



Licensing Board
TOWN OF WATERTOWN
ADMINISTRATION BUILDING
149 Main Street
Watertown, Massachusetts 02472

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BOARD MEMBERS
DONNA B. DOUCETTE
GEORGE B. NEWMAN
ROBERT J. WHITNEY

ALTERNATE MEMBER
SANDRA KASABIAN HOFFMAN

Minutes February 16, 2012

ACCEPTANCE OF MINUTES: January 19, 2012

1. Best Buy Stores L.P. #596
550 Arsenal Street
Second-Hand Dealers License Approved 3-0
2. Arsenal Street Liquors, LLC d/b/a
Arsenal Wine & Spirits
111 Arsenal Street
New All Alcoholic Package Goods License Approved 3-0
3. Donohue Holdings, Inc. d/b/a
Donohue's
85-87 Bigelow Ave. Approved 1(Whitney)-2 Bar
Alteration of Premise (Outdoor Area) Approved 0-3 TV
Change of Hours (Outdoor Area) Approved 0-3 Hours
4. John and Kimberley Stathakis
d/b/a Orchard Park Grill
208-210 Waverley Avenue
Status Hearing Continued to March 15, 2012

Donna B. Doucette, Chairman

7:35 PM to 9:00 PM

Present: Donna B. Doucette, Robert J. Whitney, Sandra Hoffman Kasabian

1. Best Buy Stores, L.P.
7601 Penn Avenue
South Richfield, MN 55423-3645.

The Watertown Licensing Board met to consider the application of Best Buy Stores, L.P. for a secondhand dealer's license to be exercised at Best Buy Store #596 at 550 Arsenal Street.

Timothy Hawley, general manager of Store #596, appeared in support of the application. Mr. Hawley stated that Best Buy operates a trade-in program for unwanted consumer electronics items. In 2009, it began to offer a recycling option, and customer feedback indicated a desire to obtain some value in that process. The business then began a "buy back" program under which a customer can receive a product upgrade or a gift card. Mr. Hawley observed that consumer electronics change rapidly, and that the buy back program applies to limited types of items – video games, cell phones, laptop computers and handheld gaming devices. The program is run to support Best Buy's primary retail business. It is expected to generate a low volume of transactions. In response to a question from the Board, Mr. Hawley stated that low volume would mean approximately 40 video games, 3-4 phones and a few laptop computers.

Items will be kept in the store for 30 days in a secured cage location with supporting documentation, and the Police Department will receive weekly reports through the 'leads online' system. Items are then shipped to an out-of-store location for processing. Sellers must be 18 years of age and provide a government-issued identification. Best Buy maintains electronic transaction records, including seller identification information, item serial number, amount of trade value, and date and time of the transaction. Each item is 'license plated' and the seller must sign a document verifying ownership of the item. In addition, transactions are tracked on an employee basis to ensure against collusion. The program is monitored by a corporate oversight team.

In response to questions from the Board, Mr. Hawley stated that for gaming items, a management level employee in the department can authorize a trade-in transaction. Electronic devices may be returned at the in-store repair counter.

District A Councilor Angeline Kounelis spoke in opposition to the application, noting that when there is a financial incentive to deal improperly with secondhand items, there can be a problem.

Sergeant Grady stated that the Police Department had no objection to the granting of the requested license, provided that the conditions stated below were imposed.

The Licensing Board voted unanimously to grant the requested license, subject to the following conditions:

1. The seller of any items to the licensee must be at least 18 years of age.
2. The seller must show two forms of identification, one of which must be a Massachusetts Registry of Motor Vehicles identification or a photograph license identification from another state. The identifications shall be photocopied and copies maintained in a logbook.

3. A record or logbook, approved by the Police Department, shall be maintained documenting all purchases made by the licensee. The record shall contain: time and date of purchase; seller's name, address, date of birth and license or identification number; and a complete description of the item(s) purchased. The record or logbook must be available for inspection by any member of the Watertown Police Department or agent of the Licensing Board.
 4. The record or logbook shall be legible and written in English, and no record shall be erased, changed, obliterated or defaced.
 5. A copy of the record or logbook shall be forwarded to the Police Department, Licensing Division, every 2 weeks and all items purchased by the licensee shall be kept for a minimum of 21 days.
 6. The licensee must immediately surrender to the Watertown Police Department any property identified as having been stolen. If property is released to any other police agency, the licensee must notify the Watertown Police Department in writing and accompany that notification with a copy of the entry for the item in the log or record book.
 7. All property presented for purchase must be examined for missing or damaged serial numbers, engraved initials or names, etc., or other standard manufacturer identification marks. The licensee shall not purchase any items which evidence any of these characteristics and shall immediately notify the Watertown Police Department of any attempted sale of the items.
 8. The operating hours shall be 10:00 a.m. to 9:00 p.m. Monday through Saturday and 11:00 a.m. to 7:00 p.m. on Sunday.
2. Arsenal Street Liquors, LLC
d/b/a Arsenal Wine & Spirits
7 Courtney Road
West Roxbury, MA 02132

The Watertown Licensing Board met to consider the application of the Arsenal Street Liquors, LLC d/b/a Arsenal Wine & Spirits for an all alcohol package goods store license to be exercised at 111 Arsenal Street.

Nada and Joseph Rizkallah, managers of the LLC, appeared in support of the application. Ms. Rizkallah stated that the site had been purchased approximately one year ago, and that she and her father are proposing a higher end storefront use for a vacant building. Her father has experience in the restaurant industry and previously held a wine and malt license at a store in Cambridge, MA. She has a CPA background and will be the primary in-store person to start operations and manage the premises.

Sergeant Grady stated that the Police Department had no objection to the granting of the requested license, provided that the conditions stated below were imposed.

The Health Department reported that the applicant must contact the Department and comply with Department provisions including, but not limited to, food service establishment plan review application and permit requirements.

The Licensing Board voted unanimously to grant the requested license, subject to the following conditions:

1. The hours of operation shall not exceed 8:00 a.m. to 11:00 p.m. Monday through Saturday and 12:00 noon to 11:00 p.m. on Sunday.
 2. The alcohol sales area shall be located as shown on the plan submitted ("First Floor Plan," sheet A-101, by Tyrone Yang Design for "Project 111 Arsenal Street, Watertown, MA 02472" dated November 14, 2011).
 3. The manager, Nada Rizkallah, shall obtain an alcohol awareness training certificate within 30 days of issuance of the license. Any other employees engaged in the sale of alcohol shall also be trained and certified within 90 days of their employment or expiration of certification. Copies of all certifications shall be forwarded to the Licensing Board clerk.
3. Donohue Holdings, Inc.
d/b/a Donohue's
85-87 Bigelow Avenue
Watertown, MA 02472

The Watertown Licensing Board met to consider the application of the Donohue Holdings, Inc. d/b/a Donohue's for approval of the alteration of its premises at 85-87 Bigelow Avenue licensed for all alcohol common victualler service namely, changes to the outdoor seating area, and for a change in the hours of service provided in the outdoor seating area.

Attorney Timothy McGoldrick appeared in support of the application, together with John Donahue, president. Attorney McGoldrick spoke on the Alteration of Premise first. He explained that the licensee proposes to add a service bar to the outdoor seating area, as well as two television sets, to be operated with no volume. The bar would be located along the back wall of the building. Attorney McGoldrick noted that the outdoor seating area had been authorized by the Board in May of 2011, but the authorization did not include a service bar. He stated that without such a service bar, the waitstaff is required to walk along the alleyway adjacent to the exterior of the building to handle drink orders by patrons in the outdoor seating area. He asserted that this results in additional foot traffic and noise, and slows service to customers. He also stated that it could be a security issue because with so much travel, there is less waitstaff present in the outdoor seating area and it is therefore more difficult to monitor the area.

The proposed service bar would measure 5 feet by 8 feet, and containers of alcohol could be brought inside the building at night following the day's operations.

Mr. Donohue stated that storage coolers located at the service bar would be padlocked. He noted that food orders are sent to the kitchen electronically. During the summer of 2011, there were two waitstaff persons assigned to the outdoor seating area at peak times, and Mr. Donohue stated that he would have a designated person at the service bar.

Attorney McGoldrick stated that the request for televisions is customer driven, for example, the desire to watch a ballgame while at the restaurant.

Board member Kasabian Hoffman noted that the absence of any volume from the televisions would not control any customer noise related to reactions to what is being shown on the screen.

Attorney McGoldrick responded that it would be up to the waitstaff to keep noise in check. He noted that the patio is a more family oriented area and suggested that more serious patrons would be seated inside the building, where there are more televisions. Member Kasabian Hoffman stated that televisions invite people to react to what is being shown. In response to a question from Chairman Doucette, Attorney McGoldrick stated that the broadcast content for the televisions would likely be sports. Mr. Donohue explained that he proposed two 42" televisions.

The Board acknowledged receipt of a petition in opposition to the application signed by residents of the Coolidge Village Condominium at 48 Bigelow Avenue. It also acknowledged receipt of a letter from a resident of that condominium stating that there had been no plantings in the outdoor seating area, as required under the Board's decision approving outdoor seating. Mr. Donohue responded that his landscape advisor had recommended starting any shrubs in the spring for better growing results.

Attorney Joshua Krefetz, counsel for the owner of the property at 77-79 Bigelow Avenue, which directly abuts the subject property, questioned the use of the property for restaurant purposes in a residentially zoned area. He asserted that noise from the outdoor seating area would be noise pollution, as defined under Watertown ordinances – 10 decibels above background noise level. He argued that the requested alteration would severely affect his client's quality of life and that the apartment in question would likely not be rentable.

Jirair Barsoumian, a trustee of St. Stephen's Armenian Church, operator of St. Stephen's elementary school at 47 Nichols Avenue, adjacent to the subject property, stated that the school conducts classes 7 days a week, including Saturday classes and Sunday School. He stated that an outside bar in operation during school hours would be detrimental to the educational process. He also noted that if patrons were to yell at the action being shown on the televisions, the noise would distract the students. He added that he believed there was a security issue if there is not a designated person at the bar at all times.

Father Antranig Baldjian, pastor of St. Stephen's Church, said that the compromise resulting in the Board's decision from 2011 permitting the outdoor seating area should be observed, and should not be altered less than a year later.

The Board's approval of outdoor seating in May of 2011 was subject to conditions, including no televisions or music in the seating area and no bar or service bar. At that time, Mr. Donohue stated he could operate without a service bar in the outdoor seating area.

Another resident stated he was concerned mostly about the noise level from the restaurant. He noted that the Coolidge Condominium has mostly senior citizen residents and that there are 30 units with bedrooms facing the street.

A trustee of St. Stephen's Church, Heather Krafian, stated her opposition to the application. She noted that there was a first and third grade classroom and a computer lab directly overlooking the outdoor seating area. She also commented that children on the playground equipment used by the school could see into the outdoor seating area, and that she was concerned about the proximity of children to alcohol and exposing children to drinking. In the spring, summer and fall, windows in the school are open and the children would hear the noise from the restaurant.

Angeline Kounelis, District A Councilor, stated that the effects from the outdoor seating area activities would be felt seven days a week, and she opposed the requested changes in operation.

Attorney McGoldrick stated that if a service bar were installed, there would be waitstaff present at all times and it would not be left unattended. In response to a question from the Board, he noted that the patio operation began just after July 4, 2011, and continued to September 30, 2011.

The Board acknowledged receipt of a memorandum dated February 16, 2012, from the Town Clerk, in lieu of a recommendation from the Police Department, requesting that no service bar be established outside the building and that no televisions be displayed in the outdoor seating area. The memo stated that these restrictions had been suggested to the Board in May of 2011 when it first acted on the licensee's request for outdoor seating.

Board Member Kasabian Hoffman stated her opposition to the application in light of the comments received and the conditions imposed by the Board in its decision of May, 2011. Board Chairman Doucette stated that quality of life was the main theme presented by the application and that the televisions could most increase the noise level in the outdoor seating area. She stated that an outdoor service bar would allow for faster service of alcohol. She concluded that there would be a greater potential for negative impact on the neighborhood should the service bar be approved.

The second request by the applicant was "Change of Hours". Attorney McGoldrick stated that the hours of service for the outdoor seating area currently in effect reflected a compromise reached at the May, 2011, application hearing. [8:00 a.m. to 9:00 p.m. Sunday through Thursday, 8:00 a.m. to 10:00 p.m. Friday and Saturday, and no alcohol service prior to noon on Sunday] The outdoor seating area was operated for approximately three months in 2011 and Attorney McGoldrick stated it was the licensee's position that a 9:00 p.m. closing time required turning people away at 8:00 to 8:15 p.m. because the restaurant would not be able to complete service prior to 9:00 p.m. He stated that the applicant requests an additional hour of service, to 10:00 p.m., and additional months of outdoor service, April and October.

Attorney McGoldrick asserted that the Licensing Board did not have the authority to reduce hours of service in the outdoor seating area to a time prior to 11:00 p.m. He cited the minimum hours provisions of section 12 of G.L. c. 138 and proceedings of the Alcoholic Beverages Control Commission in a matter involving the Georgetown Club and New England Golf Partners, Inc. in 2009.

Counsel for the Board stated his opinion that the case law cited by the ABCC in its April 2, 2009, decision on "an informational hearing" and in its July 29, 2009 decision on a reconsideration hearing did not support the stated proposition that a licensing authority cannot place restrictions on a license. He also noted that conditions on the hours of service in the outdoor seating area did not prevent the licensee from making sales within the restaurant up to 11:00 p.m.

Attorney Krefetz stated that the May, 2011, decision was a compromise and that if the licensee does not accept the hours approved, the Licensing Board should revoke the outdoor seating area hours. He cited Section 16C of G.L. c.138 regarding no sale of alcohol within 500 feet of a church or school except upon a written determination of no detrimental effect by the local licensing authority, and questioned the licensee's ability to make sales given the presence of the St. Stephen's School.

Councilor Kounelis stated that the area of the subject property is a neighborhood and that everyone deserves a quality of life. She commented that the noise level would increase and that the residents do not want that noise in their backyards.

Father Baldjian stated that he had previously proposed a restriction on summer hours to those periods when children are not in school.

A parent of two St. Stephen's School students stated his opposition to the request and his concern that the children not be looking at a bar from their place of education.

The Town Clerk presented the Town recommendation that the hours should remain as presently approved and recommended a denial of the application.

Board Member Kasabian Hoffman stated her opposition to the application based on the concerns of the neighbors and the spirit of compromise that was reflected in the Board's decision of May, 2011. Board Members Whitney and Doucette stated their concurrence.

The Licensing Board voted unanimously to deny approval for alteration of the outdoor seating area portion of the premises and voted unanimously to deny the application for change of hours of service in the outdoor seating area.

4. John and Kimberley Stathakis
d/b/a Orchard Park Grill
208-210 Waverley Avenue
Watertown, MA 02472

At the request of the applicant, the Watertown Licensing Board continued its status hearing on the compliance of John and Kimberley Stathakis d/b/a Orchard Park Grill with insurance requirements for their all alcohol common victualler license. The continued hearing on this matter will be held on March 15, 2012 at 7:15 p.m. in the Philip Pane Hearing Room, Administration Building, 149 Main Street, Watertown, MA