



Town of Barnstable
Regulatory Services
Thomas F. Geiler, Director
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.
February 11, 2013

A regular meeting of the Barnstable Licensing Authority was held on Monday, February 11, 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. Dick Boy and Patrolman Steve Maher were absent.

Mr. Hoxie welcomed our new Licensing Authority member, David Nunheimer, who brings a wealth of knowledge to the Board.

Vote to accept Minutes: Vote to accept minutes of the 1/14/13 Meeting.

A motion was duly made by Mr. Burman, seconded by Mr. Semprini and a unanimous vote taken to approve the minutes of the 1/14/13 Meeting.

Hearings:

One Day Entertainment: Application of Kim Greenlaw on behalf of Falmouth Dance Academy, 101 Spring Bars Road, Falmouth, MA for an entertainment license for a dance recital to be held at Barnstable High School auditorium big stage on June 15th from 5 pm to 9 pm (dress rehearsals June 13th & 14th, 2013 4 pm – 8 pm).

Ms. Greenlaw appeared for this event – it is at the High School from 5-9. Mr. Burman stated she applied for a license at the "big" stage at the High School. She confirmed that was true.

A motion was duly made by Mr. Burman, seconded by Mr. Semprini and a unanimous vote taken to approve the application of Kim Greenlaw on behalf of Falmouth Dance Academy, 101 Spring Bars Road, Falmouth, MA for an entertainment license for a dance recital to be held at Barnstable High School auditorium big stage on June 15th from 5 pm to 9 pm (dress rehearsals June 13th & 14th, 2013 4 pm – 8 pm).

One Day Entertainment (2): Application of Kevin Howard on behalf of the Boston Pops Esplanade Orchestra for a One Day Entertainment License for a concert to be held at the Hyannis Village Green, Hyannis on Saturday, August 10 2013 from 5:30 pm to 8:00 pm (several bands of different genres) and Sunday, August 11, 2013 from 1:00 pm to 7:00 pm for the Pops by the Sea.

Mr. Howard appeared for the application. He encountered a tree down and was late. This has been 28 years. He could not divulge the guest conductor yet. Mr. Hoxie stated this has obviously been very successful. Mr. Burman stated we should put in a codicil for no rain.

A motion was duly made by Mr. Burman, seconded by Mr. Sullivan and a unanimous vote taken to approve the application of Kevin Howard on behalf of the Boston Pops Esplanade Orchestra for a One Day Entertainment License for a concert to be held at the Hyannis Village Green, Hyannis on Saturday, August 10 2013 from 5:30 pm to 8:00 pm (several bands of different genres) and Sunday, August 11, 2013 from 1:00 pm to 7:00 pm for the Pops by the Sea, with no rain.

One Day Entertainment: Application of Sheila Burns on behalf of Barnstable Education Foundation for a One Day Entertainment License for a “Night of Music Comedy,” to be held at Barnstable High School Knight Auditorium, 744 West Main Street, Hyannis on March 2, 2013 from 7 pm to 9:30 pm.

Sheila Burns appeared for this event – last year they had a wonderful attendance. It is Glen Anderson and All That Jazz. He was Assistant Superintendent at the Town. She stated he is just plain funny. The band is amazing. The other feature is a homegrown man who has written some jazz children’s books. This is to fund grants in the Town. Mr. Hoxie asked about the admission – it is \$25.00. Tickets can be obtained on-line or at the foundation.

A motion was duly made by Mr. Burman, seconded by Mr. Sullivan and a unanimous vote taken to approve the application of Sheila Burns on behalf of Barnstable Education Foundation for a One Day Entertainment License for a “Night of Music Comedy,” to be held at Barnstable High School Knight Auditorium, 744 West Main Street, Hyannis on March 2, 2013 from 7 pm to 9:30 pm.

Change of License Type: Application of Odaat Corp., d/b/a The Original Gourmet Brunch, 517 Main Street, Hyannis, John E. Cotellessa, Manager, for a **Change of License Type** from a Common Victualler Wine & Malt License to a Common Victualler All Alcohol License.

John Cotellessa appeared for this application. Customers would like bloody Mary’s and cordials as well as beer and wine. There will be no bar; “if not eating, not drinking.” They will be there 30 years in June. Mr. Semprini asked if he believes his business has been affected by too many restaurants on Main Street? Mr. Cotellessa stated

absolutely. There are 50+ restaurants on Main. They are there for breakfast and lunch. Mr. Semprini stated he fully understood having been in business so long and wished him well.

A motion was duly made by Mr. Burman, seconded by Mr. Sullivan and a unanimous vote taken to approve the application of Odaat Corp., d/b/a The Original Gourmet Brunch, 517 Main Street, Hyannis, John E. Cotellessa, Manager, for a Change of License Type from a Common Victualler Wine & Malt License to a Common Victualler All Alcohol License.

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.

Mr. Scali stated she was told through her interpreter to be here today. He suggested because of the storm the hearing be continued to March 4, 2013.

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.

Attorney Jeremy Carter appeared to represent Omharsh Corporation. It is in the Bobby Byrne's Plaza. It used to be a Christy's open at 6 am to 11 pm. They have been running it since 2006. They are looking to be able to sell beer and wine. Mr. Hoxie asked how many beer and wine licenses we have; we believe this is the last available in Town. Mr. Scali provided a map which is entered into the record showing location of the other licensees. Mr. Hoxie asked if it was advertised that this was the last one; Mr. Scali stated it was not but we have told all those coming it was.

Attorney Carter stated there is nothing else in the plaza or street where they can buy beer and wine. These people are looking to service their customers as many other convenience stores do sell beer and wine.

Mr. Sullivan asked Mr. Scali about how many inquiries we have had. Mr. Scali stated he has not had many at all until the past month – there have been three. This is the only applicant who has applied. The applicant did in fact call some time ago.

Mr. Scali stated this is the location next to the old Stop and Shop. Mr. Hoxie asked about the package store which was the Greek one on Main Street. That license became available and was later issued.

Mr. Geiler stated there are 12 beer & wine outlets in Hyannis itself, the rest spread into the rest of the villages. There are a few right nearby to this location. Mr. Burman mentioned that as we advised in our previous hearing, the ABCC does not really know

yet what we have available for certain. Mr. Scali stated that has not been a problem until now as was more than one beer and wine available. Mr. Semprini stated he is concerned about the saturation in Hyannis. He is also concerned about the State and basing the # on population. Mr. Hoxie stated we are still up in the air on the all alcohol quota. Mr. Hoxie stated we should hear this application and then hold it as we did the Barnstable Market application. If they did get that license, there would be another beer and wine license available. He suggested we may want to send it in and force them to make a decision. Mr. Scali stated that a letter sent by Mr. Geiler to the ABCC addressing this subject has not received a reply.

Mr. Hoxie asked for public comment, and stated he wants it determined by our staff that we definitely do have an available license.

Mr. Geiler stated that this particular building is the site of a prior alcohol application more than 10 years past; it had the biggest opposition of any license we have ever had. The issue was with police, fire, social agencies, etc. How that relates to today he is not sure, but it relates to the record. Lt. Murphy stated Rte. 28 and Bearse's Way is a high Police and Fire response area – he would like time to prepare his response with regard to this location for the last beer and wine package store.

Attorney Carter stated that years ago there were incidents in the parking lot. His clients have had no incidents and close at 11. They have been asked to add the beer and wine by customers. He stated he had asked about this license in December, and there have been no other applications filed for this last one.

John Olden appeared as a resident of Alicia Road which is very nearby. He is speaking against this application. He has lived there since 1987. Years ago there were problems in his neighborhood. He sees no need for a package store here. There is one behind the mall; Willow Street Market nearby. How much more do we need? This would in his opinion create more problems in this neighborhood.

Mr. Hoxie stated he believes we have the Wine and Malt Package Store license.

A motion was duly made by Mr. Burman to postpone this hearing until we have a response from the ABCC. Mr. Geiler pointed out that there has been no negative discussion with respect to the applicants, only the site.

Mr. Hoxie stated we will continue this to March 4th, which motion was seconded by Mr. Sullivan and a unanimous vote taken to continue this application to March 4, 2013.

New Annual Common Victualler License: Application of Nirvana Barnstable, LLC, d/b/a Nirvana Coffee Company, 3206 Main Street, Barnstable, Laura Defazio-Schectman, Manager, for a New Annual Common Victualler License, to be operated 7 am to 10 pm. Seating for 8.

Mr. Schectman appeared for the application – he stated his wife is on the way but had to drive their child to school. This cafe has been here for 5 years; will operate exactly the same way as it does presently. This is now an LLC with new owners.

Mr. Schectman suggested they will close at 6 pm; Mr. Geiler stated it might be good to stay at 10 pm as was published in the paper.

A motion was duly made by Mr. Burman, seconded by Mr. Semprini and a unanimous vote taken to approve the application of Nirvana Barnstable, LLC, d/b/a Nirvana Coffee Company, 3206 Main Street, Barnstable, Laura Defazio-Schectman, Manager, for a New Annual Common Victualler License, to be operated 7 am to 10 pm. Seating for 8.

New Annual Common Victualler License: Application of 546 Main Street, The Daily Paper on Main, 546 Main Street, Hyannis, Aaron Webb, Manager, for a New Common Victualler License, with 64 seats, open from 5 am to 3 pm M-Sun.

Aaron and Samantha Webb are applying to operate the old Perry's Main Street Deli. Mr. Hoxie stated he had read all about it in the paper. Mr. Webb stated that they will run both places.

Mr. Hoxie stated he had to wait a long time yesterday at The Daily Paper but the food was worth the wait. Mr. Webb stated the generator has paid for itself since Hurricane Sandy. Mr. Geiler stated Mr. Gaines and his wife have done a wonderful job there for years and years. They have worked very very hard and given us no problems as the Webbs have given us no problems. Mr. Webb stated they are eager to get started.

Mr. Hoxie asked how the playground is coming along – Mr. Webb stated very well. A lot of issues have been resolved and it is going forward. They are still fundraising. Mrs. Webb stated there are lots of donations needed here.

A motion was duly made by Mr. Burman, seconded by Mr. Sullivan and a unanimous vote taken to approve the application of 546 Main Street, The Daily Paper on Main, 546 Main Street, Hyannis, Aaron Webb, Manager, for a New Common Victualler License, with 64 seats, open from 5 am to 3 pm M-Sun.

New Annual Junk Dealer License: Application of James Servidori, d/b/a 2 Good To Be New, 142 Corporation Street, Hyannis, for a new annual Junk Dealer License, James Servidori, Manager, hours of operation to be Mon-Sun, 7 am to 10 pm.

Mr. Servidori appeared for the application – it is higher end antiques; no low end. There is nothing presently at this location – it used to be a sneaker store. He has been doing a lot with eBay and antiques the last few years. He has run a painting company in the past.

Lt. Murphy asked if he intended to get into precious metals buying, scrap metals, etc. Mr. Servidori stated he is not. Mr. Scali stated that he wanted to make sure Lt. Murphy

saw the information in the package regarding this applicant – Lt. Murphy stated he did not.

Mr. Semprini asked if the types of items he will be selling require photographing and sending to the police department before being sold? Lt. Murphy stated yes they do; and that there is a 21 day hold for precious metals, gems, etc. and 15 day hold for other items. Mr. Servidori asked if purchasing items from auction counted among these, and Lt. Murphy stated they do. Mr. Scali wanted to make sure Lt. Murphy is not against this.

Mr. Hoxie asked Lt. Murphy to read through the information. Mr. Servidori stated it will hurt him financially if he cannot open prior to the next meeting. Mr. Hoxie stated we will hold this until after the next application and hear it then.

Lt. Murphy stated in review of the application he does not want to stand in the way of free commerce; he does have issues, however, in blindly believing the applicant will not engage in gold and silver buying and selling, just because he said he wouldn't; he said it is like those restaurants who once they get the license change to a different type of operation; thus he cannot endorse it as presented. Mr. Hoxie stated we could approve with restrictions on precious gems, gold and silver.

Lt. Murphy stated we recently had a Superior Court trial where the individual was found guilty and that we already have a saturation of junk dealers he feels. If the Board can craft restrictions he would be able to live with, fine. Lt. Murphy stated he sees nothing in the application to prohibit him in selling antiques, etc. He will not be purchasing anything from a person; just auctions. Lt. Murphy then stated he has no problems with the license.

Mr. Geiler stated we can restrict and allow him to come back for the other items maybe in 6 months.

Mr. Servidori stated he has no jewelry or coins or metals; he does understand what problems we have with respect to stolen items. Mr. Geiler stated he will be taking consignments. Lt. Murphy stated he is only concerned with the present environment around us, not Mr. Servidori himself. Mr. Sullivan stated it is a very sensitive business and Mr. Servidori seems very aware of the objections put forth. Lt. Murphy stated again that the police department has no objections.

A motion was duly made by Mr. Burman, seconded by Mr. Sullivan and a unanimous vote taken to approve a New Annual Junk Dealer's License with the restriction that there be no handling, selling, purchasing of precious metals and no purchases from individuals (consignments allowed other than gems, coins or precious metals) and the license to be reviewed in 6 months, at the July 29, 2013 Hearing.

Mr. Servidori asked about purchase of jewelry in an estate sale...Lt. Murphy stated not at present but this is to be reviewed in 6 months.

New Annual Common Victualler License: Application of Vito & Audrey Marotta, d/b/a Porky's Concessions – Cafe' 75, 75 Perversance Way, Hyannis, Audrey Marotta, Manager, for a New Annual Common Victualler License, for a cafe' with 48 seats, open from 9 am to 4 pm M-F.

Audrey Marotta appeared to speak on this application. It was just a cafeteria before – the Breakroom Café, which closed in 2011. It is for all the adjoining buildings but not open to the public. They do not market outside the buildings. They will run a catering service from this kitchen. Mr. Marotta (father) stated they are going to cater to special events – his children will run this. It is a fully equipped kitchen; they have a lease for 3 years at present.

Mr. Semprini asked about the lunchroom layout; where are the restrooms? Mr. Marotta stated in the main hallway outside the cafeteria. This is sort of like the Casual Gourmet has at Cape Cod Hospital.

A motion was duly made by Mr. Burman, seconded by Mr. Sullivan and a unanimous vote taken to approve the application of Vito & Audrey Marotta, d/b/a Porky's Concessions – Cafe' 75, 75 Perversance Way, Hyannis, Audrey Marotta, Manager, for a New Annual Common Victualler License, for a cafe' with 48 seats, open from 9 am to 4 pm M-F.

New Annual Common Victualler License: Application of Paul D. Yee, d/b/a Acai Berry Juice Bar, 14 West Main Street, Hyannis, Paul Yee, Manager, for a New Annual Common Victualler License, to be operated 7 am to 11 pm. Seating for 25 total.

Mr. Yee appeared for his application. There was a question about people crossing the street; there are a few crosswalks nearby. He stated he has put menus up at the Sturgis School. Mr. Semprini stated it is a tough location – he wondered about the new curb cut; Mr. Yee stated the rotary and lack of crosswalk marking because of it has hurt him. Mr. Semprini suggested some kind of a takeout business might help his business. Mr. Yee stated they do have takeout.

A motion was duly made by Mr. Burman, seconded by Mr. Sullivan and a unanimous vote taken to approve the application of Paul D. Yee, d/b/a Acai Berry Juice Bar, 14 West Main Street, Hyannis, Paul Yee, Manager, for a New Annual Common Victualler License, to be operated 7 am to 11 pm. Seating for 25 total.

New Seasonal All Alcohol Common Victualler License and Non-Live Entertainment License: Application of Mitchell's Cafe' Corporation, d/b/a The Dockside, 110 School Street, Hyannis, Velma Roberts, Manager for a New Seasonal All Alcohol Common Victualler License: Restaurant on main floor of wooden bldg. at 110 School Street, Hyannis. Cellar for storage. Premises is situated on the waterfront. Has 1 full bar, 4 restrooms, dining area inside and outside deck for customers. 50 seats indoors and 75 seats outdoors. Open from 7 am to 1 am serving breakfast, lunch &

dinner. Alcohol service 8 am – 1 am M-Sat, 10 am – 1 am Sun. Also requested is a Non-Live Entertainment license for radio music from 6 pm to midnight.

Velma Roberts appeared for this application. It is the same Dockside location – run the same as it was in the past. She has been there a couple years. She will be taking over as Owner/Manager.

Mr. Hoxie stated there has been a problem with entertainment at that location in the past – she stated she is asking for Just a radio; no outside noise, no amplification; all music confined to the premises. Mrs. Roberts stated the menu will be the same. Mr. Hoxie asked if they will be operational in the Spring? She stated they hopefully will be open April 10 – October.

Mr. Semprini stated that she indicated in her paperwork that she would be present 60 hours/week; who will be there when she is not? She stated that she has experienced managers. He asked if she has applied for a liquor license with the state? She said she has. He questioned the one year lease; she stated the landlord wants it re-signed every year like an automatic renewal. Mr. Sullivan verified she worked there this past season. She stated she did – they had 20-25 employees. Lt. Murphy stated his only concern is the location with entertainment; if he understands it will be radio, no DJ, no live entertainment. She stated that is correct – she does not want to disturb the neighbors. Lt. Murphy wanted the non-live license to reflect radio/muzak situation only with no amplification and nothing outside. Mr. Geiler stated speakers would be a problem and it is important to make it work. He stated her staff should be TIPS trained and Serv Safe certified. The lease shows the building and the parking lot in front; he asked about the apartments upstairs – she stated they are not occupied. Mr. Geiler stated for the record that the parking lot across the street is NOT licensed for pay parking – they are not allowed to do that.

Mr. Burman noticed the Guarantee on the lease from Mr. Roberts...which we confirmed has been removed. The landlord originally required it. Mr. Scali stated we had two meetings on this in our office with Mrs. Roberts and her husband. Her husband and a partner had this business originally. Now it is she alone. Mr. Scali told her that her husband had to be on the lease and the license application if he guaranteed the lease. That is why it was removed. They have changed the financials as well; removed the larger sum of money on the ABCC financial page and replaced it with just the license fee and a little extra.

Mr. Geiler stated this is a turnkey operation. The landlord is experienced and thinks it is good for him. He advised that all it takes is hard work and good food – there is a beautiful view of the harbor. It will take a lot of work but be beneficial to them and the Town.

Alan Goddard appeared as a neighbor. He stated he did get a notice on this – thinks he has been neighbors with this operation and 95% of the time they get along fine. His issue is with sound – a minor issue is a one day a week motorcycle group coming there

and leaving in a procession. As long as this restaurant is the same as the prior one, operating as they operate now, he has no problem. Mr. Hoxie asked about the garbage pickup – Mr. Goddard stated 95% in summer it is fine; once in a while (1-2 times) they come too early. Fish specials became a problem if no pickup the day after; but that was resolved. He has no other issues with it. Mr. Sullivan stated that hopefully since she has worked there she should know how to make it work. Lt. Murphy complimented Mrs. Roberts on her presentation and said if there are any problems they can work them out together.

A motion was duly made by Mr. Burman, seconded by Mr. Sullivan and a unanimous vote taken to approve the application of Mitchell's Cafe' Corporation, d/b/a The Dockside, 110 School Street, Hyannis, Velma Roberts, Manager for a New Seasonal All Alcohol Common Victualler License: Restaurant on main floor of wooden bldg. at 110 School Street, Hyannis. Cellar for storage. Premises is situated on the waterfront. Has 1 full bar, 4 restrooms, dining area inside and outside deck for customers. 50 seats indoors and 75 seats outdoors. Open from 7 am to 1 am serving breakfast, lunch & dinner. Alcohol service 8 am – 1 am M-Sat, 10 am – 1 am Sun. Also approved was a Non-Live Entertainment license for radio music from 6 pm to midnight, inside only (no sound to be heard off the premises).

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

Common Victualler:

Michael's Creative Baking, 424 Main Street, Hyannis

A motion was duly made by Mr. Burman, seconded by Mr. Sullivan and a unanimous vote taken to approve the application of Michael's Creative Baking, 424 Main Street, Hyannis for renewal of its annual common Victualler license.

Business Meeting:

Release of Executive Session Minutes, if any (0).

And any other new business to come before the Licensing Authority.

Lt. Murphy stated that this past week Carl Marchetti was convicted of 5 counts at Superior Court and sentenced to 4-5 years in Walpole on each of two counts, consecutively. He indicated that Judge Nickerson stated that the ByLaws the Town of Barnstable had put into place were very helpful in convicting. Mr. Hoxie stated it seemed to him that this is very gratifying as helping those victims out there. Lt. Murphy thanked the Board from himself and Chief MacDonald for their foresight in adopting the new ByLaws.

Mr. Sullivan asked about this going forward; Lt. Murphy "copied" our ByLaws. Mr. Sullivan stated that the police department should also be commended for their efforts in crafting the ByLaw changes.

On the specific conviction recently, Lt. Murphy stated things could be entered into record, and our bylaw showed the individual did not maintain proper records, and it really helped in the conviction.

Mr. Burman stated when at the Municipal Licensing Corp. meeting last Spring he remembered that Lt. Murphy was questioned about our ByLaw – many other areas are looking at our standard to bring it to their own areas. The greater message is that our state and local governments recognize this and make it statewide; effectively doing away with "fences." Mr. Geiler stated it is also beneficial for those complying with the rules – they want clear, concise rules to follow so they can be in compliance. Participation in crafting the regulations can help them best serve their customers. Lt. Murphy stated we have NO issues as far as compliance in the Town at present.

Mr. Hoxie thanked our two alternate members Ron Semprini and David Nunheimer for their willingness to serve and participate in these proceedings.

Mr. Burman suggested some type of briefcase be provided for the members as he had previously requested.

Adjourned at approximately 11:05 am.

Respectfully submitted,

Christine P. Ade, Recorder
Town of Barnstable Licensing Authority

Paul Sullivan, Clerk
Town of Barnstable Licensing Authority