

LICENSE HEARING MINUTES
SuperAmerica #4038, 390 Maryland Avenue East
Thursday, January 20, 2011, 10:00 a.m.
330 City Hall, 15 Kellogg Boulevard West
Marcia Moermond, Legislative Hearing Officer

The hearing was called to order at 12:10 p.m.

Staff Present: Kris Schweinler, Department of Safety and Inspections (DSI)

Applicant: Lesley Zaun, attorney, Faegre & Benson; and Kirk Ellis and Chris Hawkins, District Managers, representing Northern Tier Retail LLC, owner

Others Present: Leslie McMurray, Payne Phalen District 5 Planning Council, 506 Kenny Road

SuperAmerica #4038: Gas Station, Cigarette/Tobacco, Restaurant (1) – No Seats, and Retail Food (C) – Grocery 1001-3000 sq. ft., and Malt Off Sale licenses

Ms. Moermond stated that this was an informal legislative hearing for a license application. This particular license required a Class N notification which means the neighborhood was notified and people had the chance to voice their concerns; the City received one letter of concern. There were three possible results from this hearing: 1) she may recommend that the City Council issue this license without any conditions; 2) she may recommend that the City Council issue this license with agreed upon conditions; or 3) she may recommend that the City Council not issue this license but refer it to the city attorney to take an adverse action on the application, which could involve review by an administrative law judge. The applicant will be required to sign a Conditions Affidavit demonstrating the understanding of the conditions.

Ms. Schweinler stated that when the store was rebuilt in 2003, the Zoning Committee of the Planning Commission approved a Conditional Use Permit (CUP) under Zoning File No 03-248-877 on February 14, 2003 for an auto convenience market with a parking variance (17 spaces required, 12 requested for a variance of 5 parking spaces), with the following conditions:

1. The applicant shall comply with the exterior site plan requirements of the Department of Safety and Inspections (DSI).
2. The applicant shall contain trash and debris on the site in a dumpster that is covered and properly screened from adjacent residential properties.
3. The applicant shall not install or allow any individual or entity to install an exterior pay phone or vending machines anywhere on the site. The applicant may install an outdoor ice machine and a caged container for propane fuel as shown in the proposed site plan.
4. The applicant shall comply with all legislative codes that regulate outdoor storage and placement of permitted outdoor storage shall be in compliance with the Americans with Disabilities Act (ADA).

The Payne Phalen District Five Planning Council submitted a letter of support subject to the following conditions being added to the license:

1. No outside advertising (permanent or temporary) on the outside of the building or on fencing on the property.

2. On-site consumption of food and/or beverages is strictly prohibited.
3. 3.2 beer or beer products cannot be sold by the individual bottle or can.
4. Sale of 40 oz bottles of beer is not permitted.
5. Interior and exterior security cameras should be installed and records made available upon request to law enforcement.
6. There should be buffer zones at the perimeter of the property and these should be properly landscaped and maintained.
7. Trash receptacles should be well maintained and available on the perimeter of the property.
8. A Right Turn Only sign should be placed on the exit directly onto Maryland Avenue.

Ms. Moermond asked whether there had been any violations concerning the CUP. Ms. Schweinler responded that they had not received any complaints for any violations.

Ms. McMurray stated that a representative of Faegre & Benson had attended the district council meeting to address the issues and concerns regarding this store as well as the store at 1146 Payne Avenue. The neighborhood did not have any complaints concerning this store as it served a different clientele than the store on Payne Avenue. They suggested the same conditions on this location as the one on Payne Avenue with the addition of the right turn only onto Maryland Avenue as there had been a number of car accidents on Maryland at this location. As far as condition #1, she clarified that the council did not want pennants, banners or any advertising signage hung on the fence surrounding the property.

Ms. Zaun responded that she did not believe they had any authority as to whether they could have a sign to make a right turn only out of the lot onto Maryland; she said they would be open to having Public Works do a traffic study of the area.

Ms. Moermond reviewed the conditions suggested by the district council and stated she would not support adding the conditions 2, 6, 7, and 8. She suggested Public Works do a traffic study concerning the right-turn only onto Maryland to see what their recommendation might be. For condition #3, she suggested the standard DSI language be added concerning splitting 6 packs or cases for individual sale as well as no sale of 40 ounce beer. As far as condition #1, she asked Ms. Zaun whether they would be agreeable to not hanging any advertizing signage, specifically banners, on the fence surrounding the property.

Mr. Hawkins responded that they would be agreeable to this as a condition (#3) to the license as they currently did not hang any advertizing on the fence at this store. Ms. Moermond suggested adding the condition that no advertising be allowed on the fence surrounding the property.

Ms. Zaun stated that concerning the sale of 40 ounce beer, they were not agreeable to this condition as they did sell this size beer and did not have any problems thus far. Ms. Schweinler stated that she was aware that certain cultures provided beer at funerals which was served from the larger containers of beer, namely the 40 ounce sized container, and was shared in smaller glasses with funeral attendees.

Ms. Moermond asked what security system they had at this store. Mr. Hawkins responded that this store had the Westec Security System with 16 cameras, inside and outside the store, and was an interactive surveillance system wherein someone was monitoring activity via video and audio. They did employ off-duty St. Paul Police Officers Thursday through Saturday nights from 8 p.m. to

2 a.m. as the store closed at 2 a.m. and re-opened at 4 a.m. A discussion ensued regarding security measures for the store. Ms. Moermond suggested that they use the same language for the condition of employing off-duty St. Paul Police Officers as they did for the 1146 Payne Avenue location. Ms. Schweinler suggested the condition include the security video surveillance language as well as the employment of off-duty police officers “Thursday through Saturday as currently applied” so that they were not locked into specific days and times. Ms. Zaun argued that this not be added as a condition as they did not want to be bound to hire off-duty police officers if one was not available to work off duty, particularly during the summer months. It was her opinion that they would like to have the ability to hire security personnel from security companies at the store. Ms. McMurray stated that it was the desire of the community to have off-duty police officers providing security so as not to minimize safety concerns, particularly at the Payne Avenue store. Mr. Hawkins stated that although it was their practice to hire off-duty police officers, it would be preferable to have the condition list “identifiable security personnel” so that they would not be in violation of this condition if they were unable to hire off-duty police officers. Ms. Schweinler responded that it was standard to include language that establishments hire “clearly identifiable security personnel” and to not limit the hours of security operations. Ms. Moermond concurred that the language indicate “clearly identifiable security personnel at times currently applied” (Thursday or Friday nights and Saturday nights) as a condition to the license so that they not be bound to hire off-duty police officers if none were available. Ms. Zaun stated that they would prefer to not be bound to have security at the Maryland Avenue store since they had the Westec system and there weren’t any real problems with this location. She said she would be agreeable to adding the language of having “clearly identifiable security personnel” or as much as practicable, to have off-duty police officers for the Payne Avenue store. Ms. Zaun also indicated that they would be willing to work with the district council on the security issues. Ms. Moermond suggested they also participate in the East District community police meetings, which were held once per month, to discuss neighborhood policing concerns.

Ms. Moermond recommended continuing the hearing to Thursday, January 27 to discuss the right-turn only sign onto Maryland Avenue.

The hearing adjourned at 1:10 p.m.

Submitted by:
Vicki Sheffer