

**STATE OF NEW JERSEY
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF ALCOHOLIC BEVERAGE CONTROL**

IN THE MATTER OF THE MOUNTAINVIEW)	
SOCIAL CLUB REQUEST FOR WAIVER)	SR 2021-02
UNDER N.J.A.C. 13:2-8.3 AND 13:2-8.4 FOR)	GRANTING REQUEST FOR WAIVER
ISSUANCE OF A CLUB LICENSE PURSUANT)	OF N.J.A.C. 13:2-8.3
TO N.J.S.A. 33:1-12(5))	AND N.J.A.C. 13:2-8.4
_____)	

BY THE DIRECTOR:

I. Background.

The Division of Alcoholic Beverage Control (“Division” or “ABC”) received a waiver request pursuant to N.J.A.C. 13:2-8.5(b), and supporting documents, submitted by the Mountainview Social Club (the “Club” or “Mountainview”) located at Cedar Crest Village, Inc., Continuing Care Retirement Community (“Cedar Crest Village”), in Pequannock Township, New Jersey. Mountainview needs this waiver because it does not meet the requirements for qualifying for a Club License pursuant to N.J.S.A. 33:1-12(5) and its implementing regulations.

A Club License is a “Class C License” under N.J.S.A. 33:1-12(5) and permits the holder of such license to sell alcoholic beverages for immediate consumption upon licensed premises and only to *bona fide* members of the Club and their guests. Under N.J.A.C. 13:2-8.1, a *bona fide* Club consists of sixty or more persons, of legal drinking age, operating solely for benevolent, charitable, fraternal, social, religious, recreational, athletic or similar purposes and not for private gain. Under N.J.A.C. 13:2-8.3 a *bona fide* Club must have been in active operation in New Jersey for at least three years continuously prior to its submission of its application for a club license. Moreover, under N.J.A.C. 13:2-8.4, a club must have been in exclusive possession and use of a clubhouse for at least three years continuously immediately prior to the submission of its application for a license.

Mountainview satisfies the requirement that a Club must be a *bona fide* club having sixty or more members of legal drinking age but it does not satisfy the requirements as found in N.J.A.C. 13:2-8.3 and -8.4, described above. Mountainview is requesting a relaxation of these two provisions. Mountainview has submitted to the Division the following list of documents in support of its waiver request:

- 1) Six Cedar Crest Village campus plans showing the licensed and non-licensed areas and amended plans. Additionally, amended Village plans were submitted on January 21, 2021 and February 17, 2021.
- 2) Minutes from the Township Council of the Township of Pequannock, Morris County, New Jersey, dated March 12, 2019, that amend Chapter 43 of the Revised General Ordinances of the Township of Pequannock to increase the allowable number of Alcoholic Beverage Club Licenses to four.¹
- 3) Amended Club Bylaws.
- 4) Lease Agreement between the Club, as tenant, and Cedar Crest Village, Inc., as landlord.
- 5) Roster of Club's members, along with copies of membership applications executed by each member of the Club.
- 6) Roster of officers.
- 7) Current roster of Club officers and members, dated February 17, 2021.
- 8) Copy of Club's Certificate of Incorporation, duly filed with the State of New Jersey, Department of Treasury, setting forth that the Club has been established as a New Jersey Not For Profit Corporation.
- 9) Letter from Adam W. Brewer, Township Manager of Township of Pequannock, regarding the Township's support of the Club's application for a Club license, dated Nov. 1, 2019.
- 10) Executed amended club license application that was submitted to the Township of Pequannock.
- 11) Further description and purposes of proposed licensed areas, a security plan for the on-site control of alcohol, and clarification of the term 'employees' as used in document submissions, dated February 17, 2021.

¹ There is no limit to the number of club licenses that a municipality may issue. A.B.C. Bulletin 456, Item 9 (May 1, 1941). However, a municipality may, by ordinance, decide not to issue any club licenses or decide to increase or limit the number that shall be issued. N.J.S.A. 33:1-12(5).

In Mountainview's initial letter to the Division, it explained that the Club is being formed to offer alcoholic beverages for on premise consumption only to Cedar Crest Village's residents, their guests, and the Village's employees. The sale and service of alcoholic beverages would be available during the Village's dining hours at the on-site restaurants and during social events held to foster socialization among its members such as birthday and holiday celebrations and special occasion events such as the Super Bowl. Previously, Cedar Crest Village allowed residents to bring their own beer and wine (*e.g.*, "BYOB") to meals at the facility but now the residents desire the convenience of bar service. Although there has been a residents' association at Cedar Crest Village for over three years (since 2001), a club had not been formally established. To properly manage and account for sales tax, other financial aspects and to apply for the Club License, Mountainview incorporated as a New Jersey non-profit corporation on March 12, 2019. Therefore, because the Club only recently incorporated, the Club has not been in formal existence for three years and has not had control of clubhouse quarters for three years.

Mountainview further represents that Cedar Crest Village is not a typical "retirement" community but rather a Continuing Care Retirement Community ("CCRC") that is highly regulated. It receives a Certificate of Authority from the New Jersey Department of Community Affairs, offering a continuum of healthcare living accommodations to the residents. Although open to individuals 55 years of age and older, most of the residents are significantly older when they move in, with the average age exceeding 80 years. The minimum care level of housing is "independent living" in one or two bedroom apartments. If the resident requires additional healthcare services at a later point, the resident may move to "assisted living" quarters or "skilled nursing units" within the Cedar Crest Village complex. The community is self-contained: there are dining services, social activities and programs, an indoor swimming pool, chapel, library, beauty salon and physical rehabilitation.

Finally, Mountainview states that the Club's membership will consist of Cedar Crest Village's residents, their guests and employees. The residents are at least 55 years of age and will be residing in the independent and healthcare units, totaling a capacity of up to 1,900 residents at full occupancy. Mountainview asserts that the Club License would be used solely to enhance the meals and social activities of the elderly residents and their guests, and would not be an additional Class C consumption license that is open to the public. In addition, the Township is in support of Mountainview's Club License application.

II. Legal Analysis.

It is the Director's duty to supervise the manufacture, distribution and sale of alcoholic beverages in a manner that fulfills the public policies and legislative purposes of the Alcoholic Beverage Control Act ("ABC Act"). Of particular relevance to club licenses, these policies and purposes include, namely, "to strictly regulate alcoholic beverages to protect the health, safety and welfare of the people of this State" and "to foster moderation and responsibility in the use and consumption of alcoholic beverages." N.J.S.A. 33:1-3.1(b)(1) and (2).

An applicant for a Club License who does not meet the three-year requirement of continuous active operation with exclusive possession and use of a clubhouse in N.J.A.C. 13:2-8.3 and -8.4 may apply to the Director of the Division for relaxation of these regulatory requirements upon a showing of "special cause." *See* N.J.A.C. 13:2-8.5(b). The Division uses its general relaxation standard in N.J.A.C. 13:2-9.1 in determining whether the special cause standard has been satisfied.

N.J.A.C. 13:2-9.1 provides:

The rules may be relaxed by the Director upon a showing of undue hardship, economic or otherwise, on a licensee; that the waiver of the rule would not unduly burden any affected parties; and that the waiver is consistent with the underlying purposes of Title 33 and the implementing rules. Waiver requests must be submitted in writing to the Director and shall include all documentation which supports the applicant's request for a waiver.

A. Division's Concerns.

During its review of the submissions made by Mountainview, the Division raised several concerns to the Club's counsel and the Township of Pequannock about the proposed licensed premises as represented on the property plans. The proposed areas to be licensed appeared to extend throughout most of the expansive property as opposed to being restricted to contained discreet areas. N.J.S.A. 33:1-26. These areas included those well beyond where one would reasonably expect the sale and service of alcohol if the purpose of the Club were to enhance the meals and social activities of the elderly residents and their guests. The Division found this to be indicia that the licensee may not have supervision and control over the licensed areas at all times.

The statutory requirement in N.J.S.A. 33:1-26 states that a license must be sited at a licensed premises and the effect of a license is confined to the licensed premises. Moreover, because there are significant responsibilities and liabilities associated with holding an alcoholic beverage license, "each licensee must have and maintain a continuing possessory interest and control over the licensed premises." *See* N.J.A.C. 13:2-9.3. As such, the proposed plans were inconsistent with Title 33. However, the applicant amended and resubmitted their proposed plans demonstrating that alcohol consumption is limited to confined areas and for specific purposes. The Division found these changes to be satisfactory and consistent with Title 33.

In addition, the Division questioned why employees of Cedar Crest Village would be permitted to consume alcoholic beverages for on-premises consumption under the Club License when the privileges of that license are available only for members and their guests. The Division concluded that employees of Cedar Crest Village constitute members of the public and are therefore prohibited from consuming alcoholic beverages under the privileges of the Club License. *See* N.J.S.A. 33:1-12(5).

B. Application of N.J.A.C. 13:2-9.1 to Mountainview's Club Waiver Application.

Based on the Division's review of Mountainview's submissions, the Division finds that the Club has demonstrated that a denial of its application would cause a social hardship and

inconvenience to its elderly residents. Granting this relaxation request will make it easier for residents to enjoy an alcoholic beverage with their meals or at social gatherings. Further, it will obviate the need for residents to bring their own alcohol from their residential quarters or travel to a liquor store, which is likely difficult for them. Moreover, many of the elderly residents may be unable to travel because of their declining health. For these residents, the Club may be their only opportunity to socialize and enjoy an alcoholic beverage with their guests and other Club members.

Second, granting this relaxation will not unduly burden any affected parties. The Mountainview Social Club will provide a service to its elderly residents and their guests, and will not be open to the public. Therefore, the Club will have very little impact on retail consumption licensees in the area because these licensees are not in competition with Mountainview.

Finally, granting the relief sought is not inconsistent with the underlying purposes of Title 33 and the implementing regulations. A club license at this community will allow the residents and their guests to enjoy a glass of wine, beer or spirits with meals, or at organized social events and activities held at Cedar Crest Village, without the inconvenience of BYOB. This privilege will enhance the quality of life for the elderly residents in their later years and their guests, and does not appear to undermine the fundamental principles set forth in Title 33.

Based on the Division's review of Mountainview's submissions and representations, the Division finds that the Club is a *bona fide* Club as defined by N.J.S.A. 33:1-12(5) and N.J.A.C. 13:2-8.1. Further, the Division finds that Mountainview has established good cause in accordance with the requirements of N.J.A.C. 13:2-9.1 to warrant relaxation of the provisions in N.J.A.C. 13:2-8.3 and -8.4 under the circumstances described herein.

III. Conclusion.

Based on the foregoing, the issuing authority is authorized to consider Mountainview's Club License application for a new Club License for the 2020-2021 license term. The issuing authority may consider granting or denying said application in a reasonable exercise of its discretion.

Please be advised that this Special Ruling is limited to the facts of this specific situation involving a non-for-profit club situated in a CCRC that wishes to provide alcohol service to its elderly residents and their guests.

Please be advised that this relief granted by the Director is based upon the representations and submissions as set forth in the Petitioner's *ex parte* letters. The relief granted is subject to review and/or modification should the factual circumstances warrant.

For questions about this Special Ruling, please contact Deputy Attorney General Amy Beth Cohn in the Office of Counsel to the Director at (609)376-9672.



JAMES B. GRAZIANO
DIRECTOR

DATED: April 7, 2021
JBG/ABC