



Town of Barnstable
Regulatory Services
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Licensing Authority

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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.
March 4, 2013

A regular meeting of the Barnstable Licensing Authority was held on Monday, March 4, 2013. Chairman Martin Hoxie called the meeting to order at 9:30 A.M. He introduced Gene Burman, Vice Chairman; Paul Sullivan, Clerk; Ron Semprini, Associate Commissioner; David Nunheimer, Associate Commissioner, Thomas Geiler, Director of Regulatory Services and Licensing Agent, Richard V. Scali, Consumer Affairs Supervisor, Lt. John Murphy, Liaison Officer from the Barnstable Police Department, and Christine Ade, Recording Secretary. Patrolman Steve Maher and Dick Boy were absent.

Vote to accept Minutes: Vote to accept minutes of the 2/11/13 Meeting.

A motion was duly made by Mr. Burman, seconded by Mr. Sullivan and a unanimous vote taken to approve the minutes of the 2/11/13 Meeting.

Hearings:

Two One Day Entertainment Licenses: Application of Cecelia Carey on behalf of the Hyannis Rotary Club, 146 Main Street, Hyannis for two One Day Entertainment Licenses for its Annual Home & Garden Show to be held at the Barnstable High School, West Main Street, Hyannis on Saturday, March 23, 2013 from 9:00 am to 5:00 pm and Sunday, March 24, 2013 from 1:00 pm to 10:00 am to 4:00 pm.

Joan Sutherland appeared for this application. This is the 55th year. They have been very successful in the past.

A motion was duly made by Mr. Burman, seconded by Mr. Sullivan and a unanimous vote taken to approve the application of Cecelia Carey on behalf of the Hyannis Rotary Club, 146 Main Street, Hyannis for two One Day Entertainment Licenses for its Annual Home & Garden Show to be held at the Barnstable High School, West Main Street, Hyannis on Saturday, March 23, 2013 from 9:00 am to 5:00 pm and Sunday, March 24, 2013 from 10:00 am to 4:00 pm.

One Day Beer & Wine License: Application of Renee Voorhees, on behalf of Marstons Mills Public Library, 2160 Main Street, West Barnstable, for a One Day Wine and Malt License, for a its annual fund-raising event entitled, Welcome Spring. The event will be held on May 2, 2013 from 5:30 pm to 8:30 pm inside the library.

Ms. Voorhees appeared for this application. This is the 10th annual event and major fundraiser. It has gone off flawlessly in the past each year.

A motion was duly made by Mr. Burman, seconded by Mr. Sullivan and a unanimous vote taken to approve the application of Renee Voorhees, on behalf of Marstons Mills Public Library, 2160 Main Street, West Barnstable, for a One Day Wine and Malt License, for a its annual fund-raising event entitled, Welcome Spring. The event will be held on May 2, 2013 from 5:30 pm to 8:30 pm inside the library.

One Day All Alcohol and One Day Entertainment Licenses: Application of Paul Covell on behalf of Barnstable County Deputy Sheriff's Office, PO Box 3028, Pocasset, MA for a One Day All Alcohol License for its Annual Rib Roast to be held at St. George Greek Orthodox Church, 1130 Falmouth Road, Centerville on March 22, 2013 from 6 pm to 12 am and a One Day Entertainment License for a guitar player and vocalist to entertain at the event.

Paul Covell appeared for Barnstable County Deputy Sheriff's Assn. The alcohol is dispensed and under the care of the Sheriff's Dept.

A motion was duly made by Mr. Burman, seconded by Mr. Sullivan and a unanimous vote taken to approve the application of Paul Covell on behalf of Barnstable County Deputy Sheriff's Office, PO Box 3028, Pocasset, MA for a One Day All Alcohol License for its Annual Rib Roast to be held at St. George Greek Orthodox Church, 1130 Falmouth Road, Centerville on March 22, 2013 from 6 pm to 12 am and a One Day Entertainment License for a guitar player and vocalist to entertain at the event.

Transfer of Annual Wine & Malt package Store License: Application of 4120 Corp., d/b/a Big Daddy's Pizza, 4120 Falmouth Road, Cotuit, Vincent B. Holland, Manager, to transfer its Annual Retail Wine & Malt Package Store License to Ammar Corporation, d/b/a Pepper's Pantry, 4120 Falmouth Road, Cotuit, Mohammad Shafique, Manager, hours of operation for the store to be 7 am - 11 pm M-Sun; alcohol sales Mon-Sat 8 am – 11 pm, Sun noon – 11 pm.

Attorney Thomas Souza appeared with Mr, Shafique with regard to this application. Mr. Shafique is the principal of Ammar Corp. and proposed Manager. Mr. Holland appeared as the seller and current license holder. Mr. Shafique has almost 17 years experience in the liquor industry. No change in the operation of the establishment, just minor renovations. Mr. Burman read the narrative and has a concern that the number of hours and number of stores may limit his hours here. Attorney Souza said he will appoint a new manager for the Sagamore store and probably the Mashpee store and concentrate on this one for now – working here 30 + hours. Mr.

Semprini asked about tables and chairs; Mr. Shafique stated it will all be takeout. Mr. Scali stated the Health Dept. has been there with several issues; where do they stand on that. Mr. Shafique said they are in the process of fixing everything. It is an older place – should be new sink and fixed up by Friday. Mr. Scali also stated there were violations in the other stores for underage sales. He asked what had been done to resolve those issues. Mr. Shafique stated that mistakes sometimes happen – they try to do their best. Attorney Souza stated the individuals working were family members so they were given more training. Mr. Scali asked about the carding process – Mr. Shafique said if they look under 30 they pay particular attention to the ID presented. Mr. Semprini stated on the attachment it says all employees will be TIPS trained – Mr. Shafique stated it will be done within 1 ½ weeks. Mr. Burman asked if they are a food operation or an alcohol operation. He stated it is not an easy operation as they are remote and all takeout. Mr. Shafique stated it just takes hard work. He stated he will not expand on the beer and wine area. Mr. Semprini also stated at one point there were outstanding debts; Mr. Shafique stated he has paid these. Attorney Souza stated as part of the sales agreement it states all must be brought up to date and the ABCC will be checking as well. Mr. Scali asked about the November Lottery offense hearing. Mr. Holland stated that has been postponed to March 25. The hearing was because he owed the Lottery Commission money. It will be taken care of and the hearing canceled as the new owner will want this license as well. That hearing will be dismissed upon payment of the money owed. Lt. Murphy asked about the deli and package store operations simultaneously. Especially concerning is the nighttime hours when the younger people will be trying to get alcohol. He asked how many people he will have working – he will have two. Lt. Murphy asked about surveillance cameras. He does not have them now but will be getting them – has them in his other two stores.

A motion was duly made by Mr. Burman, seconded by Mr. Sullivan and a unanimous vote taken to approve the application of 4120 Corp., d/b/a Big Daddy's Pizza, 4120 Falmouth Road, Cotuit, Vincent B. Holland, Manager, to transfer its Annual Retail Wine & Malt Package Store License to Ammar Corporation, d/b/a Pepper's Pantry, 4120 Falmouth Road, Cotuit, Mohammad Shafique, Manager, hours of operation for the store to be 7 am - 11 pm M-Sun; alcohol sales Mon-Sat 8 am – 11 pm, Sun noon – 11 pm.

Mr. Burman stated as a word of caution there is some skepticism here. Mr. Sullivan stated if it happens again that they are cited for service of minors that he be vigilant. Mr. Geiler asked for the TIPS certificates to be provided to our office and to make sure all employees are also Serv Safe certified.

New Annual All Alcohol Common Victualler License and Live and Non-Live Entertainment Licenses: Application of Regatta, LLC, d/b/a The Regatta, 4631 Falmouth Road, Cotuit, Matthew P. Conley, Manager for a New Annual All Alcohol Common Victualler License: A 2 1/2 story building at 4631 Falmouth Road, Cotuit with two floors consisting of a restaurant, bar and lounge, kitchen with basement and attic for storage. Restaurant on 1st floor seating 68 including bar with 14 seats.

Upper level dining seating 38 and outside seasonal patio with five tables seating 20 on west side of building. Also requested is a Live Entertainment License for 4 performers, dancing by patrons, amplified, from 7 pm to 12:45 am and a Non-Live Entertainment license for radio and recorded music from 8 am to 12:45 am.
Rescheduled to 3/25/13.

Alteration of Premises: Application of Beech Tree Cantina, LLC, d/b/a Beech Tree Cantina, 599 Main Street, Hyannis, Jared Pane, Manager for an Alteration of Premises to replace the existing license description as follows: 599 Main Street, Hyannis, including one two-story wooden structure containing a restaurant with bar area and bistro, sandwich and coffee shop with two secure exterior patios. The front exterior patio has 38 seats. The interior restaurant on the first floor has a total of 113 seats which includes a bar having 27 seats and seating for eight persons in front of fireplace. The interior of the bistro, sandwich and coffee shop consists of 35 seats with 15 bar seats for a total of 163 interior seats on the first floor. There exists a waiting area on the second floor with 8 seats. The rear courtyard consists of a main bar with 9 seats, a service bar with 4 seats, 75 table seats and 12 couch seats for a total of 100 rear courtyard seats. There are three handicap accessible bathrooms on the 1st floor and one man's and one ladies' bathroom located on the 2nd floor. The first floor has 11 means of egress and the second floor has one means of egress. **Continued to allow time to revise new description and plan to 3/25/13 or 4/8/13.**

Mr. Scali advised they need to clarify their description. Mr. Geiler stated it needs to be properly advertised; the seating number will not change significantly but the coffee shop concept will change.

A motion was duly made by Mr. Burman, seconded by Mr. Sullivan and a unanimous vote taken to continue the application to April 8, 2013.

New Common Victualler License: Application of Green Lotus Cafe, LLC, d/b/a Green Lotus Cafe, 349 Main Street, Hyannis, Nathaniel Fanara, Manager, for a New Common Victualler License, with 18 interior seats and 6 exterior seats on the sidewalk, to be open M-F 7 am -3 pm, Sat 8 am – 3 pm.

Nathaniel Fanara appeared to say this is the old La Petite France Café. The seating inside and out will not change.

A motion was duly made by Mr. Burman, seconded by Mr. Sullivan and a unanimous vote taken to approve the application of Green Lotus Cafe, LLC, d/b/a Green Lotus Cafe, 349 Main Street, Hyannis, Nathaniel Fanara, Manager, for a New Common Victualler License, with 18 interior seats and 6 exterior seats on the sidewalk, to be open M-F 7 am - 3 pm, Sat 8 am – 3 pm.

New Common Victualler License: Application of Ming's Golden Pizza, Inc., d/b/a Hot Diggity Dogs, 569 Main Street, Hyannis, Feng Tao, Manager, for a New

Common Victualler License, with 8 interior seats and 30 exterior seats, to be 10 am – 10 pm.

The applicants appeared with Bill Mackenzie who spoke on their behalf. They will serve hot dogs and improve the menu to include some items. They will have no other employees at this time. It will be open 7 days a week. They plan to open in the Spring. Mr. Tao has his serv safe certificate and his mother will get hers. Mr. Semprini asked if they will add pizza or oriental food and was told they would not. Mr. Burman asked if the Health Dept. has approved. There is a meeting scheduled with them for March 12th. Mr. Mackenzie will represent them for that as well.

A motion was duly made by Mr. Burman, seconded by Mr. Sullivan and a unanimous vote taken to approve the application of Ming's Golden Pizza, Inc., d/b/a Hot Diggity Dogs, 569 Main Street, Hyannis, Feng Tao, Manager, for a New Common Victualler License, with 8 interior seats and 30 exterior seats, to be 10 am – 10 pm.

New Annual Package Store Wine & Malt License: Application of Omharsh Corp., d/b/a AM PM Convenience Store, 489 Bearses Way, Hyannis, Chetankum Patel, Manager, for a new Annual Retail Wine & Malt Package Store License, to be operated from 8 am to 11 pm Mon-Sat and noon to 1 am Sun. **Continued from 2/11/13. Request to continue again to 3/25/13 for ZBA Hearing results on 3/13/13.**

Mr. Geiler stated that people are paying special attention to this application as far as the clarification of the Town's quota on package stores, both all alcohol and wine and malt.

A motion was duly made by Mr. Burman, seconded by Mr. Sullivan and a unanimous vote taken to continue this application to 3/25/13.

New Annual Common Victualler License: Application of Alice Maria Da Silva, d/b/a Sabor Do Brasil, 461 B-4 Main Street, Hyannis for a New Annual Common Victualler License, to be operated 7 days, 8 am to 10 pm. Seating for 20, 6 standees, 1 employee. **Continued from 2/11/13. Application withdrawn on 2/21/13.**

A motion was duly made by Mr. Burman, seconded by Mr. Sullivan and a unanimous vote taken to accept the withdrawal of this application.

Show Cause Hearing: Show Cause Hearing for Cape Cod Precious Gems & Coins, 48 Iyannough Road, Hyannis, MA, Carl Marchetti, Manager, for revocation of its Junk Dealer License as a result of information presented to the Licensing Authority by Detective Sgt. John Murphy of the Barnstable Police Department at the December 7, 2009 Licensing Authority Hearing for failure to comply with the Town of Barnstable Rules and Regulations under Chapter 502 regarding non-reporting of items purchased for sale, that it purchased items which appear on a list of stolen

property, and a determination that Mr. Marchetti is an improper person to hold a Junk Dealer License, to show cause why its Junk Dealer License should not be permanently revoked. Continued from 8/10/11, 2/14/11, 6/20/11, 9/19/11. Along with this hearing, the renewal/non-renewal of the Junk Dealer License for 2011-2012 will be determined. Attorney Atwood's Office advised they were still in Court for 9/24/11 but the matter should be wrapped up for the 10/24/11 hearing. Request was made to continue this hearing to 10/24/11 and today it was continued to January 30, 2012 as the prior Licensee is still in Court. Per request of Licensee's attorney, this hearing was continued to March 26, 2012. This matter was continued from the June 24, 2012 hearing as it is still in Court and the attorney again requested a continuance from today's meeting to 9/10/12. Lt. Murphy stated it is going to Trial in November so added to 12/17/12 hearing. Attorney for Mr. Marchetti withdrew so Board continued hearing to 1/14/13. **Continued again to 3/4/13.**

Mr. Hoxie asked if anyone had contacted us with regard to attendance at this hearing, an attorney or Mr. Marchetti. He was advised that they had not. Mr. Hoxie stated that we can resolve this matter at this time. Lt. Murphy said that a search warrant was issued and recovery of stolen property was made; subsequently this matter from November 2009 resulted in an indictment in Superior Court and a trial at which he was found guilty on 2 of the 3 counts and acquitted on one count. His sentence was 4-5 years on each of the 2 convictions with 15 years probation. He will serve 8-10 years in Walpole and should not be allowed a license in the Town of Barnstable within the next 15 years. Mr. Hoxie asked if our new Bylaw helped lead to a conviction and Lt. Murphy stated it did help convict. Mr. Geiler stated the renewal could not be processed during this timeframe. His license was suspended in December of 2009. Mr. Geiler stated he could reapply for a license but we would have to CORI check him at that time. Lt. Murphy requested that the Show Cause Hearing be withdrawn at this time. Mr. Hoxie stated we will take no action and check with Legal to see if we need to do findings. Lt. Murphy stated he has Mr. Marchetti's current address.

A motion was duly made by Mr. Burman, seconded by Mr. Sullivan and a unanimous vote taken to file this matter.

The following renewals have been submitted without any changes from the previous year for Licensing Authority approval:

Common Victualler:

Papa Gino's, 1600 Falmouth Road, Centerville

A motion was duly made by Mr. Burman, seconded by Mr. Sullivan and a unanimous vote taken to approve.

Daily Non-Live Entertainment:

Papa Gino's, 1600 Falmouth Road, Centerville

A motion was duly made by Mr. Burman, seconded by Mr. Sullivan and a unanimous vote taken to approve.

Automatic Amusement:

Papa Gino's, 1600 Falmouth Road, Centerville

A motion was duly made by Mr. Burman, seconded by Mr. Sullivan and a unanimous vote taken to approve.

Business Meeting:

Release of Executive Session Minutes, if any (0). There were none.

ABCC Package Store License Quota discussion. Mr. Scali stated that his memo to the Board (attached) explains the position of the ABCC. We have issued 9 wine and malt package store licenses and there is one available. We have issued 14 all alcohol package store licenses and are 4 over quota. No new ones can issue. The 4 over our quota of 10 all alcohol licenses can be used only if they are transferred from the current licensee. Transfer of these 4 licenses was confirmed in a discussion with Bill Kelly of the ABCC.

Mr. Burman stated that now the all alcohol licenses will have significant value.

Mr. Geiler stated that we now should advise Barnstable Market of the ABCC decision so that it could withdraw its application for an all alcohol license and not be denied.

Mr. Semprini asked what happens with a population decrease. Mr. Geiler stated that if our population drops under 45,000 it would affect the number of package store licenses. He further stated we could appeal the decision of the ABCC but the process would be onerous.

Attorney Nunheimer asked about the time limit we have within which to appeal. Mr. Geiler stated it would be a Superior Court appeal and in the end we could get a mixture of how we thought the quota would work as opposed to how the ABCC has decided it will work. He further stated that we should probably do it administratively if we choose to ask for more licenses like we did in 1979.

Attorney Nunheimer stated that our decision is to appeal or request legislation to get more licenses.

Mr. Burman said it would behoove Attorney Lawler to do this for his client.

Mr. Geiler stated there are two different legislative policies – ours was intended to be permanent. He also stated that the ABCC’s recent decision was based on their own legislation, not ours. He stated it is up to the Board.

Mr. Scali stated that the ABCC suggested we go to the Legislature to add onto our number, but we first need to determine whether this is important.

Mr. Hoxie stated that he thinks we should leave it alone. We would have to prove public need. We now have 24 outlets; 14 all alcohol. That should be adequate. He then asked about others wanting the last beer and wine license. We already have an applicant for it. He stated we should probably advertise this is the only one left.

Mr. Geiler stated the Board can deny the application in front of it on 3/25/13 or allow them to withdraw and later to reapply. A Moratorium could also be set pending Board review.

Discussion relative to complaint brought by Building Commissioner against our Lodging House licensee, Embassy Inn, for too many lodgers. Mr. Hoxie asked that this be scheduled for 3/25/13.

A motion was duly made by Mr. Burman, seconded by Mr. Sullivan and a unanimous vote taken to schedule this matter to 3/25/13.

Notification from Macheras Main Street Corp., d/b/a Schooner’s, 349 Main Street, Hyannis, that it will be closed for 2-3 weeks for repairs due to a large leak in the kitchen area. The Board accepted the request.

Application of Smithfield Market of Barnstable, LLC, d/b/a Barnstable Market, 3220 Main Street, Barnstable, Jeffrey Blankenship, Manager, for a new Annual All Alcohol Retail Package Store license at its current location continued for decision once quota for All Alcohol Package Stores is determined by the ABCC. Mr. Scali asked for a vote on this. A motion was duly made by Mr. Burman, seconded by PS to continue to 3/25/13.

Lt. Murphy reported that we had revoked the license of Goldfinger a year or so ago; during a recent search warrant they identified several pieces of stolen property from housebreaks. The Bylaw the Board added a few years ago produced a basis for probable cause for the search warrant used to get this person into Court. Lt. Murphy thanked the Board for putting that into effect.

The meeting was adjourned at 10:30 am.

Respectfully submitted,

Christine P. Ade, Recorder
Town of Barnstable Licensing Authority

Paul Sullivan, Clerk
Town of Barnstable Licensing Authority