



TOWN OF ROCKLAND ZONING BOARD OF APPEALS

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FINDINGS AND DECISION OF THE ZONING BOARD OF APPEALS

Decision: Special Permit

Applicant: William T. Barry

Property Address: 167 Union Street, Rockland, Massachusetts 02370

Case No. 2023-07

Date: April 28, 2023

The Rockland Zoning Board of Appeals has considered the petition submitted by William T. Barry, 225 Prospect Street, Hingham, MA 02047, for a Special Permit pursuant to §415-13(A)(2)(a), Accessory Uses: Parking; §415-13(A)(3)(b), Eating and/or drinking establishments where alcoholic beverages are served; and §415-89, Special Permits, to operate an establishment where alcoholic beverages are to be served and parking at the premises known as "The Banner" and numbered 167 Union Street, Rockland, MA. The applicant is the proposed transferee of an Innholder License to Expose, Keep for Sale, and to Sell All Kinds of Alcoholic Beverages currently held by Reilly Enterprise Group, Inc. d/b/a Hotel Thomas upon purchase of the property which will be approved separately by the Board of Selectmen and MA Alcoholic Beverages Control Commission ("ABCC"). The property is located in the B-1, Business I Zoning District, §415-13, and the Downtown Rockland Revitalization Overlay District, §415-21.2, of the Bylaw, and is further identified as Lot 84, Map 45, on the Rockland Assessor's Maps. The current owner of the property is Brenda Kelley, Reilly Enterprise Group, Inc., 167 Union Street, Rockland, MA.

The Board certifies that it has complied with all statutory requirements relative to notice to abutters and new publication of notice of the public hearing and has filed copies of this decision and all plans referred to herein with the Town Clerk, Planning Board, and the Building Department pursuant to Mass. Gen. L. c. 40A, Section 11.

Advertised: March 7, 2023, and March 14, 2023, in the Patriot Ledger.

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The Board lastly has taken into consideration testimony of the applicant, the application materials, plans and revised plans, and communications from various Town boards, abutters, and with interested parties, all of which are incorporated herein by reference.

A Public Hearing was conducted remotely in accordance with state law at 8:12 P.M. on February March 21, 2023.

ATTENDANCE:

Board Members: Robert C. Rosa, III, Timothy Haynes, Robert Baker, Sr., Gregory Tansey, Robert Baker, Jr. and Stephen Galley, (alt).

(All Board members were participating remotely)

MEMBERS VOTING: Chairman Robert C. Rosa, III, Gregory Tansey, Robert Baker, Sr., Timothy Haynes, and Robert Baker, Jr.

DISCUSSION

The Chairman of the Zoning Board introduced the members of the board advising to the public that all members are participating remotely.

The Chairman entertained a motion to open the public hearing that was made by Robert Baker, Jr. and seconded by Timothy Haynes.

The ZBA members then took a roll call vote:

Robert C. Rosa, III – Yes, Timothy Haynes – Yes, Robert Baker, Sr., Robert Baker, Jr – Yes, Gregory Tansey – Yes, Stephen Galley – Yes. The vote was unanimous, and the public hearing was opened.

The Chairman read the advertised notice in the Patriot Ledger with a Public Hearing Date of March 21, 2023.

The applicant stated that he is seeking to transfer the Innholder License to Expose, Keep for Sale, and to Sell All Kinds of Alcoholic Beverages currently held by Reilly Enterprise Group, Inc. d/b/a Hotel Thomas. He is in the process of purchasing the property, planned to keep its current use and upgrade the property. He stated that parking is an issue and that Siyasham LLC, the owner of the abutting property, agreed to lease him 17 parking spots

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including a dumpster area, however, he was unable to acquire any additional parking. The Parking Space Rental Agreement dated January 26, 202, would be recorded upon transfer of the property. He stated that he had spoken with several property owners in the area about acquiring additional parking and he would continue to do so but there is additional on-street parking, especially after 5:00 p.m. when other businesses in the area close. He said that the bar is open from 4:00 p.m. to 10:00 p.m. and breakfast is served on the weekends.

He further stated that there was also an easement for the back corner of the building which would also be recorded upon transfer.

The Chairman opened the discussion to the members of the board:

Mr. Baker, Sr. asked about the car carrier that was parked there and if it was going to be moved upon possession. Mr. Barry stated only customers would park there but that he could do nothing about it now as he does not own the property.

Mr. Baker, Jr. had no questions.

Mr. Haynes stated that customers could walk to The Banner as it was in the center of town. He asked Mr. Barry about the upstairs use and how many parking spaces were available for the upper floors. Mr. Barry answered that life safety upgrades had to be made but he would eventually like to make the second floor 1 bedroom apartments with kitchens and bathrooms as opposed to the current rooming house setup. The third floor is empty. He stated that 11 parking spaces would be solely for the tenants with marked spaces, leaving the rest of the parking for restaurant patrons.

Mr. Tansey stated that there was currently no parking and that customers parked at the former Dunkin Donuts. Mr. Barry answered that he thought a dentist was moving into the empty Dunkin space and would probably close at 5:00 p.m. and he would approach them about obtaining additional parking after they close at night. He also stated that there was on-street parking for 80 spots within 400 feet of the premises.

Mr. Tansey asked about ADA accessibility and Mr. Barry stated that he was working with the Building Inspector on that. Mr. Tansey then asked if it was still open for business and Mr. Barry answered yes.

Mr. Galley asked if it was planned to open up the whole area into one big area. Mr. Barry stated the pub was open from 5:00 p.m. to midnight on Saturday and on Saturday served breakfast. He said that he wants to use the space on the left to promote families on the weekends.

Mr. Galley stated he was not concerned about the parking because of the on-street parking

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and he did not see that as an obstacle.

Chairman Rosa stated that if the parking area was restriped they could gain 1 space including a handicapped space. The legality of parking in the parking lot at night was discussed and that there was a possibility of leasing parking spaces from the dentist after 6:00 p.m. until 2:00 a.m. Mr. Rosa also stated that it was obvious that Mr. Barry was doing what he could to obtain additional parking. He further explained that the matter before the Board was the transfer of the liquor license and not the residential units, which were not expanding.

Chairman Rosa stated he would normally now open the meeting to the public but no one from the public was present.

The Chairman then asked the Board members if they had enough information to close the public hearing.

Mr. Haynes brought up the hours of operation which were discussed by the members of the Board. The outside patio area was discussed although it is not currently in use. The applicant stated it would be open in the Spring and Summer. The hours for both operations were kept the same.

Robert Baker, Sr. then made a Motion to close the public portion of the hearing that was seconded by Robert Baker, Jr..

A roll call vote was taken:

Mr. Rosa – yes
Mr. Haynes – yes
Mr. Robert Baker, Sr. – yes
Mr. Tansey - yes
Mr. Robert Baker, Jr. - yes
Mr. Stephen Galley – yes

Based on the unanimous vote of the Board on a roll-call vote, the public portion of the hearing was closed.

Mr. Rosa then told the applicant the Board would deliberate tonight and welcomed him to be present during deliberations and informed him that he will receive a decision in the mail with a date stamp and informed him of his obligation to request a certificate of no appeal. If no one has appealed to the Town Clerk, the certification and an attested copy of the original decision will need to be recorded at the Registry of Deeds to be valid, and the applicant must provide proof of recording to the Building Department.

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DELIBERATION:

The Board members agreed that they wanted to see this business continue and succeed and that the applicant was doing his best to see that the business complies. There are also a lot of parking spaces in the street. Documents to be recorded with the Registry of Deeds regarding access and parking are to be added as Conditions.

DECISION:

The Chairman entertained a Motion to grant a Special Permit with Conditions as written.
So moved by Robert Baker, Jr.
Seconded by Timothy Haynes.

In a roll call vote the Board voted unanimously (5-0) to GRANT, with members, Robert C. Rosa, III, Gregory Tansey, Timothy Haynes, Robert Baker, Sr., and Robert Baker, Jr. in favor.

CONDITIONS:

1. Following documents to be recorded herewith at the Plymouth County Registry of Deeds and the recording information to be provided to the Building Commissioner/Zoning Enforcement Officer:
 - (A) Parking Space Rental Agreement dated January 26, 2023, between 167 Union Street LLC and Siyasham LLC.
 - (B) Parking/Access Easement Deed over parking spaces.
 - (C) Parking/Access Easement Plan.
2. William T. Barry will be the Manager on the application for the Liquor License to the Selectmen and ABCC.
3. The Applicant must come back to the ZBA if there is a Change in Ownership or Management.
4. The Hours of Operation shall be:

Monday through Friday:	8:00 A.M. to 1:00 A.M. for food
Saturday:	7:00 A.M. to 1:00 A.M. for food
Sunday:	7:00 A.M. to 1:00 A.M. for food

The Board of Selectmen and the ABCC shall determine hours that alcoholic beverages may be permitted for consumption on the premises and the location on the premises where such beverages may be served.
5. Employees must be TIPS certified as well as the Manager. Proof of the same shall be provided to the Board on request.
6. The applicant for the Liquor License will be 167 Union Street LLC.
7. The ZBA will review the operation of the business under this Special Permit one year after opening.

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8. The Applicant may not sell liquor on Sundays unless authorized by the local licensing authority and the ABCC.
9. Any and all signage must comply with the current zoning bylaw and must be approved by the Building Department.

Outside patio area:

1. The Hours of Operation shall be:
Saturday through Thursday: 8:00 A.M. to 10:30 P.M.
Friday: 8:00 A.M. to 11:30 P.M.
Last call for food and beverage ½ hour prior to closing. The Owner shall adjust time for the last call so that the closing time shall be adhered to. Hours to be approval by the Board of Selectmen and the ABCC.
2. There shall be no owner, employees or customers or the like in the courtyard and patio area after closing time.
3. There shall be no live entertainment except for a one-piece un-amplified instrument. Entertainment on the outside patio shall be allowed from 5:00 P.M. to 9:00 P.M. seven nights per week. Music shall be played as background/dinner music only.
4. Lights are to be placed so as not to cause a glare beyond the property line.
5. There shall be nothing attached to the fences that will overhang onto the sidewalk on Union Street.
6. The Special Permit shall be reviewed after a full season of use so the Board can address any issues that may arise such as lighting, noise, odors and/or parking.
7. Any complaints concerning the operation of the business shall be diverted to the Building Department for enforcement in accordance with MGL Chapter 40A, §7.
8. Any and all signage must comply with the current zoning bylaw and must be approved by the Building Department.

REASON FOR DECISION/FINDING:

The Board found that the Applicant is seeking a Special Permit authorizing an establishment that is permitted to sell alcoholic beverages and to approve for parking in connection with the transfer of an Innholder Liquor License from Brenda Kelly of Reilly Enterprise Group, Inc. d/b/a Hotel Thomas. The Board found that hours of operation (other than for alcoholic beverages) will be as listed in the conditions stated above. Licensed alcoholic beverage sale hours are to be determined by the Board of Selectmen and the ABCC. The Applicant needs a Special Permit because there will be food and alcohol served in a B-1 zone. The Board found that William T. Barry is purchasing the Hotel Thomas and that the manager would be on site for the restaurant as well as the existing Pub during hours of operation. The Board found that the

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granting of the requested relief is consistent with the requirements of the zoning bylaw as conditioned and is in harmony with the general purpose and intent of the bylaw.

NOTE:

- ❖ This decision may be appealed to the District Court, Housing Court, Land Court or Superior Court pursuant to Chapter 40A, Section 17. Said appeal must be filed within twenty (20) days after this decision is filed with the Town Clerk.
- ❖ Chapter 40A, Section 11, states that in part, that no variance or Special Permit shall take effect until the Town Clerk certifies that twenty (20) days have elapsed, and no appeal has been filed.
- ❖ This Board certifies that copies of this decision have been filed with the Planning Board as well as with the Town Clerk.

FOR THE ZONING BOARD OF APPEALS

By:


Robert C. Rosa, III
Chairman