



Town of Barnstable

Regulatory Services

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BARNSTABLE LICENSING AUTHORITY LICENSING HEARING MINUTES

**Town Hall Building, 367 Main Street, 2nd Floor Hearing Room, Hyannis, MA – 9:30 a.m.
February 13, 2012**

A regular meeting of the Barnstable Licensing Authority was held on Monday, February 13, 2012. Chairman Martin Hoxie called the meeting to order at 9:30 A.M. He introduced Gene Burman, Vice Chairman; Paul Sullivan, Clerk; Thomas Geiler, Director of Regulatory Services and Licensing Agent, Richard Scali, Consumer Affairs Supervisor, Lt. John Murphy and Patrolman Steve Maher, Liaison Officers from the Barnstable Police Department, and Christine Ade, Recorder.

Mr. Hoxie congratulated John Murphy, who has been promoted to Lieutenant.

Hearings:

One Day Entertainment License: Application of Sheila Burns on behalf of Barnstable Education Foundation, P.O. Box 373, Centerville, for a One Day Entertainment License at Barnstable High School's Knight Auditorium, 744 West Main Street, for a night of music and comedy with Four Guys in Tuxes and stand-up comedy act, Glen Anderson to be held on March 16, 2012 from 7 pm to 10 pm.

Sheila Burns, retired Principal, appeared for this application. This organization is in business to raise money for the schools and students. Grant requests are submitted to them for approval. Among other special things they organize, the Museum of Science is coming down for hands-on activities with students. These are things not covered in the regular school budget. This event is a first. The musical group are professional musicians and the comedian was Principal and Asst. Superintendent in Barnstable, now retired. He has honed his skills as a comedian. His debut is here at this event. It is a non-profit organization. Admission will be charged.

Mr. Hoxie asked to waive the fee for this event.

A motion was duly made by Gene Burman and seconded by Paul Sullivan and a unanimous vote taken to grant the application of Sheila Burns on behalf of Barnstable Education Foundation, P.O. Box 373, Centerville, for a One Day Entertainment License at Barnstable High School's Knight Auditorium, 744 West Main Street, for a night of music and comedy with Four Guys in Tuxes and stand-up

comedy act, Glen Anderson to be held on March 16, 2012 from 7 pm to 10 pm and that the fee be waived.

One Day Entertainment License: Application of Sarah Horvath on behalf of BHS Celebration, 744 Main Street, Hyannis, for a One Day Entertainment License at The Cape Codder Resort, 1225 Lyannough Road, Hyannis, for a fundraiser comedy night with a silent auction, to be held on March 2, 2012 from 7 pm to 10 pm.

Ms. Horvath appeared for her request. They are also holding a one day event which is a fundraiser – it is their 17th year. They put on the after prom party at the high school which is drug and alcohol free – once in they have to stay there. They have a whole array of fun things for them to do. Events are scheduled throughout the night. They are charging a fee. They will have light refreshments at the comedy night.

Mr. Sullivan made a motion to waive the fee for this event as well.

A motion was duly made by Gene Burman and seconded by Paul Sullivan and a unanimous vote taken to approve the application of Sarah Horvath on behalf of BHS Celebration, 744 Main Street, Hyannis, for a One Day Entertainment License at The Cape Codder Resort, 1225 Lyannough Road, Hyannis, for a fundraiser comedy night with a silent auction, to be held on March 2, 2012 from 7 pm to 10 pm and for the fee to be waived.

One Day Wine and Malt License: Application of Chef Ralph Binder, The Mad Platter, on behalf of Cape Cod Chamber of Commerce Business After Hours, for a One Day Wine & Malt License for an event at Barnstable Municipal Airport's New Terminal on February 15, 2012 from 5:30 pm to 7:30 pm.

Robert Lawton appeared with Chef Bender for this event. It runs from 5:30 to 7 pm. On the plan it shows where the alcohol will be served. There will be 2 TIPS trained bartenders. The area was chosen to eliminate the opportunity for those coming in from a flight (they are on the left side of the airport) to have to pass through this area on the right side. Mr. Hoxie stated this was a thorough presentation.

A motion was duly made by Gene Burman and seconded by Paul Sullivan and a unanimous vote taken to approve the application of Chef Ralph Bender, The Mad Platter, on behalf of Cape Cod Chamber of Commerce Business After Hours, for a One Day Wine & Malt License for an event at Barnstable Municipal Airport's New Terminal on February 15, 2012 from 5:30 pm to 7:30 pm.

Transfer of Annual Wine & Malt Common Victualler License: Application of Kin On Restaurant, d/b/a Golden Fountain Restaurant, 203 West Main Street, Hyannis, Kam Ling Kuet, Manager, for Transfer of its Annual Common Victualler Wine & Malt License to Liu Ming Hua, Inc., d/b/a Golden Fountain Restaurant, Qiao Jin Zhang, Manager with no changes to the premises.

Attorney Chris Coleman appeared on behalf of the applicant. This is in the Cumberland Farms plaza. There will be no change in layout – no bar, no lounge. Alcohol service will be weekdays 11 am to midnight. The manager has been in Tennessee the last few years and is TIPS trained. Anyone serving alcohol will also be TIPS trained.

A motion was duly made by Gene Burman and seconded by Paul Sullivan and a unanimous vote taken to approve the application of Kin On Restaurant, d/b/a Golden Fountain Restaurant, 203 West Main Street, Hyannis, Kam Ling Kuet, Manager, for Transfer of its Annual Common Victualler Wine & Malt License to Liu Ming Hua, Inc., d/b/a Golden Fountain Restaurant, Qiao Jin Zhang, Manager with no changes to the premises.

Status of All Alcohol Common Victualler License: Status of license renewed for 2012 for H&S Entertainment, LLC d/b/a Dina's, at 350 Stevens Street, Hyannis, MA, Constantinos Mitrokostas, Manager, for violation of MGL, Ch. 138 and the Town of Barnstable Code Ch. 501-6 § L for failure to notify the Licensing Authority in writing of closing of its business, and failure to request a hearing for a closing in excess of two weeks.

Attorney Nunheimer appeared for Dina's along with Mr. Mitrokostas. They were closed and apologize for the lack of notice. They plan to open April 1, 2012 and will have a new Manager. At some point thereafter they will be transferring the license.

Mr. Scali asked what the transfer will be; the business is for sale. A sale fell through in the Fall and they are confident the new opportunity will close within 7 months and they will open April 1st. Mr. Sullivan asked if it is annual or seasonal; it is annual. Mr. Burman advised the ABCC has told us it is a minimum of 6 wks when a transfer or application hits them.

A motion was duly made by Gene Burman and seconded by Paul Sullivan and a unanimous vote taken to dismiss the show cause hearing.

New Class II Auto Dealer License: Application of Said Alharthy, d/b/a Adymar's Auto and Truck Repair, 31 Thornton Drive, Bay E, Hyannis, MA for a New Annual Class II Auto Dealer License, hours of operation to be Mon – Sat 8 am to 5 pm. Maximum of 8 vehicles total on premises.

Attorney Mark Boudreau appeared for Mr. Alharthy. They are looking for a Class II license for 8 autos total, Mon – Sat. 8 am to 5 pm. This was a repair facility for the past 4 years. Mr. Burman advised the 8 vehicles are separate from the repair vehicles. This is an end bay – he has the ability to park more cars on the end.

Officer Maher advised there are almost 600 used vehicles in town already and we have pretty much come to a point of saturation for Class II Auto Dealers. He also said all he does at night is count cars; the total must be what this is. He also

questioned whether this the primary business. Attorney Boudreau said the primary business would be the sale of cars. He stated that the total approved by the Building Commissioner is 14 on the lot.

Mr. Hoxie asked that the problem of saturation of Class II licenses can be put on the next agenda. Mr. Sullivan asked if repair would be done there as well? His point is that there are 8 vehicles approved on the signed plan not 14. Attorney Boudreau said that no, he will have 14, 1 of which one is a tow truck – 8 vehicles for sale. Parking is to the right of the building. Ptl. Maher stated the plan shows an approved 8 spots total – the application is for 5 display, 2 employee and 1 customer vehicle. Other vehicles CAN be inside but not outside. The reason for the number is for the police department to view the number outside 24/7 and compare it to the license. The number there must not be more than the plan shows. Mr. Sullivan stated the Class II Dealer licenses are becoming saturated so the numbers must be adhered to.

A motion was duly made by Gene Burman and seconded by Paul Sullivan and a unanimous vote taken to approve the Application of Said Alharthy, d/b/a Adymar's Auto and Truck Repair, 31 Thornton Drive, Bay E, Hyannis, MA for a New Annual Class II Auto Dealer License, hours of operation to be Mon – Sat 8 am to 5 pm. Maximum of 8 vehicles total on premises – 5 display, 2 employees, 1 customer, including 1 tow truck.

New Class II Auto Dealer License: Application Gilbert Wood, d/b/a Cape Wide Auto & Marine II, 730 Bearse's Way, Hyannis, MA for a New Annual Class II Auto Dealer License, hours of operation to be Mon – Fri, 8 am to 4 pm. Maximum of 18 vehicles total on premises, 2 service bays.

Mr. Wood appeared for his application. There has been a license here for 45 years. Mr. Wood had it until 2 years ago; then Raymond Blackburn had it; he has since died. In October of 2009 he had given Mr. Wood a pledge that it revert back to Mr. Wood if he did not renew. It will be run the way it has always been run. This is a door down from the tire store.

A motion was duly made by Gene Burman and seconded by Paul Sullivan and a unanimous vote taken to grant the application of Gilbert Wood, d/b/a Cape Wide Auto & Marine II, 730 Bearse's Way, Hyannis, MA for a New Annual Class II Auto Dealer License, hours of operation to be Mon – Fri, 8 am to 4 pm. Maximum of 18 vehicles total on premises, 2 service bays.

New Seasonal All Alcohol Common Victualler License: Application of 13 Lives Corp, d/b/a Black Cat Harbor Shack, 159 Ocean Street, Hyannis, MA, Scott C. Brownlee, Manager, for a New Seasonal All Alcohol Common Victualler License. Premises located at 159 Ocean Street and a small portion of 165 Ocean Street not utilized by licensee at that address consists of a main structure in front used for food preparation, patron bathrooms and liquor storage of 120 sq. ft. on the 2nd floor only and a smaller accessory rear structure which will consist of a service bar. No

seating located inside either structure. Two take out windows on front deck with seating for 37 not used for alcohol service, 46 seats at the bar and patio to the rear and a total of 83 seats. Hours of operation 11 am to 1 am.

Attorney Dan Creedon appeared for this application. The principals have just finished their first season. There is a rear structure at the property they are renovating to expand the menu offerings for raw bar selections, etc. and to add alcohol. They will have a horseshoe bar with high top and regular tables. Total alcohol service area will be controlled by fencing – the patron access will be stairs down into this patio area. There will be a hostess station. An additional access will be to the rear with a gate towards the Black Cat and an additional gate for handicap access. The total area for this application includes a portion of land at 165 (The Black Cat) which is not utilized by the licensee there. It is leased to this new entity. Mr. Colombo wishes to keep an open landscape area here and that is the reason for the lease. The Manager, Mr. Brownlee, is the Manager for both licenses. All servers and bartenders will be TIPS trained. There is no additional structure at 165 – Mr. Hoxie asked if it is a separate piece of property. Attorney Creedon stated that is technically correct. The reason for the inclusion of the extra land is for aesthetic purposes of where the fence will go – with walkways and gates.

Mr. Scali stated there will be no alcohol served on the 165 portion; the alcohol service will be at 159. The area is needed for easy access only, and is leased for this purpose. Mr. Scali stated it won't be fenced off right there so it has to be included. Mr. Scali stated he is fine with the proposed plan. This is not an expansion of the Black Cat license.

A motion was duly made by Paul Sullivan and seconded by Martin Hoxie and a unanimous vote taken to approve the application of 13 Lives Corp, d/b/a Black Cat Harbor Shack, 159 Ocean Street, Hyannis, MA, Scott C. Brownlee, Manager, for a New Seasonal All Alcohol Common Victualler License. Premises are located at 159 Ocean Street and a small portion of 165 Ocean Street not utilized by licensee at that address consists of a main structure in front used for food preparation, patron bathrooms and liquor storage of 120 sq. ft. on the 2nd floor only and a smaller accessory rear structure which will consist of a service bar. No seating located inside either structure. Two take out windows on front deck with seating for 37 not used for alcohol service, 46 seats at the bar and patio to the rear and a total of 83 seats. Hours of operation 11 am to 1 am.

Mr. Geiler suggested we get a couple more plans showing both properties showing the property lines North and South & Bond Court and the Shore's property lines. He wants the exits/entrances shown.

New Annual Retail Beer & Wine Package Store License: Application of ML Fruit & Produce, Inc., d/b/a Lambert's Rainbow Fruit, 1000 West Main Street, Centerville, Matthew W. Lambert, Manager, for a new Annual Wine & Malt Retail Package Store license. Hours of alcohol sales to be Mon-Sat 8 am to 7 pm, Sun noon to 7 pm. Mr.

Hoxie stated the purpose of the continuation was so that the ABCC could confirm our Barnstable quota. Continued from 1/9/12 and 1/30/12.

Attorney Ted Schilling appeared again for this hearing. Mr. Hoxie advised that we do have three Wine and Malt Package Store licenses available of which we have approved one which is now at the ABCC for consideration. Mr. Hoxie asked if there were any comments and there were none.

A motion was duly made by Gene Burman and seconded by Paul Sullivan and a unanimous vote taken to approve the application of ML Fruit & Produce, Inc., d/b/a Lambert's Rainbow Fruit, 1000 West Main Street, Centerville, Matthew W. Lambert, Manager, for a new Annual Wine & Malt Retail Package Store license. Hours of alcohol sales to be Mon-Sat 8 am to 7 pm, Sun noon to 7 pm.

Show Cause Hearing: Show Cause Hearing on Route 66 Auto Sales, 355 Yarmouth Road, Bill Gasson, Manager, holding a Class II Auto Dealer License, for failure to apply for a change of ownership/management (eliminating William Gasson and adding Michael Caliri) and for a complaint from Jamie Butler for failure of licensee to correct defective vehicle oil burning issue. A consumer complaint was also filed with the Consumer Assistance Council. This disciplinary hearing was called pursuant to MGL c. 140, §58(c) (1) (v) (8).

Mr. Hoxie stated this was originally scheduled for show cause for a citizen complaint which was subsequently withdrawn. The issue at hand now is the change of Manager to the owner's brother, who is working at the premises now. Mark Caliri is the owner. He stated that Michael has worked with him a couple years ago and he is aware of the rules and regulations for Class II dealers and Mark will be available to guide him. Mr. Scali asked if he is here now rather than in Hawaii – he is here living in Mashpee. Mr. Scali also stated Mr. Gasson needed to be removed as a Corporate Officer. Mr. Caliri stated he moved here in June – after review decided to let Mr. Gasson go. They also have a retail store in Chatham. He was appalled at the Jamie Butler issue. Made the change on the articles in June and changed the manager name at renewal time not knowing he needed to tell us of the change of manager. He has owned a home in Mashpee for years so is here now.

A motion was duly made by Gene Burman and seconded by Paul Sullivan for findings to place the show cause hearing on failure to notify the Board of corporate changes and to approve the change of Manager from Bill Gasson to Michael Caliri on file.

Renewals:

Auto Wholesaler's of Cape Cod, 92 Rosary Lane, Hyannis – hearing to discuss tax issues and renewal for remainder of 2012. Laura France came forward for this issue. Mr. Hoxie stated the Tax Collector wants to see her on Wednesday.

A motion was duly made by Gene Burman and seconded by Paul Sullivan and a

unanimous vote taken to renew the license of Auto Wholesalers of Cape Cod, 92 Rosary Lane, Hyannis, Class II Auto Dealer license until 12/31/12. Ms. France was requested to speak to the Tax Collector on Wednesday.

Business Meeting:

Executive Session: Litigation strategy on Ferreira's, 85 Old Yarmouth Road, Hyannis. Mr. Hoxie stated that as a result of imminent litigation this Authority should go into Executive Session as an open session might be detrimental. He is not aware of anything which would need to be revealed today in public session.

A motion was duly made by Gene Burman to go into Executive session without returning to this Licensing Authority Hearing, and by a unanimous roll call vote (Chairman Hoxie yay, Vice-Chairman Burman – yay, Clerk Sullivan – yay) it was approved because hearing in public session might be detrimental to possible upcoming litigation.

The meeting was adjourned at 10:30 a.m.

Respectfully submitted,

Christine P. Ade, Recorder
Town of Barnstable Licensing Authority

Paul Sullivan, Clerk
Town of Barnstable Licensing Authority