



LICENSE BOARD  
191 Cabot Street  
Beverly, MA 01915

Richard S. Kelley, Esq., Chairman  
John Roccio  
James Duggan

### LICENSE BOARD MINUTES – APRIL 11, 2013

The meeting of the Beverly License Board was called to order on Thursday, April 11, 2013 in the Council Chambers at 6:30 pm.

In attendance at the meeting were: Board Members Richard Kelley, John Roccio, James Duggan, Police Liaison Sgt. William Page, and Clerk Martha Lewis.

Meeting was called to order at 6:30 pm by Chairman Kelley.

1. Approval of the minutes -- Minutes of the meeting for March 14, 2012 were reviewed. Mr. Duggan made a motion to accept the minutes as submitted. Mr. Roccio seconded the motion. Motion passed 3 – 0.
2. Application for All Alcohol License – Huong Viet, Inc. dba Green Papaya, 214 Cabot Street, Nancy Doan, Manager

Atty. Jack Altshuler introduced the applicants Tam and Nancy Doan to the Board. He stated that they had operated a Vietnamese restaurant, Lucky Garden, for 20 years in Dover, NH. The restaurant had an all alcohol license and had no problems. They sold the business and relocated to Naples FL where they opened a restaurant. They decided to move back to NH and have been looking for a new location in this area. They found the “Desjardins building” and felt it was a good location for their new restaurant.

The Doans are from Vietnam. They arrived 27 years ago. In 1988 they opened their first restaurant in Worcester. In 1988 they both went to China for four months to learn cooking methods. They have worked in all capacities in the restaurant business. They are confident they will do well in Beverly.

The application was reviewed. Chairman Kelley noted they had run a restaurant they in Naples, Florida as well as New Hampshire. He further commented that they were lucky

to inquire about licenses in the city and found that there was one available in the quota. He then asked about the renovation of the building.

Atty. Altshuler replied that the building would be rehabbed including a new façade of the building, new kitchen equipment and the interior would be cleaned up.

Chairman Kelley commented on the financing of the establishment notably the promissory note to the landlord which includes a rate that is favorable to the landlord and asked if the pledge of license would be removed at the end of the one year term.

Atty. Altshuler acknowledged the financing terms and assured the Board that the applicants are fully aware of those terms. The note is a one-year loan. He stated that the Doans are both confident that they will be able to run a successful business. As for the pledge of license, Atty. Altshuler explained that the pledge would stay in place for the term of the lease (10 years) due to the extensive remodeling and improvements the landlord was putting into the building.

Mr. Roccio then asked who would be the manager in charge as well as the number of hours. He also asked for specifics on the interior renovation.

Atty. Altshuler confirmed that Nancy Doan would be the manager of record. It is expected that both the Doans would be on premise for 11 hours, seven days a week. Plans for the interior renovation include new rugs, fixture and furniture.

Mr. Roccio that asked about the size of the bar and how many seats the restaurant would have. Atty. Altshuler estimated that the bar would seat 10 – 12 patrons and there would be approximately 120 seats in the restaurant.

Mr. Duggan asked about the existence of the bar and the layout of the bar on the drawing submitted. Atty. Altshuler explained that the layout of the interior would fluid and the applicant would provide the Board with a new drawing of the layout if necessary.

Mr. Duggan then commented on the note agreement. He estimated that the lease would be \$18,000 - \$20,000 per month. Atty. Altshuler stated that the applicant fully understands the financial implications and is confident that they will make it a successful venture.

Chairman Kelley asked if there was any one from the public present who wished to comment of the application before the Board. No one was present from the public.

Chairman Kelley then addressed the applicants and emphasized that the owners and staff should be TIPS certified and become familiar with the Massachusetts laws concerning the safe distribution of alcohol. He expressed to them the strict responsibility that an establishment's owners for the actions of their staff. He further advised the establishment not to accept identifications that were not acceptable by the State statute.

Mr. Doan assured the Board that they would not accept out-of-state identifications.

Hearing no further comments, Mr. Roccio made a motion to approve the application for an all alcohol restaurant submitted by Huong Viet, Inc. dba Green Papaya located at 214 Cabot Street. Mr. Duggan seconded the motion. Motion was approved 3 – 0.

3. Invited In – LaFiesta, Inc. dba Anchor Pub – sale of alcohol to a minor.

In attendance from the Anchor Pub was Theresa Savageau, owner and Beverly Harlow, bar manager.

Sgt. Page presented the police report for the compliance check that took place on March 17, 2013.

Ms. Harlow addressed the Board. She explained that because it was St. Patrick's Day (March 17) she had hired a person to be on duty at the door. That person did not show up for work. There was a group of patrons who came in the establishment and went directly to the inside room. The bartenders did not see the group. One of the persons in that group went up to the bar and brought drinks back to the room. She further explained that the establishment has now hired a new door person and the back room is now locked at 10:00 pm. Furthermore, the bartenders have been reprimanded and have been sent for retraining.

Chairman Kelley commented that based on the circumstances -- the lack of checking and asking patrons to produce identifications and the use of an out-of-state license and allowing patrons to bring drinks from the bar to the back room --there was a violation.

Sgt. Page stated that he was doing bar checks that evening. He observed the bartenders for 10 minutes. He reported that no identifications were checked. He further observed several young people in the back room. When he asked for identifications, a female patron told him that no one from the establishment checked her identification.

Chairman Kelley asked Ms. Savageau if her establishment had had any prior violations in the past. She stated no. He then explained to Ms. Savageau that it was the policy of the License to impose a penalty. The penalty for a first time offense is a three day suspension to be served within a specified time frame. The physical liquor license must be turned in to the police.

Mr. Roccio made a motion to suspend the license for the Anchor Pub for a 3 days, to be served within 30 days of today's meeting, dates to be decided by the licensee. Mr. Duggan seconded the motion. The motion passed 3 – 0.

Chairman Kelley then advised Ms. Savageau that they could appeal the Beverly License Board decision to the ABCC and pay a fine in lieu of the suspension. She must contact the ABCC within 5 days. If the establishment chose to serve the suspension, they must notify the License Board Clerk within one week of the meeting.

4. Surrender of Beer & Malt Beverage License from Fazio Enterprises -- The Board accepted the surrender of the Beer & Malt Beverage license issued to Fazio Enterprises, Inc. dba Sonny's Mobil as the licensee has received final approval of the transfer of an all alcohol license from Cornerstone Liquors to Fazio Enterprises. The board signed a notification letter to the ABCC requesting that the Beer & Malt Beverage license be made available in the City's quota.
5. Request for Seasonal License – Kelly Mackin, Half Baked Café

Ms. Makin had previously sent a letter to the Board asking for consideration of a seasonal license for her café and bakery located in Beverly Farms. She outlined the seating capacity of her café (18 seats inside) and an outside patio (15-20 seats) adjacent to her building. She stated that her business consisted of bakery items as well as offering breakfast and serving lunch. She envisioned the ability to serve beer and wine with sandwiches served during lunch as well as a glass of wine with a bakery items for dessert. She felt that her offering would be a complement to the two licensed establishment in the business district.

Chairman Kelley explained that the Board is hesitant to issue seasonal licenses for a couple of reasons. The first being that there are not guidelines for issuance formulated. Also, the Board felt that the issuance of a seasonal license was in fact an easy way to circumvent the quota system. He further explained that the statute originally put a burden on the applicant to show an increase in population during the seasonal months to justify the issuance of an additional license. The Board has a tendency to not be willing to issue a seasonal license without strong facts and reasons to base that decision on. He continued that Half Baked Café is primarily a pastry and baked goods store offering lunch and it does not seem to be a fit as a seasonal license.

He further stated that the issuance of a seasonal license must be in the best interest of the public. The inclusion of the patio is of a concern as the patio is not directly tied to the business location – the patio area is not contiguous to the café. He asked Ms. Mackin if she intended to have a staff person stand outside of the patio full-time to monitor the area.

Ms. Mackin replied that she has significant experience in the hospitality business as a server. The connection to the patio is thru the kitchen. The patron would order inside and walk around front to the patio. The server would bring the drink out to the patio through the kitchen.

Chairman Kelley determined that Half-Baked Café was a relatively new business. He does not believe that alcohol is a business need, although acknowledged that it may be helpful during the lunch offering. He encouraged Ms. Mackin to withdraw her request

instead of having a formal vote taken. He then asked the other Board members for their comment.

Mr. Roccio stated that he shared the same sentiments as Chairman Kelley. He has a grave concern in light of the fact that there are two establishments – Cygnet and the Hale Street Tavern in the immediate area. He would not be comfortable supporting a seasonal license. Mr. Roccio wished Ms. Mackin the best with her business.

Mr. Duggan concurred with his colleagues. He suggested that Ms. Mackin take the advice of Chairman Kelley and withdraw her request.

Chairman Kelley suggested that Ms. Mackin give some thought to the population. The traffic going along the coast in the nicer weather may be a basis to argue that there was reason to consider whether there was an increase in population.

Ms. Mackin replied that many of her patrons have suggested she start a petition and many are willing to sign the petition on her behalf.

Chairman Kelley replied that he would not discourage her from submitting a petition but consideration must be given to the statute that there must be a seasonal need due to the increase in residency.

Ms Mackin claimed to have spoken with the other two licensees/business owners and felt that they would support her request. Again, Chairman Kelley stated there must be a public need and benefit for a seasonal license. Seasonal licenses are at the discretion of the Local License Board and at this time, it did not appear that her request would be approved. Ms. Mackin further asked what she could do to change the board's decision. Chairman Kelley replied that she must be able to have concrete evidence that the number of tourist/increase in traffic in the Beverly Farms area directly relates to her business.

Mr. Roccio commented that he did not think that a seasonal license should be granted as a consolation prize due to the fact that there are no regular licenses available in the City of Beverly's quota.

A discussion among the board members concerning the increase of traffic vs. increase in population/residency ensued. Chairman Kelley stated that there must be two board members willing to vote in favor of the request. He concluded at this time, there appears to be a hesitancy among the Board to vote in favor of the request.

6. One Day License – A total of three applications were received. All applications were reviewed. All applications were within the four-hour time limit. The application for the Cape Ann Waldorf School and the Symphony of the Sea were approved.

The third application was from Spectacle Management who is producing a theatre show, Late Nite Catechism at the Larcom Theatre located at 13 Wallis Street. Peter Lally the applicant was in attendance. He was requested a beer and wine license be issued for five

nights of the performance. Mr. Lally introduced himself and gave a summary of his background and experience as an event manager at the Lowell Auditorium. He provided details of the venue including capacity, layout of the lobby and adjacent lounge as well as the expected attendance.

Chairman Kelley asked if patrons would be allowed to bring beverages back to their seats in theatre as well as if the bartenders would be TIPS certified.

Mr. Lally replied that he was willing to work with the Board as to setting the boundaries of where the alcohol would be served and consumed. He also stated that his bartender was TIPS certified and trained. He further continued that this Show was the first of its kind taking place at the venue and if all went well, there may be future shows and dates in which they would apply for special one-day licenses.

Mr. Duggan asked for more details on the experience of the management company as well as to the time the alcohol would be served (i.e. prior to start of show and intermission). Mr. Roccio asked specifically if the beer to be served would be from bottled beer or tap.

A discussion among the board members took place and it was agreed to approve the license with certain restrictions put in place: The licensed premises was restricted to the Lobby and Adjoining Salon Room; patrons must consume in the designated areas and are not allowed to bring wine and malt beverages back to their seats.

Mr. Roccio made a motion to approve the application from Spectacle Manager for one-day license on five stated performance dates. Mr. Duggan seconded the motion. Motion approved 3 – 0.

\*Clerk's note: Mr. Lally contacted Clerk prior the date of the first performance and withdrew the applications for the special one-day licenses.

7. Other Business –

- a. Hearing no further business, Mr. Roccio made a motion to adjourn. Motion seconded. Meeting adjourned at 7:45 pm.

Next meeting is scheduled for Thursday, May 9, 2013 at 6:30 pm in the City Council Chambers.

Respectfully yours,

  
Martha A. Lewis, Clerk