

**Queen Anne's County Liquor Board
Minutes of Meeting**

**August 3, 2021
9:00 a.m.**

The Board of License Commissioners of Queen Anne's County met on Tuesday, August 3, 2021. The meeting was called to order by Chairman Gene M. Ransom, III, Esq. Those present were: Gene M. Ransom, III, Esq., Chairman; Thomas E. Beery, Vice Chairman; John T. McQueeney, and Timothy G. Hibbard, Members; Tom Calmon, Liquor Inspector; Cathy Maxwell, Clerk to the Board; Jeffrey E. Thompson, Esq., Attorney for the Board; Amy Moredock, Director of Planning & Zoning; and Vivian Swinson, Zoning Administrator. Member Charles W. Ferrar was absent.

The July 6, 2021 Minutes and the July, 2021 Monthly Report from Tom Calmon, Liquor Inspector, were approved.

VIOLATION HEARINGS:

The Board held a hearing regarding a violation under § 6-304 of the Alcoholic Beverages Code for Classic Pizza, Inc., t/a Classic Pizza. The charge involves the sale of alcohol to a minor which occurred on July 8, 2021 at the licensed premises Mr. Thompson administered the oath to all who were to testify. Mr. Jose F. Ramos and Mrs. Lorena Ramos, Licensees, appeared before the Board. They confirmed that they received a letter and Incident Report dated 7/14/21 from Mr. Calmon advising them of the charges and the hearing date. They are not contesting the charges. As English is not the first language for Mr. & Mrs. Ramos, Mr. Ransom was concerned that they may not fully understand the charges. Mr. Ivano Scotto, who was in attendance, offered to interpret to assure that Mr. & Mrs. Ramos understood the charges. Mr. Calmon read the Incident Report into the record. An underage volunteer working with Mr. Calmon entered Classic Pizza and purchased an alcoholic beverage. Mrs. Ramos did not ask for identification and the purchase was completed. Board's Exhibit No. 1 was the Notice of Intention to Defend and Mr. Calmon's letter and Incident Report. Mrs. Ramos is Alcohol Awareness certified. She said she made a mistake when she made the sale. This is the first offense for this establishment concerning sale to a minor. Mr. Calmon said his interaction with Mrs. Ramos was fine. She immediately apologized for making the mistake and accepts responsibility. A motion was made by Mr. McQueeney, seconded by Mr. Hibbard, that a violation did occur. A motion was made by Mr. McQueeney, seconded by Mr. Hibbard, that since this is the first offense, to impose a fine of \$500, with \$250 in abeyance for one year from this date, which means as long as they do not have another sale to minor violation for one year, they only have to pay the \$250 fine. By a vote of 3 in favor, none opposed, the motion passed. Mrs. Ramos thanked the Board. The Board thanked Mr. Scotto for his assistance.

The Board held a hearing regarding a violation under § 6-304 of the Alcoholic Beverages Code for Dock Bar, LLC, t/a Red Eyes Dock Bar 2.0. The charge involves the sale of alcohol to a minor which occurred on July 8, 2021 at the licensed premises Mr. Thompson administered the oath

to all who were to testify. Mr. Robert Gordon, Licensee, Mr. Ivano Scotto, Manager, and their Attorney, Joseph McQueeney, Esq. appeared before the Board. Member John McQueeney recused himself as he is the father of Joseph McQueeney. Mr. Gordon is not contesting the charges. Board's Exhibit No. 1 was the Notice of Intention to Defend and Mr. Calmon's letter and Incident Report. Mr. Calmon read the Incident Report into the record. An underage volunteer working with Mr. Calmon entered Red Eyes Dock Bar and purchased an alcoholic beverage. He said Red Eyes has always done exceptionally well with security. He said it was a new bartender working and they had not started carding at the door at the time Mr. Calmon was there. The bartender was very upset over making the sale and apologized. Mr. Gordon has been the licensee for this establishment for 3 years. This is the first violation for this establishment since Mr. Gordon has been the licensee. All his employees are well versed in alcohol awareness. He takes full responsibility for the violation. He said he does everything possible to make sure this does not happen but unfortunately it did. It depends on the time of day whether the ID's are checked at the gate or at the bar. Mr. Ivano Scotto asked the Board if they had any guidance or suggestions to assure that this does not happen again. He said everyone on premises is TIPS certified. They have security at the door. Mr. Hibbard said the volunteer gave the server a real ID, not a fake one, and that's why they are here. Mr. Beery said Mr. Scotto has done the best he can to train his employees. Mr. Ransom told Mr. Gordon and Mr. Scotto that he is glad they take their responsibility seriously. Mr. Calmon said some establishments give the employees a bonus if they catch someone with a fake ID. A motion was made by Mr. Beery, seconded by Mr. Hibbard, that a violation did occur. A motion was made by Mr. Beery, seconded by Mr. Hibbard, to impose a fine of \$500, with \$250 in abeyance for one year from this date, which means as long as they do not have another sale to minor violation for one year, they only have to pay the \$250 fine. By a vote of 3 in favor, none opposed, the motion passed.

The violation hearing scheduled for Kentmorr Associates, Inc., t/a Kentmorr Restaurant. was postponed and rescheduled until Tuesday, September 7, 2021.

The following Special Temporary Licenses were approved:

Downtown Historic Stevensville – date of event – September 4

Jacob Sloan Foundation Memorial Golf Tournament – date of event – September 10

Queenstown Vol. Fire Dept. – dates of event – September 10 and September 11

Rett Syndrome Research Trust – 4H park – date of event – September 11

Talisman Therapeutic Riding – date of event – September 18

Historic Stevensville Arts & Entertainment Dist. – date of event – October 2

Sudlersville Vol. Fire Co. – date of event – October 16

Kent Island Vol. Fire Dept. – date of event – October 31

PUBLIC HEARING:

The Board held a public hearing for Brooks McNew and Jesse McNew, for the Benefit of Glass Valve Brewing, LLC, trading as Cult Classic Brewing, to expand the premises of a Class "B-D" Beer, Wine & Liquor license located at 1169 Shopping Center Rd., Stevensville, MD 21666. Mr.

Thompson administered the oath to all who were to testify. All publication requirements have been met for this hearing. Mr. Thompson said the application is in order. Mr. Brooks McNew and Mr. Jesse McNew, licensees, and Ms. Vivian Swinson appeared before the Board. Ms. Swinson has been working with the licensees for their proposed expansion. She said all the issues with the Permit Office have been addressed. She said the only suggestion the Fire Marshal had is if the Board is going to require them to fence in the outdoor area, that they have two remote accesses out of the fenced area. Brooks McNew said they have already done that, they had put up a temporary fencing with one access. They then removed two sections of the fence to resolve that issue. The two accesses (exits) are identified in "blue" on the drawing received 6/16/21. Mr. Calmon said he has been to the property and is comfortable with the plan. He said they also recently added a 6 ft. fencing around the propane/gas tank that was a concern. Mr. Ransom asked about the adjacent landowner and the easement. Mr. Brooks McNew said that easement had been between Didonato Properties and Riaan Properties, LLC who owns the Cult Classic building and he was not aware of it. He said the deal was that if and when they developed that property in the future, that they are to have access to the property. He said even though he did not know about the easement, it has not been a problem. Mr. Ransom said when the Board makes a motion, to make it clear that Cult Classic has worked out the easement situation and nothing this Board is doing abrogates any of those rights. If the property is developed in the future, they will be able to do that because they have that right. Mr. Ransom said the Didonatos are not here so that is a good indication that things are worked out. Mr. Brooks McNew said he has no plans to add any permanent structures that would have to be removed. Mr. Thompson said the Easement Agreement in question runs down the westerly side of the parking spaces that are shown on the plat that has been provided and that easement is outside of what they are showing as being the expanded area. Mr. Beery said concerning the farmer's market that comes to the property, since that is now part of the service area, they will not be allowed to let anybody else come in and serve or sell alcohol there and this would include farm wineries. There cannot be multiple licenses on one service area. Mr. McNew said he understood this. Mr. Ransom said he thinks this expansion is a very good solution and will make a more stable situation. There were no other persons present to testify for or against this application. A motion was made by Mr. Beery, seconded by Mr. Hibbard, to approve the expansion of premises. All members voted in favor.

INQUIRY HEARING:

The Board held an inquiry hearing for Squisito, Inc. – t/a Carmines NY Pizza Kitchen regarding the status of their Alcohol Awareness Certificate. Mr. Guiseppe Di Benedetto, Manager, along with his Attorney, Joseph McQueeney, Esq. appeared before the Board. Mr. McQueeney said there was a TIPS class conducted by Mr. Terry Ober at Carmines on July 15, 2021. Mr. Ober sent an email to Mr. Calmon and Ms. Maxwell dated 7/29/21 with the test results for Mr. Gennaro DiBenedetto (licensee), Mr. Giuseppe DiBenedetto and Mr. Ruben Ventura. All passed the class and their TIPS cards are valid until 7/15/2025. Mr. McQueeney said this should satisfy the purpose of this inquiry hearing. Mr. Calmon reminded them that there must always be someone on site with the current certification. Mr. Ransom said this resolves the purpose of the inquiry hearing.

PUBLIC HEARING:

The Board held a public hearing for the transfer of a Class "B" beer, wine & liquor license from Larry Lauderbach to Walter Petrie, for the benefit of Bay Bridge Marina Waterfront Properties, LLC, trading as Hemingways, located at 357 Pier One Rd., Stevensville, MD 21666. Mr. Thompson administered the oath to all who were to testify. All advertising requirements have been met. The application and associated documents were entered as Applicant's Exhibit No. 1. Mr. Walter Petrie and his Attorney, Joseph A. Stevens, Esq., appeared before the Board. Mr. Stevens said an Amended and Restated Revocable Trust Agreement for Mr. Petrie to show his ownership interest in the Trust is controlled by him. Also provided to the Board from Alan Hyatt, Esq. who is Mr. Petrie's transactional business attorney, the Trader's License, Statement of Pending Liquor License Sale, Health Dept. Approval and copy of the Bulk Transfer Permit. Mr. Stevens said the only matter now involves the use of a management agreement. Mr. Petrie is using a management company. There was some discussion regarding the use of the management company as it relates to provision §4-109(a)(16) of the Alcoholic Beverage Code which says, "during the term of the license, a person other than the applicant will not have a financial interest in the license or in the business to be conducted under the license". Mr. Stevens said the documents submitted show that the management company has no financial or ownership interest whatsoever, they are not a member of the LLC, they are a management company. He said the management agreement shows how Mr. Petrie is the owner and license holder and controls so much of what goes on. Mr. Petrie pays for all the alcohol and all the taxes related to it through a bank account that he controls. The management company has no access to it except to deposit money into it. Mr. Petrie is also responsible for all the operational costs of the restaurant. He also has broad rights to terminate this agreement. He understands that he is responsible for any liquor law violations. Mr. Stevens, upon request of the Board at the last meeting, submitted as Applicant's Exhibit No. 2 "Factors to Consider for the Issuance of a Class "B" (beer, wine & liquor) License. To a License that Engages a Management Company to Operate its Restaurant". He said perhaps the Board can use this format for future license requests involving a management company. Mr. Thompson said the only question that came up at last month's meeting was the financial interest and Mr. Stevens has addressed these questions. Mr. Ransom reviewed § 4.210 of the Alcoholic Beverages Code, approval or denial of license application. Mr. Petrie believes there is a public need and desire for the license. He does not believe this license will have any negative effect on other license holders in the area. Hemingways has existed for approx. 30 years. He plans to run the restaurant selling first class food and alcohol. Mr. Ransom said the applicant has shown that all the standards under § 4.210 have been met. Mr. Ransom said the applicant has shown that the management company has no ownership interest. Mr. Petrie is responsible for all costs related to food and alcohol and all operational decisions are made by him. Mr. Ransom said the Factors submitted by Mr. Stevens should be used for future applications. Mr. Calmon has met with the applicant and said the meeting went well. There were no other persons present to testify for or against this application. A motion was made by Mr. Beery, seconded by Mr. Hibbard, to approve the application. All members voted in favor.

REVIEW FOR ADVERTISING:

The Board reviewed an application for a new Class "A" Beer & Wine license for Christen Leager and Wayne Leager, for the Benefit of 313 Deli, LLC, trading as 313 Deli, permitting the sale of the aforesaid beverages on the premises located at 1207 Goldsboro Rd., Barclay, MD 21607. Mr. Thompson reviewed the application and associated documents and said they were in order. This premises previously had an alcohol license under the name of Depot at Barclay Station. Ms. Leager said that license has expired and no alcohol is presently on the premises. They are renting the building. A bulk transfer permit will not be required. Mr. Ransom said there is an issue with the background check for Ms. Leager. After discussion, Ms. Leager said they will resubmit the application in Mr. Leager's name only. Mr. Thompson said the ownership interest does not have to change. Mr. Ransom told Mr. & Mrs. Leager that alcohol laws are very complicated and they may want to consider hiring an attorney but it was up to them. A public hearing on this application will be heard on Tuesday, September 7, 2021.

MOTION FOR RECONSIDERATION:

The Board reviewed a Motion for Reconsideration submitted by Joseph McQueeney, Esq. for a new Class "A" Beer and Wine license for Monika Pal, for the Benefit of Myra 1, Inc. trading as Go Mart, permitting the sale of the aforesaid beverages on the premises located at 741 Main St., Church Hill, MD 21623. Member John McQueeney recused himself as he is the father of Joseph McQueeney, Esq. This application was denied at the July 6, 2021 meeting as the application failed to have three votes in favor. Mr. Thompson said he recommended to Mr. McQueeney that this Motion be submitted. At the July 6 meeting, Mr. Beery was not present and Board Member John McQueeney had to recuse himself. That left three members to vote on the application. Christopher Drummond, Esq. appeared before the Board. He said Mr. Beery was not at the July 6 meeting so he is not familiar with the matter and there is not a quorum today to consider this Motion. Mr. Thompson said he did not realize that when the Alcohol Beverages Code was recodified, a provision was taken out of the Code, and although it was the impression that nothing had changed, in fact it did. The annotations under § 27-204 states that, "the sixth sentence of former Art. 2B, § 15-104(d), which stated that at least three members of the Board who are present at any voting session must concur in the approval, denial, revocation, suspension or reclassification of a license, is deleted as unnecessary". § 15-104(d) is the statute that deals with quorums and was the predecessor to § 27-204, which states the statute formerly said three votes were necessary in order to make a decision but only on those issues. The current statute, § 27-204, just expresses what a quorum is, "three members of the Board are a quorum for transacting business". Mr. Thompson said it states because a quorum is defined, this other provision was unnecessary. He said he disagrees with that statement because it was only in the case of an approval, denial, revocation, suspension or reclassification that three members had to concur. Mr. Thompson said so the current law is you do not have to have three members to make the vote. With regards to Mr. Drummond's objection that the Board cannot move forward because there is not a quorum, Mr. McQueeney said he does not know why Mr. Ferrar has to be present. He said he is not asking anyone to reconsider their vote, it's the outcome. He said the Board had a hearing, there was a 2-to-1 vote in favor of the license. As a result the license should have been issued. Mr. Ransom said

the point today is there is not a quorum to take action, which is to give administrative direction based on his and Mr. Hibbard's vote to approve the license. Mr. Ransom said Mr. Drummond's argument is that the Board cannot do that because Mr. Beery should not take action since he did not vote at the July 6th hearing and Member John McQueeney has recused himself. Mr. McQueeney said he is not asking the Board to delve into the actual facts of the case, but rather to examine what the law requires. The law provides that with a 2-to-1 vote, a license be given. He said Mr. Beery would not be doing anything more than to say what the law should have done. Mr. Beery said he feels he is able to vote on the issue today and this has nothing to do with what was done last month. Mr. Thompson said there is no clear answer. He said the point is there was a hearing, the vote was 2-to-1 in favor and there was a misinterpretation of a statute that resulted in the denial. Mr. Thompson found the discrepancy and contacted Mr. McQueeney to suggest that he file the Motion for Reconsideration. Mr. Thompson said the Board is only here today to address a wrong that was done last month. Mr. Ransom asked if the Board feels comfortable moving forward and overruling Mr. Drummond's objection that there is not a quorum. All members agreed. Mr. Thompson asked Mr. McQueeney if he wants to do away with the possible right of appeal, he can wait until next month for a vote. Mr. McQueeney said he feels Mr. Beery is in a position to interpret what should happen. Mr. Ransom asked Mr. McQueeney if he wants to wait 30 days and this issue goes away or does he want to move forward today. Mr. McQueeney said he wants to move forward today. Mr. Ransom asked for a vote as to whether the Board believes there is a quorum here today. Mr. Ransom, Mr. Beery and Mr. Hibbard voted "Aye". Mr. Drummond said the Minutes from the July 6, 2021 indicated that this application was denied. That may have been legally incorrect. He said what do you do when a trial judge makes a mistake, legal or factual. An appeal is noted. If the Zoning Administrator makes a mistake, an appeal is noted to the Bd. of Appeals. If a Board of License Commissioners makes a mistake, you note an appeal to the Circuit Court. Mr. Drummond said this Board may have made a legal error last month and have confirmed that error by approval of the Minutes. He said what is the applicant to do. Not to make a procedure that doesn't exist in the Board's detailed Rules and Regulations, which is what Mr. McQueeney is asking the Board to do. He said the Circuit Court may reverse what the Board did or may remand it. He said there are procedures in the Md. Rules for reconsideration of what courts do. He said this Board does not have a rule for this kind of mistake. The rule is to file an appeal to Circuit Court or file another application and have the proper number of Board members involved for a quorum and vote. Mr. Drummond said he does not know whether last month the three people that voted, believing that three were required, voted a certain way because of the belief that three votes were necessary. Mr. McQueeney said he is still within his 30-day appeal window and will file an appeal if necessary. Mr. Thompson said he does not know if Mr. Drummond is wrong on the appeal issue. It is a factual question, was it in fact approved notwithstanding what the Board did. Mr. Ransom asked if the Board has ever adopted Roberts Rules and Mr. Thompson said not to his knowledge. Mr. McQueeney said we are not reconsidering the decision. The motion was 2-to-1 vote in favor of the license. It is not a decision he is asking the Board to undo, it's the legal effect of the 2-to-1 vote. Mr. Thompson said this could be argued successfully either way, both sides have good legal arguments. Mr. Ransom said arguments have been heard on both sides and is there is a motion as to whether

the Board can accept a Motion to Reconsider. Mr. Drummond said this issue is not just because his client (Rhodes Store) does not want a license holder within a half mile of their business. He said when the Board starts making up rules, which is what Mr. McQueeney is asking them to do, instead of noting an appeal or file another application, what is the next thing that will happen when they are asked to make up a rule. Mr. Ransom said what Mr. McQueeney is asking the Board to do is to follow the rule in the statute that the Board did not know about that says two votes was a quorum. Mr. Drummond said there is no provision for a mistake that was made. Mr. Thompson said if Mr. McQueeney files an appeal, he could likely win. If he does not withdraw his Motion for Reconsideration, this Board is going to make a decision and if it goes his way, he could still end up in court and lose as Mr. Drummond has a very valid argument also. Mr. McQueeney could end up with a reapplication a year from now. Mr. Drummond said an approval of that application would have been an improper and impermissible change of the administrative or quasi judicial mind. If the Board says they made a mistake and the application is now approved, does Mr. Drummond have an appeal on those substantive issues or is Mr. McQueeney going to say he's out of time. Mr. Ransom said that is a legitimate argument regarding the reconsideration issue. By not having a rule in place, you are not staying his rights on the substantive issues. Mr. Thompson said Mr. Drummond would probably have to note his appeal in the alternative. Mr. Ransom said if the rule was in place that said if the Board reconsiders it stays the time to appeal, that would be fine. Mr. McQueeney said his original thought was to file a Petition for Judicial Review. He said as a practical matter, this Board should not be handcuffed in being able to undo that which was patently wrong. Mr. McQueeney asked for a short recess to meet with his clients.

The Board discussed pending legislation. Concerning a proposal to § 27-1403(6) of the Alcoholic Beverages Code, the Board had previously voted to write revisions to provide for a certain number of Class "B" licenses in the 4th Election District. The Board will follow up on this at the September 7, 2021 meeting. Mr. Ransom said the Board will not have any new legislation proposed for this year but will support the County Commissioners in any of their proposed legislation.

The Board discussed HB12/SB205, concerning "to go cups". Ms. Amy Moredock appeared before the Board. She said the action that was taken at the Board's last meeting was to sunset these two bills until October 1, 2021 to allow the County time to assess. Mr. Ransom said his discussion with the Co. Commissioners was that this Board would follow their lead. Mr. Thompson said he discussed this with Mr. Todd Mohn, County Administrator, and a public hearing would be the right thing to do in order to hear from the public. Mr. Thompson said the statute says that this Board has the power to opt in or not opt in. Not opt in with amendments. The Governor stated a time period, for example. It's either you opt in or you don't opt in. Mr. Thompson said if the Board opts in, they should adopt regulations. But if the Board feels the statute is complete, they do not necessarily have to. Any regulations would have to be in furtherance of the statute, not changing the statute. Mr. Ransom said he feels comfortable with the Board setting the October 1st date because the statute says we can opt in, it doesn't say how long we can opt in for. So this Board opted in for 60 days and then we will decide if we're going to do it on a permanent basis. Ms. Moredock said she will work with the Board

concerning their legal options. The Board will hold a public informational hearing at the September 7, 2021 meeting to receive comments on these two Bills.

The Board continued discussion regarding the Motion for Reconsideration for Go Mart. Mr. McQueeney said he feels safe is best and without having an express reconsideration procedure on the books, he said a better avenue would be to pursue judicial review at Circuit Court. Mr. McQueeney withdrew his request for reconsideration. He is not asking the Board to reconsider anything that happened factually or any decisions. He suggested the Board may want to adopt a form of reconsideration in their Rules and Regulations. Mr. Drummond said the Board should consider what happens if this comes back to them and what the appeal rights of his client would be at that point.

A motion was made at approx. 10:30 a.m. by Mr. Ransom, seconded by Mr. Hibbard, to go into Executive Session to discuss personnel issues.

The Board reconvened at approx. 10:45 a.m. No decisions were made in the Executive Session.

The Board discussed Carletto Pizza and Pasta in Sudlersville, MD. Ms. Michelle Dillullo had submitted paperwork to Ms. Maxwell regarding creating a new LLC. She is the only license holder and member. She did not change the name of the existing LLC, she created a new one. Mr. Thompson said Ms. Dillullo should submit the entire Operating Agreement for review. Ms. Maxwell will follow up on this.

There being no further business the meeting was adjourned, to meet again on Tuesday, September 7, 2021.

Respectfully Submitted,



Clerk

/s/ Gene M. Ransom, III, Esq.
Chairman