

TOWN OF DEERFIELD
ZONING BOARD OF APPEALS
MEETING MINUTES

May 27, 2004

- I. Meeting convened at 7:00 p.m. Main Meeting Room, Municipal Offices, South Deerfield, MA.

Members Present: Chair Francis Olszewski, Ronald Bohonowicz, Leonard Grybko, Sr, Grace Friary, Roger Sadoski, and Stephen Barrett

Members Absent: Richard Calisewski

Others present: Edward Pepyne, Attorney, Brian Kolakski and Scott Kolakski

- II. **Chair Olszewski opened the meeting continued from May 20, 2004 regarding the application of George E. Miller – Magical Wings DBA Butterfly Blues for a special permit to serve alcoholic beverages at 281 Greenfield Road, South Deerfield, MA (Assessors Map 11 Lot 81).**

Attorney Pepyne explained that a win-win situation had evolved from discussions and concerns. There will be no alcohol, at any time, near the children and museum area. He mentioned that the Board of Selectmen has changed the liquor license so that any conditions/restrictions the ZBA requires will automatically be added to the license. The time frame that liquor will be served will avoid a mix of children and alcohol. The functions are broken down to two aspects, which allow for a win-win situation for the Town and allows for growth and evolution of the business:

- a. Public (tour buses, children, etc.)
- b. Private (weddings, corporate meetings, etc.)

The proposal allows for a special permit for the sale and consumption of alcohol during normal business hours. The sales are permitted in the room named the Monarch Room, east of the lunch area. The room size is approximately 20x20 or 20x30. According to the terms of the special permit, alcohol will not be taken from the Monarch Room. The room is not for bus drivers or chaperones. Attorney Pepyne noted the room would be low impact and alcohol will not in anyway, interact with school children

For private functions the entire facility will be closed. He stated that businesses police themselves regarding serving liquor for weddings, corporate outings (peer pressure) it is a different type of function than a field trip.

He also stated that all litigation would be dismissed if this were agreed to. Magic Wings is happy with this agreement. It is a win-win situation for the ZBA, Board of Selectmen and everyone has had input into the process.

Grybko Sr. stated that Magic Wings has never been denied a permit for any function, on a per function basis. He asked if it was legal and okay with the ABCC for the Board of Selectmen to issue a liquor license that has been paid for two years but is not being exercised.

Attorney Pepyne stated that it is legal and part of the process for the Board of Selectmen to approve the license and it is just part of the process in the Bylaws for the Town of Deerfield for a liquor license. This agreement has been looked at from different angles, and the function angle works. The addition of private parties is an evolution of this business.

Grybko Sr. asked if this included stag parties.

Attorney Pepyne answered that if they can get a permit that would be a different thing, this is not going to be the Butterfly Bar and Grill. He commented that the police department would enforce the license conditions. The Board of Selectmen regarding the limitations had amended the license. It would be a violation if liquor were served outside of the Monarch Room.

Barrett asked if the State would supersede the ZBA decision.

Attorney Pepyne responded that it would have to go to Court to appeal the decision.

Attorney MacNichol also made comments.

Sadoski commented that the business is evolving. He questioned to whom the liquor license was being issued and what would happen if the butterfly portion became a smaller part of the business or evolved into something else.

Attorney Pepyne stated that right now there is no time limit and a condition could be put on the license to review it in 5 years.

Grybko Sr. asked which corporation would be getting the license.

Attorney MacNichol stated that the license would be in the name of Magical Wings.

Sadoski asked what would happen if the business was sold.

Attorney MacNichol stated the license could not be moved.

Sadoski asked if it were sold would the next party automatically get the liquor license or would they have to go through the whole process?

Attorney Pepyne asked if the ZBA would like that as a condition?

Friary asked if it could be non-transferable.

Attorney Pepyne stated that if the ZBA members were concerned a five-year review could be added to the license conditions.

Attorney MacNichol stated that non-transferable could not be put in. And she preferred that the license be issued to Magical Wings, the license doesn't go with the land, it is part of the business.

Grybko Sr. asked about the number of corporations involved in this business?

Attorney MacNichol and George Miller responded that there were two corporations.

Bohonowicz asked who the controlling person is, could the manager of liquor license be reviewed once a year and could the name be changed?

Grybko Sr. asked if after a certain number of years the license be reviewed?

Attorney Pepyne commented that a five-year time frame gives the applicant some comfort.

Friary asked if the Police would monitor the establishment night and day? Liquor is contained to one space during day, after hours and when closed to the public it becomes a private function.

Attorney Pepyne stated there would be no public access at private functions.

Friary commented that Magical Wings now receives a tax break as a museum, what would happen if it closed and operated as a function hall.

Attorney Pepyne stated that the museum exemption would be lost.

Miller stated that there was no museum exemption and Magic Wings has a TIF.

Attorney MacNichol noted there would be no food or alcohol in the conservatory, but after a meeting or event there may be a tour.

Sadoski asked what the normal hours of operation?

Miller responded that it was from 9:00am – 6:00pm, 9:00 – 8:00pm for ice cream and different hours for private functions as needed, but he didn't see hours going past 11:00 pm or midnight.

Bohonowicz asked if a sign would be put up when closed for a private function and how large the sign would be.

Miller responded that a sign would be placed on the main entry door noting that the facility was closing for a special event. The sign would be large enough to read but not too large.

Attorney MacNichol showed the members a map and reviewed the areas that alcohol was allowed and not allowed as granted by the Selectmen.

Friary questioned if food was served in the Monarch Room.

Attorney MacNichol responded no, but food can be brought in but liquor cannot be brought out.

Bohonowicz asked if liquor would be served outdoors.

Miller responded that liquor would not be served outdoors. He referred to the map and showed the locations of the permanent and portable bars. The portable bar would be used for larger functions. He noted that he did not want to be a bar business just to provide alcohol for special functions or for someone to have a drink with their food. Rooms will be reserved for special events.

Bohonowicz asked if anyone under 21 could go into the Monarch room with a family member.

Miller said yes but they won't be served liquor.

Attorney MacNichol added that it would be just like a restaurant.

Attorney Pepyne asked if everyone understood.

Grybko Sr. asked what restrictions the ZBA could legally put on the special license.

Attorney Pepyne stated the license could be reviewed once a year but he felt that was too much; a five-year review would track any patterns.

Grybko Sr. stated that he was concerned about the Town of Deerfield, things going on at Magic Wings and noting that putting a review will make people adhere to what they presented tonight.

Olszewski questioned the need for review, if a problem developed the Selectmen will revoke the license.

Attorney MacNichol commented that all liquor licenses are reviewed yearly and if the Selectmen found a problem they would deal with the issue. She stated she did not believe that a special license can be taken back for no reason and wasn't sure what the point of having a review where there were no violations to take into consideration. If the Selectmen took back the liquor license the special permit would be taken back too.

Bohonowicz stated that Miller and his group had done a good job and his concern was if the license changed hands or a new manager was appointed.

Attorney MacNichol explained the liquor license transfer process.

Friary read the restrictions.

Grybko Sr. asked if the ZBA had any authority over entertainment licenses.

Attorney Pepyne said the ZBA did not have any authority over entertainment licenses. He also asked if everyone understood.

Attorney MacNichol submitted paperwork as part of the record.

Grybko Sr. asked how much authority the ZBA has over the license.

Attorney Pepyne noted the ZBA has permit-granting authority but the Building Commissioner does the enforcement.

Olszewski asked if anyone wanted to speak before he called for a motion.

Attorney MacNichol and George Miller left the table.

Two members of the public came forth to speak - Brian Kolakski and Scott Kolakski. They noted they farmed the land behind Magic Wings. They asked questions and made comments regarding - the name on the liquor license, which part of the building the license would apply to, concerns about people drinking outdoors, trash in the field, this was supposed to be an educational facility, traffic, concerns about school buses/children and now people drinking.

Mr. Miller and Attorney Pepyne answered questions. It was noted that violations would be addressed if complaints were received.

Sadoski noted that the Selectmen could grant an outdoor café.

Attorney Pepyne noted liquor must stay inside at all times.

Grybko Sr. stated that Miller should give up the tax break because he was serving booze and asked if this was considered a change of use because it started out as a museum.

Sadoski asked if there were any other concerns? He noted bus drivers should not be drinking and that no liquor should leave the building or Monarch Room.

Attorney Pepyne noted complaints could be brought before the Selectmen and that the Building Commissioner determined change of use situations. He asked Friary to read the conditions again, which she did, and do a roll call vote.

Chair Olszewski made a motion to permit the special permit as read by Clerk Friary, it was seconded by Bohonowicz and a roll call vote was taken
Sodoski in favor
Grybko Sr. opposed
Olszewski in favor
Bohonowicz in favor
Friary opposed

Attorney Pepyne noted that this was a win-win situation and a good deal. He asked if this was the board's pleasure? The board had voted. Attorney Pepyne left the meeting. The Chair noted that the vote was lost.

Chair Olszewski noted it was the time of year to review board positions. He noted that he said he would be chair for a year and the year is up and asked if anyone was interested in becoming the chair.

Bohonowicz declined noting a heavy work schedule and that he had done it for five years before Fran. He suggested that the Town Administrator pick a chair or set a policy for members to do a one-year chair rotation.

Oszewski noted no one wanted to be chair. He answered a question from the public regarding 43 Conway Road and noted that would be discussed June 17, 2004.

On a motion by Bohonowicz, seconded by Friary it was unanimously voted to adjourn.

Respectfully submitted,

Vivien Venskowski, Zoning Board of Appeals Clerk