

MINUTES OF THE PROCEEDINGS OF THE
LICENSE COMMISSION OF THE CITY OF WORCESTER
OCTOBER 1, 2015

LEVI LINCOLN CHAMBERS

Commission Members Present: Karon Shea, Chairperson
Anthony Salvidio, Commissioner
Walter Shea, Commissioner

Commission Members Absent: None

Staff Present: Stephen S. Rolle, Planning & Regulatory Services
Alexandra Kalkounis., Law Department
Deborah Steele, Planning & Regulatory Services
Lt. James Johnson, Worcester Police Department
Sergeant Thomas Needham, Worcester Police Department
Officer Mark Jolin, Worcester Police Department
Officer Glenn Stout, Worcester Police Department
Jim Foley, Health Department

Approval of the Minutes – September 17, 2015

Upon a motion the Commission voted 3-0 to approve the minutes of September 17, 2015.

OLD BUSINESS

1. Petition: Request for package store malt & wine license

Petitioner: JK Mart, 209-211 Chandler Street

Attorney Jonathan Finkelstein along with Bharatkumar Patel and Jack Patel appeared on behalf of the application.

Attorney Finkelstein stated that he and the applicant met with the police and finalized the paperwork. He stated that this license is proposed to be in a small strip plaza which includes a Dunkin Donuts and a laundromat and has a lot of parking. He stated that it is a compact convenience store and they share the common area with the Dunkin Donuts and the laundromat.

Attorney Finkelstein stated that the public needs is determined by how many people would go into an establishment like this and it has been demonstrated during the site view that it was very busy with customers for the laundromat and Dunkin Donuts.

Attorney Finkelstein stated that the store will install a security system and the hours of operation will be 5:00 a.m. to 11:00 p.m. but store would only sell during the allowed times.

Attorney Finkelstein stated that the applicant owns several package stores and has experience in other states with operating convenience stores.

Attorney Finkelstein stated that near the proposed store there are two full package stores. El Coqui Liquor and State Liquor and they don't provide the type of convenience that this store would and this is a convenience store that is on the main road and the kind of venue you will see in the future that will be selling beer and wine and the store is not competition with anyone of its size.

Commissioner Shea stated that his big concern is the number of package stores in the area and as he recalls there are six within a mile radius and he believes the area is well served and at this point couldn't vote for this license as there are six within a one mile radius.

Chair Shea stated that it is a very busy location and during the Commission's view of the premises it was observed it was very tight with the Dunkin Donuts and laundromat also operating at the location and she doesn't see the need and can't approve this location having a beer and wine license.

Commissioner Salvidio stated that he commends the presentation but the fact is the area is well served and the location has too much going in it already and he doesn't think the applicant has demonstrated that there is an additional need for another license.

Attorney Finkelstein stated that it not like the other stores in the area. It not a full package store and this is a wave that is across the rest of country and beer and wine is sold at delis and convenience stores and need is not determined by a public survey but by how many people come in a store and based on fact that it is compact and a lot of people come in there shows that there is a need.

Commissioner Salvidio stated that everyone talks about need and convenience as if they are the same thing but everything is a convenience and the area is well served and convenience doesn't require that every store on every corner sell beer and wine and it requires much higher level of due diligence and there is so much going on in the place already and when they viewed the premises they could barely move as it was too compact.

Attorney Finkelstein stated that in previous meetings the Commission had relative to beer and wine in supermarket the Commission stated that a supermarket is a place where people come for other goods and it is a convenience and this is matter of convenience such as a supermarket which is as busy as a convenience and this will be small location and will serve neighborhood and won't detract from the other stores.

Upon a roll call the Commission voted 3-0 to deny the package store malt and wine license based on the fact that there was not a public need for another package store in area, the area is well served and the site is too small for amount of activity going on at location.

Exhibit A: Application for package store malt & wine license received June 29, 2015 and dated June 29, 2015.

NEW BUSINESS

One Day Liquor & Entertainment Requests:

2. Petition: Request for one day liquor license
- October 17, 2015 – 7:00 p.m.-11:00 p.m.
- Petitioner: Cirque duNoir/Sprinkler Factory, 38 Harlow Street
- 2a. Petition: Request for one day entertainment license for dancing by patrons, live music
- October 17, 2015 – 7:00 p.m. – 11:00 p.m.
- Petitioner: Cirque duNoir/Sprinkler Factory-7:00 p.m.-11:00 p.m.

Items 2 & 2A were taken contemporaneously.

Louis Fraire appeared on behalf of the items. He stated that this is a fundraiser for the Sprinkler Factory.

Upon a motion the Commission voted 3-0 to approve the one day liquor license and one day entertainment license.

Exhibit A: Application for common victualer license received September 22, 2015 and dated September 22, 2015.

Exhibit B: Application for one day entertainment license received September 22, 2015 and dated September 22, 2015.

Common Victualer License Requests:

3. Petition: Request for common victualer license
- Petitioner: Subway Restaurant, 867 Grafton Street

Upon a motion the Commission voted 3-0 to approve the common victualer license for Subway Restaurant.

Exhibit A: Application for common victualer license received September 15, 2015 and dated September 15, 2015.

4. Petition: Request for common victualer license

Petitioner: Somethin' Catchy, 358 Shrewsbury Street #2

Rose Ellen Padavano appeared on behalf of the application. Ms. Padavano stated that this will be a seafood restaurant and will open in a month and will be BYOB.

Upon a motion the Commission voted 3-0 to approve the common victualer license for Somethin' Catchy.

Exhibit A: Application for common victualer license received September 15, 2015 and dated September 15, 2015.

5. Petition: Request for common victualer license

Petitioner: Dos Tacos Cafe, 294 Pleasant Street

Upon a motion the Commission voted 3-0 to approve the common victualer license for Dos Tacos Café.

Exhibit A: Application for common victualer license received September 11, 2015 and dated September 11, 2015.

6. Petition: Request for common victualer license

Petitioner: June Street Grill, 119 June Street

Helen Richard appeared on behalf of the item.

Ms. Richard stated that this will be a breakfast/lunch place.

Upon a motion the Commission voted 3-0 to approve the common victualer license.

Exhibit A: Application for common victualer license received September 15, 2015 and dated September 15, 2015.

Alcohol & Entertainment Permit Applications:

7. Petition: Request for restaurant all alcohol license

Petitioner: Lock 50, Inc., 50 Water Street

Ms. Steele stated that this application has been postponed until October 15, 2015.

Exhibit A: Application for restaurant all alcohol license received September 15, 2015 and dated September 15, 2015.

8. Petition: Request for restaurant all alcohol license
Petitioner: Worcester BBC, LLC, 225 Shrewsbury Street

8a. Petition: Request for entertainment license for tv, recorded music live music, amplification system
Petitioner: Worcester BBC LLC, 225 Shrewsbury Street

Commissioner Salvidio recused himself from items 8 and 8a.

Items 8 and 8a were taken contemporaneously.

Attorney Mark Donahue along with Gary Simon and Craig Pietz appeared on behalf of the item.

Attorney Donahue stated that this is the former Urban Kitchen and Worcester BBC LLC will take over the location with the exclusion of the function area. He stated that there are 11 existing stores in Massachusetts and this is a well known chain and it is a British Pub concept. He stated that the total seating will be for 231 people.

Chair Shea stated that the Commissioners viewed the premises prior to the meeting and are thrilled to see the restaurant coming to the City of Worcester.

Commissioner Shea asked if there would be a function room. Attorney Donahue stated that it is not a function room more like a private dining room.

Commissioner Shea asked if there would be valet parking. Attorney Donahue stated that not at this time as there is parking lot right next to the building but they may look at it further down the line.

Mr. Simon stated that the hours for entertainment would be 11:00 p.m. to 1:00 a.m.

Upon a motion the Commission voted 2-0 to approve the restaurant all alcohol license along with pledge of license.

Upon a motion the Commission voted 2-0 to approve the entertainment license to 1:00 a.m.

Exhibit A: Application for restaurant all alcohol license received September 15, 2015 and dated September 15, 2015.

Exhibit B: Application for entertainment license received September 15, 2015 and dated September 15, 2015.

Commissioner Salvidio returned to the meeting room.

9. Petition: Request for transfer of package store all alcohol license

Petitioner: MASSState LLC, 370 Park Avenue

Attorney David Superenant appeared on behalf of the item.

Upon a motion the Commission voted 3-0 to approve the transfer of the package store all alcohol license and the pledge of license.

Exhibit A: Application for transfer of package store all alcohol license received September 8, 2015 and dated September 8, 2015.

10. Petition: Request for change in beneficial interest and change of officers and directors

Petitioner: Drake Petroleum Company Inc. dba Exit 4 Extra Mart,
1181 West Boylston Street

Attorney Leslie Delaney Hawkins appeared on behalf of the item.

Upon a motion the Commission voted 3-0 to approve the request for change in beneficial interest and change of officers and directors.

Exhibit A: Application for change in beneficial interest and change of officers and directors received September 3, 2015 and dated September 3, 2015.

Violation Hearings

11. Rocky's Food & Spirits, 139 Water Street – Violation of Rules #7, #14, #17 and 204 CMR 2.05 – September 19, 20, 2015
Manager responsible for violations occurring on the premises
No alcoholic beverages to be consumed except in areas specified
Sales to persons under 21
Patio violation

John Fresolo appeared on behalf of the item and waived his right to counsel.

Lt. Johnson read the following reports.

September 19, 2015

On September 19, 2015 Officer Jolin of the Worcester Police Department's Alcohol Enforcement Unit was contacted by Deputy Chief Edward McGinn at 12:30 a.m. to inquire about patio licenses as Deputy Chief McGinn had observed numerous people outside of Rocky's Food and Spirits at 139 Water Street drinking. All sidewalk cafes must cease at 11:30 p.m. and Officer Jolin noted that the time was 12:30 a.m. and drove over to investigate.

Upon Officer Jolin's arrival at Rocky's Food and Spirits he observed that there were three Adirondack chairs with tables out front. There was no border or any demarcation to define the patio and Officer Jolin observed 8-9 people outside with beers. Officer Jolin asked them what they were drinking and several responded beer while others ignored Officer Jolin. Officer Jolin then identified himself as a police officer and asked a female in a red dress what she was drinking and where she had obtained the beer. A male sitting beside the female pointed to Rocky's. Officer Jolin asked the female for her ID and she stated that she had no ID and after asking the female a few times her age she responded that she was 20 years old.

Officer Jolin had the female accompany him back into the bar and spoke with the owner John Fresolo and informed Mr. Fresolo that the female and others were out in front on the patio drinking. Mr. Fresolo stated that he had a patio permit. Officer Jolin stated that the patio must be closed by 11:30 p.m. Mr. Fresolo stated that he was not informed of the rules. Officer Jolin also informed Mr. Fresolo that the female was only 20 years of age and that she was drinking beer. Mr. Fresolo stated that it had nothing to do with him because he never served her. Officer Jolin stated that he as the owner of the licensed premises was responsible for any illegal drinking on the property or patio.

As Officer Jolin was discussing the violations with Mr. Fresolo the female ran out of the bar and into the crowd on Water Street so Officer Jolin could not identify her.

Officer Jolin informed Mr. Fresolo that he needed to have a staff member monitoring the patio area and Mr. Fresolo stated that there was a person but wasn't present at that time.

Officer Jolin then spoke with the doorman who was in the back of the bar and asked about his responsibilities and he stated that he watches the patio area and checks all ID's as people enter. Officer Jolin asked about people under 21 years of age and doorman stated that everyone must show an ID and was told that anyone under 21 receives a black magic marker mark on the back of their hand. Officer Jolin pointed out that the underage female in the red dress had a beer and Officer Jolin did not notice any mark on her hands. The doorman stated that she may have entered through the side door.

Officer Jolin then walked up to two female patrons and one had a mixed drink and requested her ID. Both girls informed Officer Jolin that they did not have IDs. Officer Jolin asked how old the girls were. Both stated that they were 20 years old. The girl with the mixed drink stated that she was holding it for a friend.

Officer Jolin called Mr. Fresolo over and explained the situation and then requested the girls flip their hands over and no magic marker marks were on their hands. Mr. Fresolo stated that they must have come in from the side door. Officer Jolin explained that all doors should be controlled and there was no excuse to not have checked all the patrons. Officer Jolin also pointed out that this was second and third patron upon his arrival at the establishment that had absolutely no ID. The doorman told Officer Jolin that he checks every ID.

Officer Jolin then went over to four females walking out the side door and all four females stated that they were 20 years old. Officer Jolin asked for their IDs and they stated that they had no IDs with them. Officer Jolin then asked the girls to turn over their hands and none of them had any marks to show that they were under 21 years of age.

September 20, 2015

On September 20, 2015 Sgt. Thomas Needham and Officer Glenn Stout were working as members of the Worcester Police Departments Alcohol Enforcement Unit and were conducting surveillance at Rocky's Food and Spirits located at 139 Water Street.

The officers observed several patrons with drinks leave the patio area and walk onto Water Street. Officer Stout observed that the patio had no border or any demarcation defining the area of the patio.

At 12:45 a.m. Officer Stout observed a white male wearing a white shirt walk out of Rocky's carrying a red solo cup and walk south towards Kelley Square. Sgt. Needham and Officer Stout followed the male to Columbus Street and stopped their unmarked police vehicles and exited to speak with the male. As they approached the male and identified themselves as Worcester Police Officers the male poured the contents of the cup on the ground and kicked the cup under Sgt. Needham's vehicle. Officer Stout could smell the beer that the male had poured on the ground and asked the male for identification. The male stated that he didn't have an ID and all he had was his high school ID which he showed to Officer Stout which showed his name and date of birth of July 27, 1996. Officer Stout ran the male's ID through CJIS and it showed he had an active driver's license with date of birth of 7-27-1997.

Officer Stout asked Mr. Randall where he had gotten the beer and Mr. Randell stated Rocky's. Officer Stout observed that Mr. Randall was wearing a paper bracelet around his wrist and asked what the bracelet was for. Mr. Randell stated to buy beers in Rocky's. Mr. Randell stated that he was friends with the owner John Fresolo and that he doesn't get carded at the door to purchase alcohol inside the bar.

Less than 24 hours prior Officer Jolin had three violations at Rocky's and had conversation with owner John Fresolo advising him of the violations.

Sgt. Needham had conversation with Mr. Fresolo and advised him that he would be required to appear before the Worcester License Commission.

Officer Jolin stated that on September 19, 2015 that when he approached the bar there were no boundaries for the patio and the owner said he didn't serve the girl and it wasn't his responsibility and Officer Jolin stated that he spent 20 minutes explaining the rules about what identifications the establishment could take and how to secure the doors.

Officer Stout stated that they had witnessed numerous patio violations and people with drinks up and down Water Street and the underage male that they stopped said that the student body of Worcester State College knew that Rocky's was the place to

go and get alcohol on a Thursday night and whatever Officer Jolin had explained the evening before had been ignored.

Sgt. Thomas Needham stated that when he and Office Stout were across from the establishment they observed numerous violations and there were numerous individuals walking from the establishment with red solo cups up towards Kelly Square and there was no defined area for the patio and embarrassingly the police observed two females climb out the windows of the establishment and place their drinks on the ground and retrieve them from the sidewalk. The young male they stopped left through the side door and walked out toward Kelly Square with his drink and they stopped him by Widoff bakery.

Sgt. Needham stated that he then went to speak to Mr. Fresolo at Rocky's to express their disappointment in the way that the business was being run. Especially when only 24 hours before Officer Jolin had discussed the rules with Mr. Fresolo and it was an embarrassing situation for a business to be run that way.

Mr. Fresolo stated that he had no other excuses other than his lack of experience with a big crowd and he had been in business for only three and half months. It got busy overnight and it just so happened it was the evening the police came in that they went from 10-15 patrons at their place to place being shoulder to shoulder and he didn't have the proper staff and was overwhelmed but he had been educated by police on what needs to be done but he was unable to do it within 24 hours but he had it in place for the following weekend. As far as the male saying that students at Worcester State saying that this is place to drink there has not been more than 10-15 people in the place prior to that night and this was the first night that he had this many people in establishment since his grand opening and his only excuse is inexperience in dealing with a crowd that size and wasn't aware of the sidewalk ordinance and he made sure at 11:30 the next night that no alcohol was outside and he stated that he usually stays on the sidewalk on Friday and Saturday. Mr. Fresolo stated that he was understaffed and overwhelmed and he apologized and it will not happen again and he has put boundaries put up around the patio and the doors have boundaries so people can't sneak in.

Mr. Fresolo stated that he is a food establishment and that is why he allows under 21 in the establishment and they use wristbands for over 21 but there were people underage and someone could have bought a drink for someone underage.

Chair Shea stated that obviously if it went to packed establishment overnight it should have been an indication that word was out there that it was the place to go and should have been red flag to ask where are all these young people are coming from and triggered the need to card.

Commissioner Salvidio stated that he understands that Mr. Fresolo is fairly new to the business and he understands the patio could have just been naiveté but serving alcohol to under 21 is a big problem. Having underage mix in with the over 21 crowd and the establishment is courting problems and he is concerned with people entering and exiting the premises with alcohol and the establishment is in a busy area and it is now on the Worcester Police Department radar due to its proximity to the colleges and

Rocky's needs to rethink the business as there were two violations within 24 hours and this cannot occur again.

Commissioner Shea stated that he understands the business is tough but the underage kids are looking for a place to go and Rocky's should look at what direction it wants to go.

Commissioner Salvidio stated that he thinks the problem is the under 21 and a smart solution would be to serve food to a certain hour and then change it to over 21 later in the evening as it will make it easier to patrol the crowd. Also the side door needs to be addressed.

Sgt. Needham stated that Mr. Fresolo could set up barriers.

Mr. Fresolo stated that he would be fine with the conditions suggested by the Commission.

Commissioner Shea asked if all the servers were TIPS certified. Mr. Fresolo stated that they were.

Officer Jolin stated that it another problem is that the establishment is using promoters.

Commissioner Salvidio stated that when establishment goes with promoters the establishment gets in trouble as establishment gets overwhelmed.

Upon a motion the Commission voted 3-0 that a violation of Rules #7, 14, 17 204 CMR 2.05 occurred on the premises and voted 3-0 to impose a two day suspension with two days served and Mr. Fresolo should contact Ms. Steele with days he will close. The Commission also imposed condition that establishment will be 21 years or older after 9:30 p.m.

Exhibit A: Police Report dated September 22, 2015.

Exhibit B: Police Report dated September 22, 2015

Communications

ABCC notice of suspension – JP Alliance-Shangri-La – October 14, 2015 - October 15, 2015 - No comment.

ABCC notice of hearing Varsity Bar & Grille – October 13, 2015 - No comment.

ADJOURNMENT

Upon a motion the meeting adjourned at 11:15 a.m.