

**Selectboard  
August 8th, 2018  
Town Offices  
Open Session  
6 pm**

The open session of the Selectboard of the Town of Whately was called to order on August 8, 2018 at 6:05 p.m. by the Chair, Jonathan Edwards. Present were Selectboard members Fredrick Orloski, and Joyce Palmer-Fortune (via remote video connection). Town Administrator Brian Domina, Town Counsel David Doneski, and Administrative Assistant Amy Schrader were also present. The Board previously signed the Vendor and Payroll warrants.

Jonathan informed the audience that Joyce was participating remotely in the meeting due to geographic distance and that all votes would need to be done by roll call vote.

The Board voted to approve the meeting minutes from July 25th, 2018.  
Roll call vote: Jonathan – yes, Fred – yes, Joyce – yes. All in favor.

**Comments from the Public – No Public Comment**

**Public Hearing (continued)**

**To consider a request from Whately Investments, LLC for a variance from Chapter 62 § 8 of the Whately General Bylaws for 226 State Road, Whately, MA.**

Mr. Edwards (Selectboard) opened the public hearing at 6:05 p.m. and read the variance request submitted by the Applicants.

Mr. Edwards (Selectboard) stated that he crafted a middle ground proposal that will allow the Town and the new owners of the Club Castaways to move forward with restrictions in place so that the Town can be comfortable with their ability to run an adult entertainment business, while preserving the public health and safety. Mr. Edwards posted, a little less than a week ago as promised, a proposed motion to grant the variance subject to conditions.

Mr. Edwards (Selectboard) read the proposed motion to grant the variance subject conditions as follows;

1. The variance shall be for a four (4) month probationary period beginning on the date the Licensee commences operations after completion of the purchase from Demetrios Konstantopoulos d/b/a Castaway Lounge.

2. During this four (4) month probationary period, the variance shall not apply to the following times, during which the Licensee shall arrange for, at the Licensee's expense, a uniformed police officer who is approved by the Whately Police Chief, to be present at the licensed establishment:

- a. Thursday 9:30 PM to 1:30 AM
- b. Friday 9:30 PM to 1:30 AM
- c. Saturday 9:30 PM to 1:30 AM
- d. One hour before and one hour after a Special Event, as described in paragraph 3 below

3. A Special Event is defined as any entertainment or performance that the Whately Police Chief, in his discretion, and after consulting with the Licensee's Director of Security, reasonably determines may draw a crowd in excess of the capacity of the licensed establishment.

4. The Selectboard shall review the Licensee's operations under the terms of the variance at its second monthly meeting of every month during the four (4) month time period for the purpose of evaluating safety and security at the licensed premises and to consider whether the variance should be continued in effect, modified, or rescinded.

5. At the end of the four (4) month period, the Selectboard shall meet and decide whether or not to continue the variance in its then current form, grant a new variance with or without conditions, or rescind the variance.

6. The Licensee's Director of Security shall meet with the Whately Chief of Police on a weekly basis during the four (4) month probationary period to review operations under the security plan required as a condition of the Licensee's entertainment license, to evaluate any security-related incidents that may have occurred at the establishment, and to establish any modifications to the security plan or other operational changes necessary to protect the public health, safety, order and welfare.

Mr. Edwards (Selectboard) suggested that an amendment be added to the security plan that states the interior CCTV footage would be available to the Whately Police Chief "upon his reasonable request, and other law enforcement through proper judicial procedure or the discretion of the Club Castaways management". The interior video footage would be available only to the Police Chief unless the Police Chief saw actions on the video tape to the point where further legal action or security action needs to be taken.

Mr. Orloski (Selectboard) questioned the need for the four (4) month probationary period. It's going to be discussed in January which is 3 or 4 months from now. Mr. Orloski doesn't see the need to have a discussion to renew the license in a four (4) month period and then two (2) or three (3) months from that have another discussion. The bylaw says that the Selectboard can terminate the license any time it wants for cause.

Mr. Edwards (Selectboard) clarified that the probationary period is the duration of time that a police detail would be required to be on the premises during those four (4) hours for three (3) nights a week that was discussed. It's a probationary period for the security system to demonstrate that it works.

Mr. Orloski (Selectboard) stated that he could agree for the four (4) month period for the detail requirement, but that he does not agree with the four (4) month time period for every second meeting of the month. Mr. Orloski thinks that is too many meetings. Mr. Orloski doesn't think we need to wait until the second monthly meeting of the month to hear what's going on. A meeting should happen any time our Police Chief or their Director of Security wants something changed either in the security plan or to discuss an incident.

Mr. Edwards (Selectboard) stated that the proposed meeting requirement is to ensure communication between the Applicants and the Town. At a minimum it would require an update conversation about how things are going, what issues are we seeing, are there things that we didn't expect, or are there things that we did expect and are taking place. Are we pleasantly surprised or terribly disappointed? It ensures that we communicate on at least a monthly basis for that four (4) month period of time while that police detail is in place. Otherwise, there is no guarantee that we ever can meet.

Mr. Orloski (Selectboard) stated that he still thinks it's an excessive number of meetings and that the Police Chief will tell us if anything happens and if we need to change the security plan. Mr. Orloski feels that we have other things in Town to deal with that are just as important or more important than this issue.

Mr. Orloski (Selectboard) stated that item 2D of the proposed motion should state one hour before, during, and after. Not just before and after, for clarity purposes. Mr. Orloski questioned number 3, the crowds in excess of capacity, are we talking about the building itself or capacity of the parking lot?

Mr. Edwards (Selectboard) clarified that there is no capacity for the number of people in the parking lot, but public safety is the concern. Most public restaurants that have lines outside of the door are along the sidewalks of major metropolitan areas. This is on a rural road with residential properties in close proximity. This will require that sufficient security is in place to ensure that the lines are not creating a problem with traffic flow and that the crowds are managed appropriately.

Mr. Orloski (Selectboard) stated that he doesn't have a problem with that but we're talking about the capacity of the building itself. The parking lot could overflow and parking could happen up and down the street. Why are we not concerned about that?

Mr. Edwards (Selectboard) stated that he is concerned about that which is why the police detail would be required for when special appearances are taking place that will increase the foot traffic in and out of the building.

Mr. Orloski (Selectboard) questioned number 2 of the proposed motion as it related to what type of officer would be required and who would arrange for the officer to be on the premises?

Mr. Edwards (Selectboard) clarified that a uniformed detail police officer would be required.

Mr. Orloski (Selectboard) suggested that the word "detail" be added to number 2 of the proposed motion. Mr. Orloski questioned whether the Licensee would arrange for that and pay the Officer the going rate?

Mr. Edwards (Selectboard) clarified that the Police Chief would be involved in approving the Officer, oversight of the Officer on duty, and accounts receivable/payable.

Mr. Orloski (Selectboard) questioned what the Licensee is responsible for and whether the language of motion needs to be changed because it states that the Licensee is arranging for the Police.

Attorney David Doneski, Town Counsel stated that the bylaw contemplates that there would be the same kind of administrative arrangement as there is for any other details as the Chief just mentioned. Implicit to this, is that there needs to be communication and administrative cooperation between the Licensee and the Police department.

Mr. Orloski (Selectboard) stated that it shouldn't make a difference to the Licensee who the Police Officer is, that should come from the Police Chief who should be there, not from the Licensee.

James Sevigne (Chief of Police) stated the Licensee would find out who the uniformed detail police officer is when they show up,

Julius Sokol (Applicant) stated that the Licensee can't hire that person. Everyone in the state goes through your local police station to get police details.

Mr. Edwards (Selectboard) questioned what would happen if a police detail is not available? Can the establishment still open? Mr. Edwards stated that he is trying to avoid that situation.

Mr. Sokol (Applicant) questioned how they're going to find a uniformed detail officer? The Chief can't do it by law, he can't be a detail. So now we have one full time officer?

Michael Aleo (Attorney for Applicants) respectfully stated that the establishment has been open for several decades and as far as he understands there is not a major issue of crime or traffic. My clients have been very cooperative with the police department and the police chief and what's included in the security plan is far and away more security than currently exists at the property where there is no issue of crime. We have agreed to go well, well beyond anything that exists now and I would say beyond what the bylaw requires. You are putting my client in a position where they can't count on being able to operate their business and therefore making it impossible to run a business for four (4) months.

Mr. Orloski (Selectboard) stated that the three Selectboard members agreed to come up with a final motion of what the Board thinks the variance would look like. We are not at the point of back and forth with the audience at this point because we don't have a final agreement yet. I hear your comments and they are valid but it's not at a point for discussion. We have other people who want to say something too but that is not the point for what we're doing right now. On this issue of who is going to arrange for the police, are we clear that our Police Chief is going to find detail officers to fill the shifts?

Mr. Edwards (Selectboard) – answered yes.

Mr. Orloski (Selectboard) stated that five (5) or six (6) officers are needed to provide coverage for the weekends in Town. Which leaves only three (3) officers left for details so our Chief is going to have to look elsewhere for officers during that time period. Mr. Orloski stated that this Board has been concerned about the Police department as to what they're doing and what they're not doing. The Board

renewed the Chief's contract a little while ago which included things that the Chief should be doing. The Board limited his administrative work to be in the office for one (1) day and now we're asking him to arrange for details for all these other events. Having him scheduling details is taking his time away from other activities. Regardless of how many police details are required, the Applicants don't want to be called in here every month to hear "you guys failed, you can't operate anymore." The Applicants have an investment, it's not a low-cost undertaking. I think it's as much their responsibility to follow the guidelines, as it is for our Chief to make sure they're following them.

Ms. Palmer-Fortune (Selectboard) stated that she liked the idea of the four (4) month period because she doesn't think the Board knows enough now to make a permanent decision. Ms. Palmer-Fortune likes having a built-in mechanism for the Board to get feedback. In the past, the Police Chief was worried about the administrative burden of trying to find someone for six (6) days of the week for 12 or 13 hours a day, but what is being proposed is three 4-hour shifts, which doesn't seem as big of an administrative burden. Ms. Palmer-Fortune agrees with the access to the interior footage and she hopes every square inch of the interior will have CCTV cameras that our Police Chief would be looking at.

Mr. Orloski (Selectboard) stated during the four (4) month period the Police Department can always randomly stop and see what's going in the building. The person on the second shift, if the busy time is 10:00 pm or 11:00 pm, can walk in and see how things are going. It's another measure of security and checking, especially on the days that the other detail officer isn't there.

Mr. Edwards (Selectboard) stated that is traditional community policing which the Police Department does already.

James Sevine (Police Chief) stated just like any other business there are visits. The officers don't stop at every business in town four or five days out of the week to make sure they are compliant with the Town's bylaws. The goal is to build relationships within the community. The Police need to be given the opportunity to build relationships instead of mandating them to stop on specific days/times. It is up to the Police to do our normal community policing things and build that relationship.

Mr. Edwards (Selectboard) suggested that the Board accept feedback and if they're other changes, such as, 2D changes, we can do all the changes at once rather through a narrative process.

Michael Aleo (Attorney for the Applicants) stated the current establishment doesn't have a history of problems that are addressed by this proposed variance. There is not a history of significant crime or traffic. The buyers are looking to invest a significant amount of money to make the establishment better. Mr. Aleo stated that his clients have been working cooperatively to build a positive relationship with the Police Chief and the Police department. That's the plan to work closely with the police department. The Applicants have a proposed security plan, that goes well above and beyond anything that ever existed at this establishment. There has never been a police detail at this establishment, there has never been regular security, the way that's being proposed right now. There is going to be internal and external monitoring and a security detail assigned to the establishment. The Police Chief is going to be aware of that person and be involved in that process in a very close and detailed way. To require through this variance, the hiring of a detail police officer is cost prohibitive. I'm not sure what my clients will do if this variance is passed. It's highly troubling for a buyer to buy with those circumstances. Given those circumstances, it creates significant legal doubt. If there's going to be a probationary period, and in effect it's always a probationary period, have the probationary period defer

to what the Police Chief has communicated to Attorney Aleo clients and to the Town as being an appropriate security plan. Have that be the probationary period so that the potential owners can do what the Police Chief thinks.

Attorney David Doneski, Town Counsel clarified the terminology it's the Licensee who has asked for the variance. Attorney Doneski thinks the issue is not the variance but rather the conditions because in the absence of the variance the bylaw would require an officer at anytime that entertainment is offered. A variance is actually reducing what the obligation of a Licensee would be. The conditions that are being proposed are what the discussion is about.

Michael Aleo (Attorney for Applicants) respectfully stated that it's not such a cut and dry matter and he prefers to think that no court will have to render a decision on that down the road.

Mr. Edwards (Selectboard) stated that Town Counsel has indicated that Whately LLC is requesting this variance to eliminate the town bylaw requirement of a full-time police detail. Mr. Edwards suggested that his proposed motion would reduce the requirement to four (4) hours a day, three (3) days a week, so in fact his proposal makes it more viable for Whately LLC. to operate as a viable business. The four (4) month period of time is an additional approximately \$10,000 in total, on top of a \$1.0 million investment already so from a percentage perspective it's not a great deal more money. Mr. Edwards reiterated that the four (4) months allows the Town of Whately and the Applicants the opportunity to get a better understanding of the foot traffic, in and out of the building, and the car traffic in and out of the parking lot. He stated that the business plan and the discussions in the past make it obvious that the Applicants are looking for more revenue out of Club Castaways to make the investment a viable investment. He stated that the Board is dealing with an absolute unknown and the past is absolutely irrelevant because if the past was going to continue in perpetuity the Applicants wouldn't be buying the building or the business. The proposed motion is intended to provide a police detail during the historical high-traffic time periods of any restaurant or bar, Thursday, Friday, and Saturday night.

Mr. Orloski (Selectboard) stated that the proposed times make sense based on current activity. Currently, there is very little activity before 9:30 pm, especially on weekdays. The other consideration is the history of incidents happening there over the last fifteen (15) years are in the evening hours. During this time is when the detail would be there, evening hours and on the weekends. The Selectboard looked at that it didn't just arbitrarily say four hours on a weekend. There is some justification that's the busy time for most businesses.

Michael Aleo (Attorney for the Applicants) expressed his main concern that the variance is going to make it impossible for his clients to have their business open and also that a precedent is being set to require police details in the future. If there was language in the ordinance that assured his clients that if there were no incidents then the detail would no longer be required then that would be more reassuring. If this is something that's going to stick around forever, it makes it more difficult for the owner to sell and for the new owner to invest the funds.

Mr. Edwards (Selectboard) stated that if he thought that this needed to be there permanently he would have put it in that language. Mr. Edwards wondered whether the attorneys could put together language that would provide so assurance to the Applicants.

Ms. Palmer-Fortune (Selectboard) stated she thinks there might be a misunderstanding pertaining to the security plan versus the conditions of the variance. The security plan will be in effect the whole time the variance is in effect. It's not like it's one or the other. The security plan is a condition of the entertainment and alcohol license. It's not that you don't have the security plan going, these conditions are in addition and we put a four (4) month timeline on that because it's something that you want to review. Ms. Palmer-Fortune doesn't want to tie the hand of whoever has to make the decision, which is presumably the Selectboard members and would be very wary of putting in language that would promise something that would put us in a position that technically we would have to fulfill.

Mr. Edwards (Selectboard) stated that the security plan is different than the amended variance. The security plan is in place and the internal video camera is part of that permanent security plan.

Michael Aleo (Attorney for Applicants) stated that we won't know how well the security plan works because we're going to have to go through this process of having a security detail which is costly and could result in the business shutting down at times. The Applicants are going to make every effort to make sure that the security plan works but they aren't going to know after 4 months whether it works.

Mr. Edwards (Selectboard) stated that the potential new owners will know if the security plan work because there is not going to be a detail for three (3) of the six (6) days when adult entertainment is taking place. So, in fact, a security plan is being given considerable ability to demonstrate its success.

Mr. Orloski (Selectboard) asked Attorney Aleo whether #5 of the proposed motion covers his request for assurances. Mr. Orloski doesn't know how the Selectboard can be any more specific than that, we either continue, modify, or rescind the variance.

Michael Aleo (Attorney for Applicants) stated that the way # 5 of the proposed motion is worded doesn't suggest that if there is no evidence that the security detail is needed then there would be some presumption that a detail would no longer be necessary. It doesn't sound temporary, it sounds permanent even though we have no evidence it was necessary in the first place.

Mr. Edwards (Selectboard) stated that if counsels can figure out language, which doesn't bind the Board to anything, but gives the Applicant comfort then he is open to that language.

Attorney David Doneski, Town Counsel suggested language for # 5. The Selectboard could include the following language "including reduction or elimination of detail hours."

Mr. Edwards (Selectboard) stated he would be open to that language.

Susan Baron (120 North Street) stated the responsibility of the Selectboard and police department is the protection of the safety and the security of the community. Ms. Baron suggested that the bylaw relating to inappropriate touching has been violated on numerous occasions at the establishment so in fact illegal activities have been occurring at the establishment, especially related to lap dances. Ms. Baron expressed concerns about the security plan posted online and she expressed her belief that it is inadequate because security officers are not required to patrol the establishment. Ms. Baron also expressed her concerns that the proposed times for the police details were arbitrary based on her observations of vehicles in the parking lot.

Mr. Orloski (Selectboard) stated that the document posted online was only a summary of the security plan and that the plan itself has more detail in regards to what that security person is going to do.

Mr. Edwards (Selectboard) questioned what the internal surveillance cameras will cover, public areas, private rooms? He stated that the fact that the Police Chief can look at a surveillance tape at any time would be a strong deterrent against illegal activity because if the Chief decided to take a look at one of those surveillance tapes and found that on the tape, then that's a clear violation. The point of the camera is for public safety, but it also should and will be a strong deterrent against that type of activities.

Susan Baron (120 North Street) questioned if it's necessary to post signage that states video camera is recording?

Michael Aleo (Attorney for Applicants) stated that they would absolutely post that there are video cameras on the premises.

Nicholas Spagnola (Applicant) stated that having a cop sitting there will also be a deterrent.

Mr. Edwards (Selectboard) stated that, as he mentioned, the four (4) hour a day, three (3) days a week, for four (4) months is less than \$10,000.

Julius Sokol (Applicant) stated but there is no baseline for when this is going to end.

Chip Powers (Webber Road) questioned the probationary period, does that mean that at the end of the probationary period, and everything's ok, there would be no requirement for any police officer?

Mr. Edwards (Selectboard) stated that not necessarily but it's a possibility that would be open for discussion about whether the Board has a sense of the customer traffic flow and what if any incidents occurred.

Joe Zewinski (59 Christian Lane) stated that obviously the Selectboard read the security plan and either agrees with it or not. Mr. Zewinski questioned the current owners, if there was a minimum age for employees or your patrons in this business?

Julius Sokol (Applicant) stated 21 years of age for a customer and 18 years of age for an employee. The laws go against the liquor portion not the adult entertainment portion. A customer can not come in under 21 years of age.

Mr. Orloski (Selectboard) questioned whether the security plan developed has been in concert with the Police Chief and whether there was an agreement between our Police Chief and the new owners on the security plan?

Michael Aleo (Attorney for Applicants) stated yes, that's correct.

James Sevine (Chief of Police) stated that they agreed with what we gave them with the second revisions. As far as the Chief knows, there hasn't been a final decision as to whether it's approved or not.



Mr. Edwards (Selectboard) stated that whatever the Selectboard votes on tonight is the final draft with or without amendments to it, that's the final draft, and we vote to approve the security plan with or without amendments. .

Mr. Orloski (Selectboard) stated that he thought the security plan would be approved by the Police Chief and asked Town Counsel to clarify this.

Attorney David Doneski, Town Counsel stated the approval of the plan by the conditions of the vote to grant the license is with the Police Chief.

Ms. Palmer-Fortune (Selectboard) stated that she doesn't want to vote on a variance without having some assurance from our Police Chief or anyone involved that access to interior footage will be a part of the security plan.

Mr. Edwards (Selectboard) stated he thinks the Selectboard should vote on the security plan first with that amendment and then should that pass, move forward with the variance vote.

Fred Baron (120 North Street) questioned is there anything in the detailed security plan that says how long the proprietor has to keep the security video?

Mr. Orloski (Selectboard) stated yes, it must be retained for a certain period of time.

Mr. Edwards (Selectboard) stated we're going to vote on the amendment to the security plan first.

Susan Baron (120 North Street) questioned whether the Board would insert a requirement that the police will view footage at least X amount of times, every week, every month. Something to make sure that the police are randomly reviewing the video and its not just piling up and not doing anything.

Mr. Edwards (Selectboard) stated we have the ability to ask the Police Chief about his viewing of and request for the video surveillance footage at any time. We have to trust the Chief, as the Chief law enforcement officer, to do what he feels is best to do his job that we asked him to do, just like I don't tell the highway superintendent how to plow the streets. That being said, I can go the highway superintendent and say "the streets haven't been plowed in a month and it's January and it snowed three times." That kind of thing. The Chief should expect us to ask that question but we have to trust that the Chief is going to do his job.

Mr. Edwards (Selectboard) asked for a motion to accept the amendment to the security plan for interior surveillance access.

Ms. Palmer-Fortune (Selectboard) moved that the security plan be amended inserting the phrase, "upon his reasonable request", then going back to the original language, other law enforcement through judicial procedures or the discretion of Club Castaways management.

Mr. Orloski (Selectboard) second the motion.

Roll call vote: Joyce (yes), Fred (yes) and Jonathan (yes). Security plan was amended

Margaret (resident) stated she would like the public areas and the public private areas to be covered by the video.

Jonathan Edwards (Selectboard) stated that is covered in the detailed security plan.

Brian Domina (Town Administrator) stated when the Board transferred the entertainment license there was a condition imposed that all areas as allowed by law be covered by the surveillance system.

Mr. Orloski (Selectboard) questioned what the difference is between the four (4) month probationary period and the renewal of the license?

Attorney David Doneski (Town Counsel) stated the license renewal is statutory. The Selectboard would need to act by the end of the year. The four (4) month period depending on when it commences could either end prior to or after that end of year point.

Mr. Orloski (Selectboard) questioned whether at the point in time when that four (4) month period comes up, does the Board still have the option, if it wants to, rescind the license?

Attorney David Doneski (Town Counsel) stated no, the 4-month period is as to the variance, whether it's continued, modified, or some other action.

Mr. Edwards (Selectboard) stated that whether we rescind or not rescind the license has nothing to do with the four (4) month period of time. That can happen at any time. This is about the variance request and the conditions that we're going to propose to that variance request.

Mr. Orloski (Selectboard) stated that the reason to rescind the license could be because of the variance. That could be a possible action.

Attorney David Doneski (Town Counsel) stated any conditions of the variance, compliance with those and the performance under the variance is the review exercise at the end of 4 months. The license renewal, although, by subject matter may implicate the variance, it's really a separate exercise.

Mr. Edwards (Selectboard) made a motion to close hearing

Ms. Palmer-Fortune (Selectboard) seconded motion.

Roll call vote: Joyce (yes), Fred (yes), Jonathan (yes). All in Favor.

Attorney David Doneski (Town Counsel) stated a proper motion would be to approve the security plan with the amendment adopted at this meeting.

Mr. Orloski (Selectboard) made a motion to approve the security plan as proposed with the amendment that was discussed at this meeting and agreed to at this meeting.

Ms. Palmer-Fortune (Selectboard) second motion.

Roll call vote: Joyce (yes), Fred (yes), Jonathan (yes). All in Favor.

Attorney David Doneski (Town Counsel) stated the three changes to the written motion document dated August 1<sup>st</sup>, 2018, which came up during discussion. The first of those was in item #2, inserting the word “detail” after uniformed in the second line. In item #2D, it would read 1 hour before, during, and 1 hour after a special event. In item #5, should the Board approve, that was the language Attorney Doneski suggested to address what would happen at the end of the probationary period. After the word conditions, at the beginning of line 5, the phrase, including reduction or eliminate of detail hours, would be added.

Mr. Edwards (Selectboard) questioned how does the Selectboard deal with when the clock starts ticking?

Attorney David Doneski (Town Counsel) stated the clock is referenced in item #1 and begins upon commencement of operations after completion of the purchase.

Mr. Edwards (Selectboard) expressed concern that if the sale was completed tomorrow and operations began the next day and then after 4 months they close for undetermined period of time what would happen.

Mr. Edwards questioned the potential owners, if their plan is to close for undetermined amount of time while you make these modifications?

Julius Sokol (potential owners) stated no. Work is typically done during the day and the establishment would be open at night. During the day we might close for a couple of hours. But we’re not going to shut down.

Mr. Edwards (Selectboard) questioned when does the clock start to tick with their ramp up of activities to increase business flow? Do they have 30 days to complete all the modifications? 60 days to complete the modifications? What happens if the modification are delayed?

Brian Domina (Town Administrator) stated we have conditions that if they’re not able to meet what’s provided they will come back to the Board because it’s impossible. There will be further dialogue, if that’s the case.

Mr. Edwards (Selectboard) stated that he wants to make sure the clock doesn’t start to tick when we know there’s going to be no change to anything because we all agreed that there’s not going to be a big difference in terms of business operations on day 1.

Mr. Orloski (Selectboard) stated that if the potential owners settle today, they will be serving liquor tomorrow and if you have entertainment, that’s fine. You’re commencing operations that day. You’re not going to close for two weeks to make improvements because you can’t afford that.

Brian Domina (Town Administrator) questioned whether Mr. Edwards concern is that if the potential owners close for a month than we only have 3 months or is it the level of activity?

Mr. Edwards (Selectboard) stated that his concern is that nothing changes on the first day that ownership officially transfers and that won’t give the Board a clear understanding of what traffic will be after the renovations.

Mr. Orloski (Selectboard) stated Mr. Edwards is assuming that the potential owners are not going to get increased traffic until after the 60 days.

Mr. Edwards (Selectboard) stated that he is assuming that it takes time to implement a business plan.

Mr. Orloski (Selectboard) stated that with some immediate marketing efforts traffic might be increased regardless of what is done with facility.

Margaret (Resident) expressed concern that the level of activity is representative of the true level of activity during the probationary period, which she states that is what Mr. Edwards is trying to avoid.

Julius Sokol (Applicant) stated that they're going to be back here a lot for ZBA and Conservation Commission hearings. They have to come back once a year, minimum, for each license already. We have a four (4) month probationary period. Whether it's four (4) months or six (6) months, it's whatever the Board wants.

Attorney Michael Aleo (Attorney for Applicants) stated that there is a set occupancy limit so they're going to start proceeding with operations and do some sort of internal renovations. So until the renovations are done there will be no detail and when the renovations are done there will be a police detail for four (4) months.

Mr. Edwards (Selectboard) stated that is what he is suggesting. That when the renovations are done (assuming that renovations are going to take place immediately) then the police detail will begin. Also, assuming that the surveillance system is being setup at the same time.

Julius Sokol (Applicant) stated that the cameras are going to be done first or within the 60 days, that's what we talked about. If there's a slow period of time in the season, which we don't know yet when that is here because there are different factors in this area. Ideally, a restaurant is renovated in the slow season. Historically, that's how people do it. We can decide when that time is, that maybe when the big overhaul inside happens. The cameras those are a done deal, those are items we agreed too.

Ms. Palmer-Fortune stated that the Board's hands are not tied by the language of the variance one way or the other after the four (4) month period. If things go over smoothly and easily then we kind of know where we are heading but we can't predict the future. Ms. Palmer-Fortune doesn't know how much time the Selectboard should spend at this meeting trying to nail down a specific time. The Selectboard should just pick a point in time and do they best they can.

Mr. Edwards (Selectboard) suggested that the clock starts to tick 30 days from the closing and then it ticks for that four (4) month period of time. If the business closes for upgrades, renovation, then the clock stops ticking until the business reopens. Mr. Edwards doesn't want the four (4) months to be taken up at any point by business not happening.

Attorney David Doneski (Town Counsel) stated that there was a suggestion at the start of this hearing that the transfer might not even take place. Attorney Doneski recommends that the Selectboard ask the Applicants on the record, if the proposed sale is to be consummated because that's a date that the Board does not have control over.

Mr. Edwards (Selectboard) stated that assuming the Selectboard passes this, is the plan to still proceed with the sale?

Attorney Michael Aleo (Attorney for Applicants) stated that's a question that can't be fully answered at this moment.

Mr. Orloski (Selectboard) stated that the thirty (30) days after the completion of the sale or the closing day gives our Chief time to arrange for a security detail.

Brian Domina (Town Administrator) questioned what happens during that thirty (30) day period, is there a police detail or no detail? Mr. Domina suggested that the four (4) months period should begin immediately after the purchase excluding any time when they're closed and the police detail would start immediately.

Mr. Edwards (Selectboard) stated that the police detail would start immediately upon closing.

Attorney David Doneski (Town Counsel) stated that he thinks we're OK with the language as it reads, after the completion of the purchase, the only addition now though is, excluded from the 4-month calculation are days in which the establishment does not open for business.

Mr. Edwards (Selectboard) makes a motion to grant the variance subject to the following conditions that Town Counsel is going to read.

Attorney David Doneski (Town Counsel) stated the motion as made on the document dated August 1, 2018 with the following revision. In item 2, line 2 inserting the word "detail" between uniform and police. In item, 2D, inserting comma after before and the word "during". In item 5, after the word conditions in line 3, inserting the phrase "including reduction or elimination of detail hours". The fourth revision that is in item 1, after the phrase 4-month probationary period, in the first line, we would insert "excluding days the establishment is not open for business."

Mark Dejackome (security consultant for applicants) asked the Selectboard board to add to the proposed motion that the detail officer will be hired by the Chief Police and not the Security Director.

Mr. Edwards (Selectboard) stated it would per normal detail procedures.

Mr. Orloski (Selectboard) stated we should strike out during which the Licensee shall arrange for to clear up any misunderstandings.

Julius Sokol (Applicant) questioned what happens if despite everyone's effort the Police Chief can't find a detail?

Attorney Michael Aleo (Attorney for Applicants) stated why not defer to the security plan if the Police Chief can't find a detail? In that case, when the Police Chief is unable to secure a detail, it defaults to the security plan, it applies anyways. Why shut the business down, it's no fault of the Police Chief, and no fault of the business owners?

Mr. Edwards (Selectboard) stated that if the Chief is having a hard time finding a detail, we're going to have a conversation really fast about what we need to do to change our system.

Attorney Michael Aleo (Attorney for Applicants) stated why not have a contingency, in the case that the Police Chief cannot secure a detail then the Police Chief shall report to the Board and the establishment shall continue to operate. The Police Chief can send an officer on those days to do a spot check, swing by unannounced.

Mr. Edwards (Selectboard) expressed confidence in finding a detail officer because its only for twelve (12) hours a week.

Ms. Palmer-Fortune (Selectboard) stated that the Board would know, well enough in advance, to have a quick meeting about it. Ms. Palmer-Fortune doesn't think she wants to put something into the agreement about that. The police officer is there for the safety of the public, the employees, and everyone involved. Just because we can't find one on a day, does that mean we aren't interested in the people's safety anymore?

Julius Sokol (Potential Owners) questioned what happens when someone calls out sick?

Mr. Edwards (Selectboard) stated that the same question could be asked if that happens to your security person? What happens?

Attorney Michael Aleo (Attorney for Applicants) stated that he has dealt a lot with security firms. They are usually staffed with former police officer and they have a whole slew of people available to assign shifts.

Mr. Orloski (Selectboard) suggested that if a detail officer isn't available, then a second security officer should be there?

Mr. Edwards (Selectboard) agreed with the suggestion that an additional security guard will be on the premise if no detail officer is available.

Attorney David Doneski (Town Counsel) suggests that item 2E reads that if a detail officer is unavailable the licensee shall have on duty at least 2 security personnel.

Mr. Orloski (Selectboard) made a motion to approve this variance with those changes discussed above.

Mr. Edwards (Selectboard) seconded the motion.

Joyce – yes, Fred – yes, Jonathan – yes. All in Favor.

The variance was granted subject to the conditions listed below:

1. The variance shall be for a four (4) month probationary period beginning on the date the Licensee commences operations after completion of the purchase from Demetrios Konstantopoulos d/b/a Castaway Lounge, excluding full days that the establishment is closed.

2. During this four (4) month probationary period, the variance shall not apply to the following times, during which at Licensee's expense, a uniformed detail police officer who is approved by the Whately Police Chief, shall be present at the licensed establishment:
  - a. Thursday 9:30 PM to 1:30 AM
  - b. Friday 9:30 PM to 1:30 AM
  - c. Saturday 9:30 PM to 1:30 AM
  - d. One hour before, during, and one hour after a Special Event, as described in paragraph 3 below
  - e. If a detail officer is unavailable then the Licensee shall have on duty at least two (2) security personnel.
3. A Special Event is defined as any entertainment or performance that the Whately Police Chief, in his discretion, and after consulting with the Licensee's Director of Security, reasonably determines may draw a crowd in excess of the capacity of the licensed establishment.
4. The Selectboard shall review the Licensee's operations under the terms of the variance at its second monthly meeting of every month during the four (4) month time period for the purpose of evaluating safety and security at the licensed premises and to consider whether the variance should be continued in effect, modified, or rescinded.
5. At the end of the four (4) month period, the Selectboard shall meet and decide whether or not to continue the variance in its then current form, grant a new variance with or without conditions, including reduction or elimination of detail hours, or rescind the variance.
6. The Licensee's Director of Security shall meet with the Whately Chief of Police on a weekly basis during the four (4) month probationary period to review operations under the security plan required as a condition of the Licensee's entertainment license, to evaluate any security-related incidents that may have occurred at the establishment, and to establish any modifications to the security plan or other operational changes necessary to protect the public health, safety, order and welfare.

## **Appointments**

The Board elected to hear Bob O'Bear from O'Bear Construction regarding the purchase of 219 Christian Lane Lot # 1 from the Town of Whately. Mr. O'Bear is seeking a purchase and sale agreement for Lot # 1 to move forward with the renovation of 219 Christian Lane. Mr. O'Bear expressed concern regarding the Town's zoning bylaws and its limit of four dwelling units per property. Brian Domina (Town Administrator) stated that some towns have adopted adaptive reuse overlay districts which are typically used when municipalities try to reuse old school or mill buildings. The Selectboard will ask Town Counsel to draft a purchase and sale agreement to be signed at its next meeting.

## **Old Business**

- a. Town Hall Project Update & Discussion – Brian stated that the Town Hall is really close to being finished. A walk-through will be scheduled in mid-august to see how to operate the mechanicals. By the end of the month, the contractor hopes to have the project wrapped-up. The fire alarm needs be placed on-line and a hand full of other things need to be finished up.
  - i. Furnishings – Brian informed the Board that groups are anxious to get back into the building. Brian wants to make sure we have an orderly approach for moving furnishing back into the building. The Selectboard agreed that Brian and Fred will handle the move back into the Town Hall.
- b. Historic Preservation Restriction – 194 Chestnut Plain Road – Sign Document  
The Town has not received the agreement from the Massachusetts Historic Commission for the Board to sign.
- c. Whately Elementary School – Purchase of Pre-Owned Generator – Brian stated he was hoping to have an idea of total costs for installation from Mark Bussiere, but the vendor Marc was working with quoted the wrong equipment. The Town doesn't have a final cost estimate. The remaining unknown is the installation cost. There is \$58,800 in an account right now, from a generator that was supposed to be purchased a long time ago. Fred stated and the Board agreed that if Brian gets a reasonable estimate for installation then the Town should move the project forward and purchase the generator.

## **New Business**

- a. Franklin County Solid Waste Management District
  - i. MOU - Household Hazardous Waste Day – The Town budgeted \$1,000 so residents can dispose of their household hazardous waste. Franklin County Solid Waste District operates the event and it's free of charge for residents. Fred and Jonathan signed the agreement.
  - ii. MOU – Third Party Inspection of Transfer Station – Mass DEP regulations require that it be inspected by a third party. Brian emailed Francis Fortino to make sure he recommended that the Board sign these and he did. Fred and Jonathan signed the agreement.
- b. Approval of Stop Signs
  - i. Grey Oak Lane/Long Plain Road – For these stop signs to be enforced, the Selectboard needs to approve the installation of the stop signs at those locations. Jonathan Edwards (Selectboard) made a motion to approve stop signs at Grey Oak Lane and Long Plain Road and the intersection of Eastwood Lane and Long Plain Road. Joyce Palmer-Fortune (Selectboard) second motion.  
Roll call vote: Joyce, yes – Fred, yes – Jonathan, yes. All in Favor.

## **Town Administrator Updates**

Brian stated that we have the results back from the audit for fiscal years 15, 16, and 17. The audit went well. No deficiencies in the finances of the Town. The auditors provided



some recommendations on best practices that the Town might follow in several areas. Brian will get the final reports out once we receive them back.

The magnesium filtration project is out to bid with sub-bids due August 29<sup>th</sup> and general bids due September 12<sup>th</sup>

Cemetery Project Phase III restoration of the grave markers is also out to bid with bids due August 15<sup>th</sup>. Grave Marker restoration will take place in the East Whately and West Whately cemeteries. The restoration for the Center Cemetery has been completed.

Water Merger. There was a meeting of the water merger committee, The question that came out of that meeting was how fast the Board would be willing to move this along? In terms of, any votes for funding, whatever amounts whether that should happen at a special town meeting or a regular town meeting? How do we fund it and when do we want to present it to the town for funding? Jonathan Edwards (Selectboard) stated this should happen at a regular town meeting for maximum participation. The Committee is concerned about missing a construction season if they wait until the annual town meeting. If it's delayed for another year, you never know what's going to happen to the water system. Joyce Palmer- Fortune (Selectboard) stated she's not against a special town meeting, if there's an advantage to it. The Selectboard wants to make sure that people are well-educated and would like to have an informational meeting before the vote. Jonathan Edwards (Selectboard) wants to make sure that all funding options are exhausted because going to town meeting.

**Adjourn** – Motion to adjourn (Jonathan Edwards) – 8:49 pm.

Respectfully submitted,

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Brian Domina, Town Administrator

**Document List on File in the Selectboard Office**

Meeting Minutes – July 25th, 2018

Selectboard Chair, Jonathan Edwards, Proposed Motion to the variance dated August 1<sup>st</sup>, 2018

Letter from Attorney Lessor dated June 14, 2018

Plot plan of 219 Christian Lane Lot #1 dated 10/10/2017

Draft of Purchase and Sale agreement for 219 Christian Lane Lot #1

Land Development agreement between the Town of Montage and O’Bear construction dated January 26, 2015

Letter from Whately Historical Society dated July 21, 2018

Email between Brian Domina, Town Administrator, and Bob and Pete dated April 26<sup>th</sup>, 2018

Memorandum of Understanding by and between The Franklin County Solid Waste Management District and the Town of Whately

Memorandum of Understanding by and between the Franklin County Solid Waste Management District and the Town of Whately regarding third-party inspection of the Town’s municipal transfer station.

Email from Whately Highway Superintendent dated July 25<sup>th</sup>, 2018

Town of Whately Management Letter dated June 30, 2017

Letter from Scanlon & Associates dated July 30, 2018

Letter from Massachusetts Office on Disability dated July 27, 2018

Next Meeting Dates (August 29, 2018) (September 12, 2018)