023 approval of the Applicant’s license and the Local Licensing Authority’s granting of said license on the grounds that the ABCC’s decision was:

1. In excess of the statutory authority or jurisdiction of the agency;
2. Based upon an error of law;
3. Unsupported by substantial evidence; and
4. Arbitrary or capricious, an abuse of discretion, or otherwise not in accordance with law.

**Plaintiff seeks the invalidation of the license granted by the ABCC to Defendant.**

Respectfully submitted,

CHARLES JOHNSON,

By his attorney,

/s/ Danielle E. deBenedictis

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Dated: May 11, 2023