

TOWN OF TRURO
BOARD OF SELECTMEN
MEETING OF TUESDAY, JULY 31, 2007

The Truro Board of Selectmen met for their weekly session on Tuesday, July 31, 2007 at 6:00 p.m. at the Truro Town Hall, 24 Town Hall Road, Truro. In attendance were: Chairman Alfred Gaechter, Vice-Chairman Gary Palmer, Clerk Christopher R. Lucy, Curtis Hartman, Jan Worthington, Town Administrator Pamela Nolan, Assistant Town Administrator Charleen Greenhalgh, Administrative Secretary Julie DuPree, Martha Nagy, Roberta Lema, Winifred S. Skillman, Helga Lupien, Martha E. Sedgwick, Stephen Williams, Doug Jensen, Eric Jensen, Curtis Graham.

Mr. Gaechter convened the meeting at 6:04 p.m.

Minutes: Mr. Palmer moved to approve the minutes of the July 24, 2007 as written. Mr. Hartman seconded it. Vote: 5-0, unanimous.

Public Comment: None.

Public Hearing: Entertainment license for Blackfish, 17 Truro Center Road: Mr. Gaechter moved to open the public hearing. Roll call vote: 5-0, unanimous. Mr. Lucy disclosed that he has worked for the applicant, Eric Jansen. He did a septic inspection at his home, and has also done inspections for the owner of the former restaurant, Nancy Stephani. There was no objection made to his acting on this application.

Mr. Jansen read his letter of application. In it, he noted that entertainment was allowed there in the past, that every effort will be made to limit the amount of exterior noise during performances, doors and windows kept shut, artists told to keep the volume down, for example, drummers will be required to use brushes instead of sticks. Events will consist mainly of live jazz, blues, bluegrass and folk-rock music, the majority of which will be acoustic. He went on to say that he has held an entertainment license at the Wicked Oyster in Wellfleet with very little problems. He gave the Board an overview of his past experience in the restaurant business. Mr. Hartman asked if he had any complaints, and he responded that he just had one. He read a letter he received from Joe Connor. While Mr. Connor has his reservations, he feels comfortable that Mr. Jansen's track record demonstrates he would be equal to the task of accommodating everyone's needs and anxieties and addressing the problems that may arise. Mr. Jansen had also spoken to abutter Keith Thurlow; he told him he had no problem with it, but if he did, he would speak to him personally. Mr. Gaechter asked him what his hours of operation were and the entertainment hours. Mr. Jansen said his hours are 5:00 p.m. - 1:00 a.m.; he will take food orders from 5:00 p.m. to 10:00 p.m. The bar will be open until 1:00 a.m. He plans to serve breakfast at 7:00 a.m. either this fall or next year. Mr. Gaechter asked him if that meant that from 10:00 p.m. - 1:00 a.m. he intends to be solely entertainment. Mr. Jensen said yes, but he doesn't want to upset the abutters, he just wants the opportunity to be a successful restaurant. If he fails with this experiment, he will not pursue this, or if he has consistent complaints. He doesn't intend to book loud musical events. Mr. Gaechter read letters received from Gordon Lupien and the Veevers-Carters. He noted that they were not just worried about loud music, but also the noise of departing customers. Mr. Jensen responded that the letters show a predisposition and pre-judice against this type of establishment. He again spoke to his record. When asked, he told

the Board that he was amenable to decreasing the hours of the license. Ms. Lupien noted that she feels the same as her husband, Gordon, and expressed her opposition to this. Ms. Sedgwick was alarmed by how many plates Mr. Jensen had told them he wanted to turn over and it was more than twice the occupation limit of the building.

The Licensing Agent, Ms. DuPree gave the Board some information to help them in their determination. The former restaurant's hours of operation on their liquor license were 11:00 a.m. - midnight, Monday through Saturday and 1:00 p.m. - midnight on Sunday. Since that licensing took place before she worked for the town, she asked the former Licensing Agent and was told that the time of closing was set at midnight because the restaurant was located in a residential zone. The entertainment licenses that were granted were not annual as this one would be, but issued for special events. Ms. DuPree explained that the hours of sale for Section 12 license holders are set by the local authority, but sales shall not be barred between the hours of 11:00 a.m. - 11:00 p.m. She had typed in the hours of operation on his license--which has not been issued yet--after questioning the applicant, because there is no place on the ABCC forms for the hours of operation. It is her opinion that BOS did not approve hours of operation when they approved his liquor license application. Mr. Jensen disagreed with that; he remembers the hours were on his application.

Mr. Hartman said he was sympathetic to the abutters; no one wants Truro Center to be an urban area. He suggested that they grant the license on a six-month basis, event by event. If there are no issues, after that he could reapply. Mr. Palmer thought that doing it on an event basis would be hard on the applicant, and suggested limiting the number of events. Mr. Gaechter noted he would be willing to approve it with the hours of operation limited to 11:00 p.m. Mr. Jensen said that restriction would put him out of business. Ms. Worthington said she felt that is restricting him too much; the profit is in the bar. She said the BOS should encourage new businesses. Mr. Jensen said that midnight would be a reasonable time to cut the music. Ms. Lema said she has had a lot of experience with the Blacksmith, and it was a place that was known to have good food. It never stayed open really late, and occasionally they had entertainment. It is a food restaurant and Truro is a small town for nightly entertainment. Mr. Hartman asked how many nights per week he would have entertainment. Mr. Jensen responded that he was not sure; at the Wicked Oyster he had entertainment twice a week. Mr. Hartman noted that this license runs out December 31st, at which time he would have to reapply, so this is a short term license. Mr. Palmer said that it is his experience that a restaurant takes on the complexion of the owner, so opinions are subjective and based on what they feel Mr. Jensen is going to do. It is pre-existing, non-conforming. He feels they should limit the music to midnight and evaluate it after the season ends.

Mr. Williams said he had spoken to most of the abutters. The Cyrs could not come this evening and gave him permission to say that they like Mr. Jensen and have respect for him, but they are opposed to a 1:00 a.m. closure and this license being granted to this restaurant with it being located so close to their bedroom would be a real imposition. For himself, he said this is an anomaly, a pre-existing non-conforming restaurant use that they have all had to put up with, an attractive nuisance. There is debris and he told the Board some of the problems he has had in the

past with cleaning it up, and with the noise of customers leaving late at night. None of the abutters are in favor of this. Ms. Lupien said she looks forward to the restaurant opening, but it is very noisy. Trucks are running early in the morning, so you cannot sleep at night or in the morning. Mr. Williams said that Mr. Jensen told him that he wants to get it up to 220 meals per night. He feels that before a discussion of entertainment, Mr. Jensen should see what the operation is like. If it is his desire to have musical accompaniment to a meal, but not to be the feature of the restaurant, that could be done on an event to event basis with notice to abutters. Next year he should sit down with the abutters so they can voice their concerns. Mr. Gaechter asked if Mr. Jensen was saying he could not survive without entertainment. Mr. Jensen said, no, he could not survive without the bar business. It is a very difficult business and their wanting to handcuff him out of the gate is unreasonable and surprising to him. His reputation is stellar, and the Wicked Oyster was also pre-existing non-conforming.

Ms. DuPree recommended that the Board grant this license, but with conditions. She said that they have discretion to do this under MGL. She recommended that they limit the hours, limit the music to acoustical, and consider limiting the number of events per week. She noted that the applicant has put in a lot of time and effort and money in bringing the building up to code, with expectation of being allowed to operate his business. She agreed with his statement that he would be handcuffed if denied; he should be given the opportunity to run a successful business. From the comments of the abutters tonight, she gets the impression that they do not object to a restaurant as long as it is not too successful.

Mr. Williams took exception to her comment that the BOS have discretion in this. He maintained they do not--it is a zoning issue--non-conforming. Ms. Worthington said that at this point we do not know if the operation will get bigger and bigger; he hasn't opened the doors yet. When he was asked, Mr. Jensen said that he would like to open August 8th, but a more realistic date would be August 15th.

Mr. Gaechter said he would like to continue the hearing to August 7th. He wants to talk to more people; he has gotten conflicting information this evening. If forced to vote tonight, he will vote no. Ms. Worthington did not want to hold up the applicant. Mr. Palmer asked Mr. Jensen if he would accept the statements in his application letter, for example, doors and windows shut, etc., as a condition. He said that he would. He also agreed to end the entertainment at midnight. **Mr. Palmer moved, with the conditions of the statements contained in Mr. Jensen's letter and with the entertainment to end at midnight, to approve the week-day entertainment license. Ms. Worthington seconded it. Vote: 4-1, with Mr. Gaechter opposing.**

Mr. Williams expressed his disappointment and anger at the Board's decision. He told the Board that his next move is to complain to the Building Inspector because this is against zoning.

Request to use town property: Mr. Hartman moved to approve the request from Robert diMartile and Holly Busse to hold a wedding ceremony at Ballston Beach on September 22, 2007 at 4:00 p.m. Mr. Palmer seconded it. Vote: 5-0, unanimous.

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Reappointment: Mr. Palmer moved to reappoint Gary Palmer, Kevin Kuechler to the PLOG, and John Lundborn as alternate. Mr. Hartman seconded it. Vote: 5-0, unanimous.

With no further business, Mr. Palmer moved to adjourn. Vote: 5-0, unanimous. The meeting was adjourned at 7:05 p.m.

Alfred Gaechter, Chairman

Gary Palmer, Vice-Chairman

Christopher R. Lucy, Clerk

Curtis Hartman

Janet W. Worthington

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