

Minutes – July 9, 2015

The following members were present at the County Commissioners' Meeting Room, Charles County Government Building, for a regular hearing of the Board of License Commissioners: Pamela Smith, Chairwoman; William B. Young, Vice Chairman; Guy N. Black, Thomasina Coates, and Steve Lowe. In addition, Alcohol Enforcement Coordinator Master Cpl. Judith Thompson, Alcohol Inspector Greg Kiesel, Associate County Attorney Matthew Clagett, and Lisa Bailey, Clerk/Recording Secretary, were in attendance.

1. Upon a motion made, duly seconded and unanimously carried, the following temporary alcoholic beverage license applications were approved:

Rotary Club of Charles County, La Plata, by: Jamie Reidy. Appearing on behalf of the applicant was David Gehris, for a 1-day temporary alcoholic beverage license to sell/serve Beer Only on Sunday, October 4 from 11 a.m. to 6 p.m., for their 60th Annual Lobster Festival fundraiser at the Charles County Fairgrounds, with approximately 1200 people expected to attend.

Woodrow Wilson H.S. alumni Group, DC Chapter & 1st Integrity Group, by Patrick A. Goodwin & Alicia Perkins, for a 1-day temporary alcoholic beverage license to sell/serve Beer, Wine & Liquor on Friday, August 14, from 9 p.m. to 2 a.m. at Take a Bow Performing Arts Group a/k/a The Culture Center, 109 Post Office Road, Waldorf, for a fundraiser with approx. 400 people expected to attend. This group is organized by retired DC police officers and will host 2 live bands and a DJ, for adults over 21 only.

Family Crisis Center of Prince Georges County, by: Lisa Russell. Also appearing is William Phillips. This application is for a 1-day temporary alcoholic beverage license to sell/serve Beer, Wine & Liquor on Saturday, July 25, from 9 p.m. to 2 a.m. at the Chin Hamaya Culture Center, 109 Post Office Road, Waldorf. This event is a fundraiser in support of the "Fight Against Domestic Violence" and will conclude the 8th Annual Charity Motorcycle Ride a/k/a "Riders Against Domestic Violence," with approx. 400 people expected to attend.

Bryans Road VFD & Rescue Squad. Inc., by Dennis Tomlinson & Dave Hamrick, President, for a 1-day temporary alcoholic beverage license to sell/serve Beer, Wine & Liquor on Saturday, September 16 from 3 to 9 p.m. at the Bryans Road Firehouse, for the Sportsman Bonanza fundraiser with approx. 400 people expected to attend.

Education Association of Charles County (EACC), by Linda McLaughlin, President, for a 1-day temporary alcoholic beverage license to sell/serve Beer Only on August 21 from 3-8 p.m. at the Charles County Fairgrounds, for their "Welcome Back Charles County Public Schools Employees" with approximately 400 people expected to attend.

2. Walter Lee Nash, Margaret Hodo Nash, Lefty's Barbeque Unlimited, Inc., t/a Lefty's Barbeque, 2064 Crain Highway, Waldorf, Maryland 20601, appeared for a new Class B/RB (Restaurant/Bar) Beer, Wine & Liquor (on sale only) alcoholic beverages license. Counsel to the applicant was Nathaniel H. Chapman, Esq. Testimony was presented by the applicants as to the facts contained in the application. Both Mr. and Mrs. Nash previously held a Class B – Beer, Wine & Liquor (on sale only) alcoholic beverage license on behalf of Lefty's Barbeque Unlimited, Inc., trading as Lefty's Barbeque, which was not renewed for the 2015 licensing year due to a fire at the licensed establishment in December, 2013. The 2013 license was placed on 'hold' from December, 2013, renewed and 'held' by the Board through April 30, 2015, at which time it expired. With renovations nearing completion and a re-opening date anticipated in August 2015, the applicants applied for this new license. Mr. and Mrs. Nash each serve as officers, hold a 50% interest in the corporation, and each meet the residency requirements. Testimony was presented that this is a family owned/operated restaurant type business which was first licensed in 2004. The applicants anticipate that the granting of the alcoholic beverages license will be an accommodation to the public as there has been a need established by the patrons. The applicants further testified that they have no intention to offer entertainment, nor do they anticipate any change in the operation of the business. The Board cautioned the licensees as to compliance with alcoholic beverages laws and the Board's rules and regulations and recommended alcohol management certification for those employees involved in the sales/service of alcoholic beverages. Upon consideration of the testimony and evidence presented and upon a motion duly made, seconded and unanimously carried, the Board approved the granting of this new Class B/RB (Restaurant/Bar) Beer, Wine & Liquor (on sale) alcoholic beverage license contingent upon submission of a Use & Occupancy Permit and payment of the annual license fee within 60 days.

3. Show Cause in the Matter of the Class B/H (Hotel) Beer, Wine & Liquor (on sale only) alcoholic beverage license issued to Paresh Karshan Patel, Waldorf Hospitality Services, LLC, held a Courtyard by Marriott – Waldorf, 3145 Crain Highway, Waldorf, Maryland 20603. At the request of Counsel, Sarah Arthur, Esq., this matter was continued to August 13, 2015.

4. Show Cause in the matter of the Class B – Beer, Wine & Liquor (on sale only) alcoholic beverage license issued to Myung Ho Paik, Robert A. Boarman, Waldorf, Inc., t/a Spice Club Bar & Grill, 3250 Old Washington Road, Waldorf, MD 20602. Counsel to the licensee was David Martinez, Esq. Board member Steve Lowe recused himself from this portion of the hearing due to a conflict. Associate County Attorney Adam Storch joined the meeting to present testimony and evidence in support of the Show Cause charges, in pertinent part(s):

COUNT I

That on or about the dates of May 9, 2014, and/or June 27, 2014, and/or October 31, 2014, and/or February 7, 2015, the licensee(s), Myung Ho Paik, Robert A. Boarman, Waldorf, Inc., t/a Spice Club Bar & Grill, did allow to occur on the licensed premises or location for which the license was issued, some or all of the activities listed in Article 2B, Section 10-405 of the Annotated Code of Maryland, to wit:

Article 2B, § 10-405 (c)(3) *Attire and conduct.* – With respect to attire and conduct, a person may not: “Encourage or permit any person on the licensed

premises to touch, caress or fondle the breasts, buttocks, anus or genitals of any other person;”

Article 2B, § 10-405 (d) - Entertainment provided generally. – With respect to entertainment provided, a person may not:

(1) Permit any person to perform acts of or acts which simulate:

(i) The act of sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation or any sexual acts which are prohibited by law;

(ii) The caressing or fondling of the breast, buttocks, anus or genitals; or

(iii) The display of the pubic hair, anus, vulva or genitals;

(2) Permit any entertainer whose breasts or buttocks are exposed (subject to the restrictions of paragraph (1) of this subsection) to perform closer than six feet from the nearest patron; or

(3) Permit any person to use artificial devices or inanimate objects to depict, perform or simulate any activity prohibited by paragraph (1) of this subsection.

Article 2B, § 10-405 (f) Persons exposing genitalia, etc. – A person may not permit any person to remain in or upon the licensed premises who exposes to public view any portion of his genitals or anus.

3. That by allowing certain nudity or sexual displays, Myung Ho Paik, Robert A. Boarman, Waldorf, Inc., are in violation of Article 2B, §10-405. of the Annotated Code of Maryland.

COUNT II

2. That on or about October 10, 2014, the licensee(s), Myung Ho Paik, Robert A. Boarman, Waldorf, Inc., t/a Spice Club Bar & Grill, did allow to occur on the licensed premises or location for which the license was issued, some or all of the activities listed in Article 2B, § 12-113 of the Annotated Code of Maryland, to wit:

Article 2B, § 12-113 (b) Tampering with contents of container. -- A retail dealer or an agent or employee of a retail dealer may not tamper with, by the addition to, or the change in any manner the quantity or quality of, the contents of any container of alcoholic beverages after the container of alcoholic beverages has been sealed in accordance with the laws of the United States and/or the laws of the State of Maryland, and while the contents remain in the original container.

Article 2B, § 12-113 (c) Except as specifically authorized by this article with respect to refillable beer and wine containers, a retail dealer, or an agent or employee of a retail dealer may not refill any container of alcoholic beverages with any substance after the container has once been emptied of its original contents.

Article 2B, § 12-113 (d) Keeping containers in violation of section. --

(1) A retail dealer may not keep or possess any container or containers of alcoholic beverages that have been tampered with in violation of subsection (b) of this section.

(2) A retail dealer may not keep or possess any container or containers of alcoholic beverages that have been refilled in violation of subsection (c) of this section.

Counsel to the licensee, David Martinez, Esquire, explained to the Board that his client had attempted to voluntarily surrender the alcoholic beverage license at the Office of the Board of License Commissioners the previous day, and that said surrender was refused. Associate County Attorney Adam Storch presented a statement in support of moving forward with the hearing. Attorney Martinez opined that the matter never rises to the Show Cause level because the Board does not have the authority to refuse a surrendered license. Associate County Attorney Matthew Clagett reiterated the sequence of events from the day before and requested that the Board move into closed session to consult with counsel.

Upon a motion by Thomasina Coates, seconded by William B. Young, and unanimously carried, in accordance with State Government Article §10-508(a)(7) the Board went into closed session at 11:14 a.m. to seek legal advice as to the Board's legal authority to accept surrender of an alcoholic beverage license while a Show Cause Order is pending.

The Board reconvened at 11:36 a.m. Upon a motion made by Thomasina Coates, seconded by William B. Young, Jr., the Board unanimously agreed to accept the surrender of the Class B – Beer, Wine & Liquor (on sale only) alcoholic beverage license issued to Myung Ho Paik, Robert A. Boarman, Waldorf, Inc., t/a Spice Club Bar & Grill, 3250 Old Washington Road, Waldorf, MD 20602. Further, Chairman Pamela Smith ordered that the evidence in support of the allegations set forth in the Show Cause Order against the licensee(s), be kept on file in case any of the licensees attempt to obtain an alcoholic beverage license in the future, then the evidence may be presented and considered as to whether or not the applicant is “a fit and proper person” to hold an alcoholic beverage license.

The Board further asked Associate County Attorney Clagett to look into drafting the following legislative initiative/rules & regulations:

(1.) Within 10 business days of service of a Show Cause Order upon an alcoholic beverage licensee(s), said licensee(s) may voluntarily surrender an alcoholic beverage license to the Clerk to the Board of License Commissioners. Said surrender shall nullify a pending Show Cause Order and stay a hearing. However, evidence obtained in support of the Show Cause Order may be utilized to determine the fitness of the licensee in any future applications before the Board of License Commissioners.

(2.) After 10 business days of service of the Show Cause Order upon the licensee(s), the voluntary surrender of an alcoholic beverage license shall not nullify a pending Show Cause

Order; shall not stay a hearing; shall not nullify a finding by the Board of License Commissioners, and/or imposition of a suspension, and/or imposition of a monetary fine, and/or imposition of a suspension, and/or imposition of a revocation by the Board of License Commissioners.

(3.) A legislative request to amend Art. 2B, §10-102 (if statewide), to include a statement that the license applicant(s) have never voluntarily surrendered an alcoholic beverage license while a Show Cause Order, or other allegation of violation, has been served upon the licensee and is pending a hearing. The Board is to work with Maryland Alcohol Licensing Association (MALA) to determine if they would support this statewide amendment, or if this is to be limited to Charles County.

Other business:

5. The Board approved a written request submitted by David Martinez, Esq., on behalf of his client, Cheung Fui Chan, Nicole D. Chen, Celeste Cunningham, 228 Market & Liquor, LLC, 10965 Berry Road, Waldorf, MD, to be closed for more than 10 consecutive days for renovations (approx. 120 days from issuance of Building Permits) through December 1, 2015, and to re-define their licensed premises to include the area formerly defined as living quarters, in accordance with their written request and submitted diagram. The Board ordered the licensee to turn-in their alcoholic beverage license to the clerk for safe keeping while the renovations are underway.

6. The written request from Robert A. Boarman, to resign as the resident licensee/officer on the Class B/N (Nightclub) – Beer, Wine & Liquor (on sale only) alcoholic beverage license issued to Myung Ho Paik, Robert A. Boarman, Waldorf, Inc., t/a Spice Club Bar & Grill, 3250 Old Washington Road, Waldorf, MD 20602, was deemed moot in that the licensee voluntarily surrendered their alcoholic beverage license to the Board of License Commissioners.

7. The clerk provided the Board members with a copy of their FY2016 Approved funding Line-Item Report.

8. Upon a motion duly made, seconded and unanimously carried, the Board approved the Minutes of the May 14, 2015 & June 11, 2015 meetings.

With no further business the meeting adjourned at 12:16 p.m.