



## Georgetown Zoning Board of Appeals

*Memorial Town Hall ♦ One Library Street ♦ Georgetown, MA 01833*

March 13, 2012

### MINUTES OF A PUBLIC HEARING

**ZBA FILE #12-01**

**Black Swan Country Club, 258/258R Andover St., LLC – Owner Jack Swansburg  
Special Permit Request to Modify Condition of Previous Decision #89-15**

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Board Members Present: Paul Shilhan, Acting Chairman  
Gina Thibeault, regular member  
Sharon Freeman, regular member  
Evan O'Reilly, associate member

**Absent:** Jeff Moore and Dave Kapnis, regular member

Zoning Admin: Patty Pitari

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P. Shilhan opens the Hearing at 7:59pm. This hearing was opened on January 3, 2012, and the applicant asked for a continuance to 3/13/12.

G. Thibeault – An application has been made by 258 Andover Street, LLC (Owner), John R. Swansburg and applicant: (Alan Boisvert, Lessee), Property Address: 258 & 258R Andover Street, Georgetown MA, 01833, Map 5, Lot 3 & 3E, to modify an existing Zoning Decision, under M.G.L. Chapter 40A, § 9, and the Georgetown Zoning Bylaws Chapter 165 § 9, 78 and 79. The applicant wishes to increase the sunrise to midnight to sunrise to 1am.

P. Shilhan introduced the board members and let the applicant know since we have 4 board members he would need a unanimous vote in favor, he may continue, if he does not want to go with a unanimous vote. Mr. Boisvert agreed.

Evan O'Reilly and Sharon Freeman, missed the first hearing on 1/3/12, they signed a certification pursuant to M.G.L. c. 39, section 23D of participation in a session of an adjudicatory hearing where the undersigned member missed a single hearing session of 1/3/12, to be able to vote for tonight's hearing.

P. Shilhan reads authorization letter from Mr. Swansburg dated 3/13/12 to have Alan Boisvert to represent the property at tonight's hearing, the letter stated he may attend the May 13 meeting, so Patty found the original authorization letter in the file from the first hearing in January and board was going to use that. Evan stated he was not comfortable because that letter didn't state the hearing date in the main part of the letter.

Alan Boisvert called Mr. Swansburg who is out of town, and reached him and gave the phone to the Clerk (Patty), and she asked Mr. Swansburg about the date of the letter and he told her it was a typo, and yes he agreed to have Alan there to represent the club.

Patty also let the board know that Alan Boisvert is named as an applicant also in the legal and public hearing notice, so the board decided that was enough to go forward.

### Correspondence

P. Shilhan read the correspondence from the Building Inspector dated 10/11/11 regarding the complaint it read:

*The building Dept received a complaint on 9/29/11. The complaint alleges that the Black Swan Country Club is operating beyond the hours specified in the special permit granted by the Zoning Board of appeals in June of 1989. Specifically the complaint states the golf course begins mowing and maintenance operations prior to sunrise and has events past midnight (see attached).*

Alan Boisvert - Yes we operate the restaurant and events after midnight, I was unaware of this condition from the 1989 decision, when we purchased the property, and went then we received the liquor license from the Selectmen, so we would like to modify the condition. Right now we have stopped serving after midnight, because of this issue. The previous owner was aware of this it seems, and he is the person who filed this complaint. As far as the allegations of operating the mower before sunrise is untrue.

E. O'Reilly – I believe when I was on the Select board we were unaware of this decision.

P. Shilhan stated he spoke to the building inspector, what he considers the definition of hours of operation would not include typical maintenance of the building/the course, or the cleaning up after an event.

### **Audience**

Beverly Enos, 296 Andover Street – I was the chairman of the ZBA in 1989 when we heard this special permit, we heard it for a golf course, there were no buildings, there was no clubhouse, it was not hours of operation to build and run a golf course. I am right on the first fairway and there is no mower going on before sunrise. That decision was based on a golf course, no buildings, and I believe after that they just pulled the building permits to go on with construction.

Nancy Petrillo – 35 Baldpate Rd. – I am concerned about the hours of mowing, in the morning, I am on the opposite side of Ms. Enos, I am curious of what actual time they can get out there it actually dark, and I hear the cutting. My big concern is mowing at 5:30 – 5:45.

P. Shilhan – Depending on the time of year sunrise can be 5:30 – 5:45am. This hearing is strictly about the hours of operation from midnight to 1am. You can address a maintenance issue with the club.

Alan stated he will speak to Tony Aieta, Manager, and Ms. Petrillo mentioned poles outside and netting is gone from a previous storm. Ms. Petrillo stated she will go by and speak to the manager.

P. Shilhan – To Ms. Petrillo, you should call the building inspector if the mowing is before sunrise, he is the zoning enforcement officer, but I would talk to the club first.

### **Audience Cont'd**

Chris Rich, 292 Andover – I am not here as an adversary of Keon's, I take exception to the Building Inspector's definition of operation, I am been an attorney for 35 years, operation is any type of business movement, washing windows, mowing etc...I live directly next door, the complaint says maintenance is being done before sunrise and after midnight, their application it opens up the special permit, you can do anything you want. I would ask you to consider..... (stopped sentence). I have not heard any loud functions at all. I am not bothered by it, but I do have a problem with extending hours of operation for maintenance, or any non-social if you will, activities in the clubhouse or pool.

I have an issue with the golf course and maintenance.

G. Thibeault – When you say you have issues with, can you be more specific.

C. Rich – I don't want mowers going through my backyard.

G. Thibeault – Before sunrise or after midnight?

C. Rich – Yes. I have no problem with the events, or anything in the clubhouse/functions; 1am is a standard time for things like this.

G. Thibeault – So you have the same issue about mowing.

C. Rich - The machines are definitely out before sunrise.

P. Shilhan – This is a request for a modification of hours of operation specifically midnight to 1am.

C. Rich – I believe the whole special permit is open and I think this is a minor modification. I don't want it extended at all; I would like you to put sundown.

G. Thibeault – Do they mow after midnight?

C. Rich – I have not seen it yet.

S. Freeman – Based on what Ms. Enos said it was based on just a golf course, and then the business grew and we are at a difference place, perhaps we should make two sets of hours.

C. Rich – The original decision of the gold course shall be sunrise to sunset.

P. Shilhan – No, it reads sunrise to midnight.

Mr. Rich is handed a copy of the 1989 decision.

C. Rich – I would suggest hours of operation be sunrise to sunset.

P. Shilhan – Still the operating before sunrise needs to be taken up with the building inspector.

C. Rich – I don't disagree with that.

P. Shilhan – The maintenance issues are not happening after sunset according to you, but you want to make sure, you're saying it could happen.

C. Rich – I would suggest, and I broke it down into four categories club house, golf course, pool, maintenance, as for the pool, I don't have a problem with that, operation of the golf course, I don't want to have to worry about golfers at night, security of my home night, the maintenance; I don't want to have an issue to have a machines coming through my yard at night.

C. Rich - I would suggest this be a minor modification. If it's major modification you have to start from scratch. It would have to come back to the planning board, and we don't need new business.

E. O'Reilly – From an enforcement standpoint it can be ambiguous it might make sense to pick an actual time.

G. Thibeault – It could be almost an hour, depending on time of year, I think it should stay sunrise, and if it's before sunrise you should make a phone call, its enforcement issue. If we get into conditioning this, we muddy it. We are talking about midnight to 1am.

P. Shilhan – There are at least 3 different ways to describe daylight, and then dusk, we are not trying to address that now. We can add a specific condition, I think if we want to go that far into maintenance, it an enforcement issue. It confuses the different pieces. If we get into that the club might want to bring in the maintenance people to ask them.

C. Rich – He is asking for the entire hours of operation.... (.inaudible Mr. Rich is speaking from back of the room.)

E. O'Reilly to Mr. Rich I think that's the end result, we would be changing the hours of operation for the entire property and I don't think that what he is here for.

C. Rich – (somewhat inaudible speaking from back of room) to Evan, that's the change Mr. Swansburg took, when he sent someone else in here to represent him.

E. O'Reilly - I don't think that this condition in 1989 was that thought through.

C. Rich – I don't have a crystal ball, maybe you do.

Alan – I know it's open, can we deal with the midnight – 1am now, the complaint is now 6 months old, I will go back to Mr. Swansburg about the mowing issues that Mr. Rich and Ms. Nancy Petrillo have, but I you really can't mow in the dark.

C. Rich – I would like the record to reflect, I did not file a complaint, I am a big boy, and I am not bashful, If I have a complaint I will file it, my concern is just that the machines are out there, I didn't complain about it.

P. Shilhan – To Mr. Rich, what you are requesting and what Alan is talking about are two different items, if we were to extend the hours from midnight to 1am, the only impact it would have is on the Club and their ability to run a business, you can't even pretend to think that Mr. Swansburg is now going to take advantage and now have machines running behind your property after midnight, if you address the hours of operation for the whole club, you have the right you can complain to the building inspector and we can come back here, and address it as a different subject.

C. Rich – I respectfully disagree with you.

P. Shilhan – I understand.

C. Rich – You opened up a hearing, for a modification of a special permit.

P. Shilhan - I feel that you are through legal tactics are trying to intimidate me into doing something that you want me to do.

Mr. Rich – Absolutely not.

P. Shilhan – But you have to understand Sir, I am not a lawyer, I don't necessarily know what all of the ramifications of this decision are, we just know, the board as a whole what we are trying to address, and you are creating a little more confusion, about the operation of the whole club, we are just trying to extend the time to 1 hour, it that realistically going impact anything, not likely, but I do understand that you have opinions about a broader subject.

Jack L'Hommeideau – 330 Andover St. – We have been awakened many times by the mowing, but it's improved over the years, since Mr. Wojtkun is no longer there. Mr. Rich mentioned those four items, what you're doing may result in re writing the conditions on the golf course, and after midnight it's tomorrow. My main concern might make things worse, it may not allow them to run their business, and you don't want to make it legal for them to do more than that.

P. Shilhan – We are only talking about, extending this 1 hour to 1am.

P. Shilhan – Anytime we make a decision at any hearing, there is always a chance of something going array.

J. L'Hommeideau – I was on the Zoning Board for years, I understand.

G. Thibeault– I think we are going around in circle a bit, I feel like the only hours of operation in question is the restaurant and the banquets/functions, and if we feel we can't vote right now, we can continue it.

E. O'Reilly – This is something that is going to go with the property, if someone buys or sells, it may change, maybe get an opinion from Town Counsel, I think this is a minor change in the scope. We may want to wait.

P. Shilhan – Yes the condition #9 is vague. To Mr. Rich, if it's a minor modification, if we do what you are suggesting, and break it into four different sets of hours, at what point is it not a minor modification any more.

C. Rich – It's the aspect of the hours of operation, in the boards opinion is a minor modification.

Alan – I don't understand breaking this down, for example, if you go have a gas station do you tell them to stop fixing cars at 5pm but you can sell gas till 10pm. Then you should do it at every business.

Alan – We are not running heavy equipment from 12 to 1am. I know for a fact the previous owner and complainant, ran the operation till 1am, I know that because I hired his managers, unknowingly we always went to 1am. I expressed my surprise to Patty, until this complaint, we didn't know this decision stated midnight; I have weddings that expect to be able to go to 1am.

G. Thibeault – The abutters are displeased with what has nothing to do with extending this until 1am. This extension of hours only applies to function hall/events.

E. O'Reilly – Can we come back in a month and open a new hearing.

Patty – You can continue. If another issue arises, you can have the applicant placed on the agenda under business and if the board agrees it's a minor modification, it can be done at a business meeting, no hearing it would be a Finding. Only if it's determined it's a major modification you need to open a hearing. We have done it with West St., and others to make the determination of minor vs. major.

G. Thibeault – At the end of the day, nothing is happening with any of the other 4 items between 12 and 1am, so if we say it's just for the restaurant and banquet hall its fine.

P. Shilhan – Yes, we can state it only applies to the function hall and restaurant.

J. Hommeideau – Were did the original complaint come from?

Patty – Mr. Peter Wojtkun.

J. L'Hommeideau – That's were your troubles come from.

Richard Soloski of 4 Crescent Meadow Lane – He has a liquor license to 1am. All Alan is asking is to make it coincide with the liquor license, its simple why can't you just address that now.

P. Shilhan – Yes, I agree. I can understand the other issues it is vague.

C. Rich – This opens it up...it also says on condition #4, it says maximum construction hours from 7am to 4:30pm, now can one interpret that as making any noise with machinery. I suggest that what it means.

P. Shilhan – We are trying to let this gentlemen to be competitive with other businesses and be open until 1am, that's what we are discussing right now.

S. Freeman – So we are addressing on the function hall/restaurant.

Discussion on wording for clubhouse activities/events/function hall.

E' O'Reilly – We should add something, hours for golf course should be separate somehow.

G. Thibeault – I don't think we should be so specific with the time of golf hours.

R. Soloski – The building inspector can address anything before sunrise.

G. Thibeault– My fear is as someone who is trying to bring more business to town if we postpone another month, he may lose weddings, and then he has a 20 day appeal, we are pushing him out 2 months, and it's not brought up on the application, I am not sure that's fair and penalize him for it.

E. O'Reilly – When we changed the liquor license (selectmen) and then the State said that we did something different and the town had to live with that.

Alan – I still don't open until 11am.

The board works on writing a motion.

C. Rich – I think what Evan came up with, in adding that for his business, hours for clubhouse functions, events and clubhouse activities.

G. Thibeault – That's what we have. But not golf.

C. Rich – And limit, use dusk to sunset.

G. Thibeault – I don't feel comfortable limiting the golf.

S. Freeman – Can we just make a motion for just the club activities.

E. O'Reilly – Yes, if we limit just the club activities, and add at the end excluding golfing.

Nancy Petrillo, Baldpate– (speaking from back of room....inaudible).

#### **Minor Modification**

**Motion** – G. Thibeault/E. O'Reilly - I make a motion that this be a minor modification, seconded by E O'Reilly, all in favor, Motion carries 4-0.

#### **Motion Modification**

**Motion** - Evan O'Reilly/ G. Thibeault -I make a motion that the board grant the applicant's request to modify the existing special permit, ZBA file #89-15, Condition #9 granted June 28, 1989 specifically authorizing the hours of operation from sunrise to midnight, now be modified to **be Mon- Sunday from sunrise to 1am for the clubhouse activities, clubhouse functions, and clubhouse events. The hours of operation related to golf operations will remain unchanged.**

**No discussion – No**

**P. Shilhan – All in Favor, the Motion carried unanimously.**

Jack – L’Hommideau – I think that is a good decision.

P. Shilhan stated the Zoning clerk has 14 days to file a decision any appeal of this decision shall be made pursuant to Massachusetts General Laws Chapter 40A, Section 17, within 20 days after the date the notice of decision was filed with the Town Clerk.

Motion to close the hearing for 258 Andover St., O’Reilly/G. Thibeault, all in favor. Motion carried.

*Patty Pitari*  
*Zoning Administrative Assistant*

*Approved, April 3, 2012*