



# 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, 2<sup>nd</sup> Floor Hearing Room, Hyannis, MA – 9:30 a.m.  
September 19, 2011

A regular meeting of the Barnstable Licensing Authority was held on Monday, September 19, 2011. Chairman Martin Hoxie called the meeting to order at 9:30 A.M. He introduced Gene Burman, Vice Chairman, Paul Sullivan, Clerk, Richard Boy, Associate Commissioner, Thomas Geiler, Director of Regulatory Services and Licensing Agent, Lt. JoEllen Jason and Patrolman Steve Maher, Liaison Officers from the Barnstable Police Department, and Christine Ade, Recording Secretary. Richard V. Scali, Consumer Affairs Supervisor, was absent.

#### Hearings:

**One Day Wine & Malt License:** Application of Sarah Biggs on behalf of Casual Gourmet, for a One Day Beer & Wine License for a Hyannis Chamber of Commerce Business After Hours event to be held at Marvin Design Gallery, 73 Falmouth Road, Hyannis on September 21, 2011, from 5:30 pm to 7:30 pm.

Mary Lyons appeared for the Casual Gourmet. She stated that it is a standard Business After Hours event.

A motion was duly made by Gene Burman, seconded by Paul Sullivan and a unanimous vote taken to approve the application of Sarah Biggs on behalf of Casual Gourmet, for a One Day Beer & Wine License for a Hyannis Chamber of Commerce Business After Hours event to be held at Marvin Design Gallery, 73 Falmouth Road, Hyannis on September 21, 2011, from 5:30 pm to 7:30 pm.

**New Annual Retail Wine & Malt Package Goods Store License:** Application of VE Foods, LLC, d/b/a GOL Supermarket, 55 Iyannough Road, Hyannis, MA, Vincent D'Olimpio, Manager, for a New Annual Retail Wine & Malt Package Goods Store License, hours of operation of market to be Monday through Saturday 7 am to 9 pm, Sunday 8 am to 5 pm; sale of liquor hours to be Monday through Saturday 8 am to 9 pm, Sunday 10 am to 5 pm.

This hearing was called out of order as the applicant has a commitment elsewhere and requested to be heard first. Attorney David Lawler appeared to represent the applicant. He stated that Mr. D'Olimpio is a long time resident of Barnstable and has been in business for years; has held liquor licenses prior to this; no history of violations on prior licenses. GOL is a Brazilian market. It is part of the requirement for alcohol package stores to show need and convenience in the community for the license to be granted. In this case, more importantly, we are looking at the word "community." The Brazilian community is 5,000 or more in the greater region. It is a strong dynamic and a wonderful community; striving to retain its heritage. They conducted a short survey of 10 specific liquor stores in Hyannis, to see if they carried Brazilian beers and wines. 90% of the GOL clientele is of Brazilian heritage. Attorney Lawler passed out folders of product brands they plan to carry. Each brand carries multiple different products. Only two of the stores surveyed carry a Brazilian beer. Most have 0-2 Brazilian wines; the most is 4 when there are many to choose from. They wish to fill the void here for the Brazilian community. Mr. D'Olimpio spoke about his past experience and stated he is a presently a realtor and manager of this market. Mr. Hoxie asked if they will carry other beer and wine other than Brazilian; Mr. D'Olimpio stated 90% will be of the Brazilian variety and 10% domestic as a convenience factor. Mr. Hoxie asked if they have been receiving requests for these beers and wines – Mr. D'Olimpio stated there have been numerous requests as no-one down here carries it. Mr. Hoxie asked whether the people asking for these beverages have gone to the other two stores to get them? Mr. D'Olimpio stated he does not know.

Mr. Burman recused himself from this hearing. Mr. Boy will sit in his stead. Mr. Boy asked again about the need for these items in the area. Attorney Lawler stated we just have to look at the numbers of Brazilians. Mr. Boy stated we in Cape Cod are all ONE community. Attorney Lawler stated that race is a protected class. What makes the country great is that immigrants have brought their culture with them. There are language issues too with the Brazilian community – the staff at this market speak Brazilian. This is a big segment of the community. They need to be serviced. It is 7-8% of the population of Hyannis. This is reality – not hypothetical. The need at the present package stores surveyed for beer and wine is not met for enough Brazilian products (see Attachment #1). Attorney Lawler stated it is not being sold any closer than New Bedford. Mr. Hoxie asked the question why the other package stores do not stock these products. Attorney Lawler stated it is not the problem of this applicant to know that; it is his wish to meet this need which is being overlooked. Mr. Boy asked if perhaps another immigrant wine was not available you could ask and put another package store nearby this one to sell that wine or beer? Attorney Lawler stated this is a particular community need. There is a large Brazilian population with minimal coverage at best as far as their beer and wine choices here at present. When looking at need and convenience we must look at more than miles and feet away from others. Mr. Hoxie asked if they are ignorant or ignoring these facts. Attorney Lawler stated perhaps not to create a scene or whatever; they have acquiesced and bought what is here. Attorney Lawler stated that in THIS store, with the high concentration of 1<sup>st</sup> generation Brazilian clientele, there is definitely a need.

The Brazilian community is a vibrant and large part of the whole now. It is a sub-community of the Village community in Hyannis. The cultural difference is much greater than just which village one lives in. Mr. Hoxie asked him if he believes the two very close liquor establishments are not meeting the need of the community. The survey was not even done in farther reaching villages, but believes that would also show these products are not available there. Mr. Hoxie asked if they would consider a petition to get names of people who would buy and cannot now buy these products? Attorney Lawler stated they would do so – Mr. D’Olimpio stated there are over 1,000 in that market every day, which is a conservative figure. Mr. Hoxie asked if they could give a percentage – Attorney Lawler stated they don’t know, but the people in that market choose to go there as it is a Brazilian market. It is what they are used to seeing and buying and using. Compare it to Chinatown and the North end in Boston. All have their own markets which keep their cultures alive. The fact that there are 2 liquor stores nearby is not relevant – just that they do not carry what this market would carry. Mr. Hoxie asked how many of them would drink the beer and wine; Attorney Lawler stated he has no way to determine that. Mr. Sullivan said one establishment is within 500 feet – which one is that? Attorney Lawler stated it is the 3<sup>rd</sup> one down. Which one is the one 4/10 of a mile? They stated that is #6 down. Mr. D’Olimpio stated the 3<sup>rd</sup> one had one six pack of Brazilian beer. The one around the corner has none. Mr. Sullivan asked if the folks who go there are mainly from Hyannis or regional? Mr. D’Olimpio stated it is a regional store – the Brazilian people come from other villages to shop there. He asked how many families? They stated thousands. The market is language friendly. They also want to state the beer and wine is a complement to the store which will still remain the main focus. The beer and wine will be a small portion of the inventory. The 7<sup>th</sup> on the inventory list is a “specialty” store – a Mediterranean/Greek store. This Board has a history of granting a license to just such a store. Their place did get a license from this Board. This is a strong precedent to follow. Attorney Maher asked if the alcohol will come from the conventional alcohol wholesalers/distributors. They ARE aware the product can only come from licensed wholesalers. Officer Maher asked how they will enforce the sale to minors if people come in without a license or passport? Attorney Lawler stated they must have one of those OR a MASS I.D. card or will not be able to purchase. They will follow the law to the “T.” Attorney Lawler stated he has been before this Board for violations and Mr. D’Olimpio will be very vigilant and there will be zero tolerance. Officer Maher asked how many hours a week he himself will be there? He stated 30 hours a week on average.

Mr. Sullivan stated he is concerned that if we grant this license, what are we doing to the two businesses very close to this one? Mr. Sullivan wants to see more information before voting on this matter. Attorney Lawler stated the issue of competition is moot – this new place will be carrying things the others do not carry. There will be “0” competition on all alcohol; and carrying what others do not is also no competition. Mr. Sullivan stated he is still not convinced as to need. It will only be a small section in the store providing what they cannot get anywhere else, all in the store they shop in already. This absolutely IS for the need and convenience. The basis of this request is to service this “community.” Mr. Hoxie asked if it is

possible the high seller here might be a domestic beer? Attorney Lawler stated anything is possible but he really doubted it. Mr. Hoxie asked what the drinking age is in Brazil? Attorney Lawler stated it is 21. Mr. D'Olimpio stated the whole market has a Brazilian feel; most of the inventory would be Brazilian.

Mr. Hoxie asked for comments from the public...there were none. Mr. Hoxie then asked for a positive motion.

A motion was duly made by Paul Sullivan, seconded by Mr. Hoxie to approve the application of VE Foods, LLC, d/b/a GOL Supermarket, 55 Iyannough Road, Hyannis, MA, Vincent D'Olimpio, Manager, for a New Annual Retail Wine & Malt Package Goods Store License, hours of operation of market to be Monday through Saturday 7 am to 9 pm, Sunday 8 am to 5 pm; sale of liquor hours to be Monday through Saturday 8 am to 9 pm, Sunday 10 am to 5 pm. Mr. Hoxie and Mr. Sullivan voted yay; Mr. Boy voted nay. The motion passed by majority vote.

Mr. Boy stated Mr. Lawler did an excellent job in representing the client but is too close to 2 existing package stores. Mr. Sullivan commented that there is clear evidence there is a need for this; some limited service from other stores. No-one appeared to speak against this new license. He finds it to be appropriate. Mr. Boy stated it is not a requirement that the other package stores appear; Mr. Sullivan thought if any might have felt threatened they should have come forward. Mr. Hoxie stated we did grant another license with Greek wines, etc. His only concern is that there be less Brazilian product and more domestic. He did state Attorney Lawler did present a strong case.

Mr. Sullivan stated what swayed him was that 90% of their clientele is Brazilian and this will be more in line with their ethnic tastes. He does have the concerns of Mr. Hoxie that they do not become competitors for the domestic beers and wines.

**New Class II Auto Dealer License:** Application of Used Auto Cape LLC, 61 Falmouth Road, Hyannis, MA, Aramays Melikyan, Manager, for a new Class II Auto Dealer License with a total of 26 vehicles on site.

Mr. Aramays Melikyan appeared for this application. Mr. Danielyan spoke on his behalf. This location was a used dealer lot in the past – has been closed for a year. Mr. Burman has concern about a proliferation of used car dealerships. Mr. Hoxie reminded him this location did have a dealership already.

A motion was duly made by Gene Burman, seconded by Paul Sullivan and a unanimous vote taken to approve the application of Used Auto Cape LLC, 61 Falmouth Road, Hyannis, MA, Aramays Melikyan, Manager, for a new Class II Auto Dealer License with a total of 26 vehicles on site.

**New Lodging House License:** Application of Berkshire 1802 House, LLC, d/b/a Honeysuckle Hill B&B, 591 Main Street, West Barnstable, MA, Richard J. Kowarek,

Manager, for a new Lodging House License for an existing premises with a maximum of 10 lodgers and 5 lodging rooms.

Mr. Kowarek appeared for this application with Attorney Matthew Spillane. Mr. Spillane advised that Mr. Kowarek is one of the managers. This B&B has been operated as such for approximately 25 years; operates with a special permit and variance, which was transferred by the ZBA. The owners have extensive B&B background – had one in the western part of the state which they sold in 2007. Looked for an opportunity on the Cape which they found here. They are very excited to be here. This B&B has strong good will associated with it – best B&B mid-Cape and honored in Cape Cod Life. The owners have been seeking partnerships with local businesses to drive this goodwill. He asked for any questions from the Board. Mr. Hoxie confirmed it is 10 lodgers. Mr. Spillane advised they were not properly advised they needed our license – staff contacted them to come in for this license. Mr. Kowarek does the baking; his partner the cooking. Mr. Burman stated that he and Mr. Boy sat on the original ZBA request many years ago.

A motion was duly made by Gene Burman, seconded by Paul Sullivan and a unanimous vote taken to approve the application of Berkshire 1802 House, LLC, d/b/a Honeysuckle Hill B&B, 591 Main Street, West Barnstable, MA, Richard J. Kowarek, Manager, for a new Lodging House License for an existing premises with a maximum of 10 lodgers and 5 lodging rooms.

Mr. Hoxie stated we did have a letter of support on this B&B. The other abutter has also wished them good luck according to Attorney Spillane.

**New Annual Common Victualler License:** Application of Rod, Tyler, Karen and Danielle Desimone, d/b/a TJ's Deli Subs, 1070 Iyannough Road, Hyannis, Ron Desimone, Manager, for a new Common Victualler License, operation to be 7 am to 9 pm with seating for 22 inside and 8 outside, when available.

No-one appeared for this application. Ms. Ade advised that they opened up as a take out restaurant only and had no idea why they did not appear today.

A motion was duly made by Gene Burman, seconded by Paul Sullivan and a unanimous vote taken to continue the application of Rod, Tyler, Karen and Danielle Desimone, d/b/a TJ's Deli Subs, 1070 Iyannough Road, Hyannis, Ron Desimone, Manager, for a new Common Victualler License, operation to be 7 am to 9 pm with seating for 22 inside and 8 outside, when available to October 3, 2011.

**Show Cause Hearing:** A Show Cause Hearing has been called due to a report from the Barnstable Police Department of two violations of Pufferbellies, 183 Rear Iyannough Road, Hyannis, Sunny Aroustamian, Manager on July 19, 2011 of the Code of the Town of Barnstable Licensing Authority, to wit: Chapter 501, §7I, Sale or delivery of an alcoholic beverage to a person under 21 years of age (1 count) and of Chapter 501, §8A, Failure to ensure that a high degree of supervision is exercised

over the conduct of the licensed establishment at all times. Hearing was requested to be continued by the licensee to October 3, 2011.

Mr. Hoxie stated that the hearing will be continued to October 3, 2011.

**Business Meeting:**

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

Officer Maher stated the Police Department held a sting of 30 establishments recently and only two failed. The police department thinks the seminars really have helped the establishments to know what is expected of them.

The meeting was adjourned at 10:30 am.

Respectfully submitted,

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Christine P. Ade, Recorder  
Town of Barnstable Licensing Authority

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Paul Sullivan, Clerk  
Town of Barnstable Licensing Authority