

East Longmeadow Planning Board

60 Center Square

East Longmeadow, Massachusetts 01028

since 1894

Telephone: (413) 525-5400- extension 1700 - Facsimile (413) 525-1656

Ralph Page, chair

George Kingston, vice chair

Tyde Richards, clerk

Michael Carabetta

Deborah Bushnell

robyn d. macdonald, director

rmacdonald@eastlongmeadowma.gov

Minutes of March 21, 2017

Present were: Chair, Ralph Page; Vice Chair, George Kingston; Clerk, Tyde Richards, Michael Carabetta and Deborah Bushnell.

Public Hearing Amendment to Special Permit – Fogueria, 621 North Main Street

Chair, Ralph Page opened the public hearing and Clerk, Tyde Richards read the legal notice into the record.

Mr. Page said that Fogueria Portuguese Steakhouse is looking to change their name to GMRC, Inc. d/b/a Foqueria.

Attorney Steve Reilly said they are seeking an entertainment license and the requirement is that they go before the Planning Board to add entertainment to the Special Permit and they also want to change the name from Fogueria Portuguese Steakhouse to just Foqueria.

Mr. Page said if he is correct the previous Special Permit doesn't actually list entertainment and they are looking to have that included into the requirements of the Special Permit. He said other than adding entertainment into their Special Permit they just strictly changing their name with no other changes. Ms. Macdonald asked if they are doing GMRC d/b/a for the name so that everything matches, the health permits not just Fogueria.

Attorney Reilly said everything they have now will be GMRC, Inc. d/b/a Fogueria and they are trying to have consistency between the licenses and Special Permit.

Mr. Page asked what type of entertainment they are looking to add to the Special Permit.

Manny Coelho, Owner said that he has had entertainment for 28 years and would like to continue having entertainment and said that he never thought he would lose his license by changing the name of his business.

Attorney Reilly said they are seeking TV recorded music, live music and the purpose was really to change it from a night club focus to more of a food focus. He said that he

would like to keep the entertainment as it's been which is live entertainment & television, Dancing is also included and they are the same things he has had for the past twenty something years.

Mr. Page said as far as the TV's and juke box he thinks that's normal and asked if they could be a little more explicit regarding the live entertainment.

Mr. Coelho said he just wants to have bands that will play smooth music.

Mr. Page addressed the Board for any questions.

Ms. Bushnell said her interpretation of the live entertainment would be maybe a five member band and on the side of Jazz, softer side and not really detrimental to the environment around them.

Jacqueline (daughter) said pretty much and where people used to dance is all dining area now.

Ms. Bushnell said as long as there are not any noise issues with the abutting neighbors.

Mr. Coelho said that the town made him install double doors to the entrance.

Attorney Reilly said certainly the type of music will be different than what was there before.

Mr. Carabetta said that his concern would also be the noise and thinks they would keep an open door policy as far as the noise goes. He said that is what the Board has done with other businesses in the past and as long as there are no complaints they can let it run its course. Mr. Carabetta said they have that with Bentley's who has entertainment for a 3 piece band and as long as the noise doesn't get out of hand he doesn't foresee it being a problem and it will be toned down from what it was previously .

Mr. Kingston said that he agrees with Mr. Carabetta and the licensing authority is the Town Council so they do the entertainment license which will be more specific. Mr. Page said under the Special Permit the Board is required to find out what type of entertainment, is it going to affect the neighbors and any other special criteria they might have whether it be some type of sound proofing like double doors or something like that. Mr. Kingston said that he would support adding entertainment in and would like to have a clause that says if they get more than one complaint a month that they would revisit the Special Permit and give the Board the right to look at it if there are persistent complaints.

Mr. Richards said his issue would also be the noise and he agrees with what has been mentioned already.

Attorney Reilly said that they have no issue with that either. He said if there is a problem with noise Mr. Coelho wants to be a good neighbor who has been there a long

time and they would be more than happy to come in before the Board if they want to see additional remediation taken.

Mr. Kingston said in looking at the Special Permit the third criteria that they need to consider is that there will be no nuisances such as noise, etc. or safety hazards created and if they are find that's the case they would be able to revisit.

Mr. Page said that he did go back to the Special Permit issued in 2001 for the addition of the kitchen/restaurant area onto the off the back and a house was taken down and parking was added. He said that Mr. Coelho switched from a night club/bar to a restaurant/night club. Mr. Page said that night club is still included in verbiage on the Special Permit, they have done amendments to that but it's still a restaurant/night club and at that time the Board let Mr. Coelho know that once he switched to restaurant/night club he can't go back to just a night club. He said that is why he thinks they are all in agreement as far as the music and because he still has the category of night club which was grandfathered in. Mr. Page said how do they tell a night club they can't have music and said that they are also asking for dancing. He asked the Board if they had any thought on it.

Ms. Bushnell asked if it will be dancing for their patrons.

Attorney Reilly said yes it will and in the past there was a dance area which was in front of the stage and now there are tables there so the likely hood that it's going to look anything like it did in the past is not a very high. He said that Mr. Coelho would have to rearrange quite a bit to have a dance floor.

Mr. Coelho said that said that he take he will have to move a few tables to open the area up a little bit.

Attorney Reilly said again it's probably something he has always been doing to a much lesser extent.

Mr. Page said that they are changing the music and it's not going to be the hard rock like it used to be and would assume that it would be a couple going there for dinner and maybe dance to a song that they like and sit back down after the song.

Ms. Macdonald said that she thinks there was also a question on the hours.

Attorney Reilly said that they are just seeking what's it's always been 2:00 a.m. which is the liquor license time and there is no reference to the time in the other Special Permits.

Mr. Carabetta said that he would assume it would coincide with the grandfathering, would it not? Ms. Macdonald said no not once it went to a restaurant and said that they have limited others restaurants that have been before them.

Mr. Page said typically it didn't go to a pure restaurant it went to a restaurant/night club and he believes that is a complete difference. He thinks what it was at the time was

they were slowly going towards what the by-laws are now and doesn't think they gave up everything hence the reason it said restaurant/night club.

Mr. Carabetta asked if they had any record of what past hours were. Ms. Macdonald said no but Town Counsel reported to the Town Council that their other lawyer understood that he was giving up that 2:00 a.m.

Attorney Reilly said that is the first time he ever heard of that and said that there are no existing conditions on any of the Special Permits that have ever been granted.

Ms. Bushnell asked what they are asking for hours.

Attorney Reilly said maintaining the liquor license hours which is 2:00 a.m.

Mr. Kingston said since there is nothing in the existing Special Permit regarding hours unless they add hours in they have no control.

Attorney Reilly said that he thinks they should be consistent with the liquor license and thinks to do otherwise would be an infringement on the liquor license. He said that they would seek the same hours as the liquor license which is 12:00 a.m. to 2:00 a.m.

Mr. Kingston said if Town Council decides to change the liquor license at some point then they would have to address that. Ms. Macdonald said that they did.

Attorney Reilly said they received their liquor license in the mail which was to 1:00 am. and there was no hearing information provided and they were not notified of anything.

Ms. Bushnell said being that it's a little cumbersome as to what time it is do they need to include that currently. Ms. Macdonald said yes because it should be the last time he has to come before the Board to make any changes. Ms. Bushnell said if there hour's operation are 11:00 am. to 2:00 a.m. and they abide by the requirements and maintain operation as it currently exists she wouldn't have a problem with that.

Mr. Page said the only reason he would be in agreement is simply because the wording on their Special Permit specifically states that they are a restaurant/night club. He said that he knows that is bringing them closer to being just a complete restaurant and it is slowly transiting.

Mr. Kingston said that they are dealing with the liquor license that was issued and depending how that turns out obviously if for some reason it is sustained to be 1:00 a.m. he's not going to stay open if he can't sell liquor. Ms. Macdonald said that liquor is supposed to be secondary and food is supposed to be first under a restaurant.

Mr. Page said that they will put into the finding that it's mandatory they serve food during the hours they are open. Ms. Macdonald said that she believes that the Council made that change because all the Special Permits state that restaurants cannot stay open after 1:00 a.m. because people aren't going to go in at 1:30 in the morning looking for food. The Board agreed that they would support until 2:00 a.m. There being no further discussion and upon motion duly made by Michael Carabetta and seconded by

George Kingston, the Board voted unanimously (5-0) to close the public hearing. Upon motion duly made by George Kingston and seconded by Michael Carabetta, the Board voted unanimously (5-0) to amend the Special Permit to change the name from "Fogueria Portuguese Brazilian Steakhouse" to "GMRC, Inc. d/b/a Fogueria" and to approve entertainment in the way of TV's, Jukebox, live entertainment (music only) and dancing to the music provided at property located at 621 North Main Street.

Waivers of Site Plan Reviews Approved

Authen Foods, 3 Birch Avenue

My Happy Place, 560 Parker Street

ANR – Dwight Road and Admiral Street

Michael Carabetta recused himself for conflict interest.

The Board reviewed the ANR for St. Paul Church owned by The Roman Catholic Bishop of Springfield to combine lot 6 consisting of 19,962 square feet and lot 5 to create a new Lot 7 for a total of 255,761 square feet (5.87 acres) with the required frontage on Dwight Road.

Upon motion duly made by George Kingston and seconded by Deborah Bushnell, the Board voted unanimously (4-0) to endorse the ANR for Admiral Street.

Discussion regarding Pride Convenience, Inc. request for extended hours

Mr. Richards read into the record a letter from Robert Bolduc to Town Council requesting an extension of hours of operation for Pride Convenience, Inc., 618 North Main Street to 7 days a week, 24 hours a day.

Mr. Carabetta asked what they fall under. Ms. Macdonald said Special Permit. Mr. Kingston said that their Special Permit doesn't list any hours. Mr. Carabetta asked if there are any set hours for that district. Ms. Macdonald said no it's business zone.

Ms. Bushnell asked the Board ever allowed 24 hour operation in a business zone? Ms. Macdonald said that it's never even been requested.

Mr. Page said that it would be an amendment to the Special Permit and under the permit he thinks they should specify the exact hours that they can be open. He feels that all Special Permits should have hours of operation and thinks it was probably an oversight. Ms. Macdonald said that it was a long time ago and he is right across the street from Fogueria.

Mr. Kingston said if they are not violating any of the criteria of their existing Special Permit the Board can't unilaterally modify it. Ms. Macdonald said that it's a change in use. Mr. Kingston said it's not a change in use they were never restricted on hours.

Mr. Carabetta said that he would be reluctant to just give without sitting down with them because it is in close proximity to residence C.

After further discussion the Board felt that maybe Town Counsel Jim Donahue should look at it and advise what they have that authority to do and what they can't do. Ms. Macdonald said unfortunately they are going before the Town Council next week and she is not sure what they are looking for from the Council. She said that the Town Manager sent the request to her.

Mr. Page said that he agrees with Mr. Kingston and wanted to ask Attorney Donahue what the Board's ability is on it, and if he says the Board has the ability to ask them to come in and amend the Special Permit for specific hours, then that's exactly what they will do. He said if he says that the Board doesn't have the authority than they would take it as a notice that's what they are going to do. The Board agreed if they are allow it they will have to amend their Special Permit and hold a public hearing and abutters will be notified.

Minutes

The Board reviewed the minutes of March 7, 2017 and upon motion duly made by Deborah Bushnell and second by George Kingston, the Board voted unanimously (3-0) to approve the minutes.

Miscellaneous

Mr. Page informed the Board that he was planning on going to the seminars but didn't sign up for them due to the weather predictions.

Ms. Macdonald reminded the board that it was time from them to do their State Ethics Training.

With no further business and upon motion duly made by George Kingston and seconded by Deborah Bushnell, the Board voted 5-0 to adjourn at 7:15 p.m.

For the Board,

Ralph Page, Chair