

LICENSE HEARING MINUTES
SuperAmerica #4039, 1146 Payne Avenue
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 10:10 a.m.

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

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

Others Present: Janet Worden, 671 Geranium Avenue E; and Leslie McMurray, Payne Phalen District 5 Planning Council, 506 Kenny Road

SuperAmerica #4039: Gas Station, Cigarette/Tobacco, Restaurant (1) – No Seats, and Retail Food (C) – Grocery 1001-3000 sq. ft., 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 four letters 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 there currently were no conditions on this license and DSI had no recommended conditions for this store. The Payne Phalen District Five Planning Council submitted a letter of support subject to the following conditions being added to the license:

1. Hours of operation are limited to 5:00 a.m. - 11:00 p.m. Monday through Sunday.
2. No outside advertising (permanent or temporary) on the outside of the building or on fencing on the property.
3. On-site consumption of food and/or beverages is strictly prohibited.
4. 3.2 beer or beer products cannot be sold by the individual bottle or can.
5. Sale of 40 oz bottles of beer is not permitted.
6. Interior and exterior security cameras should be installed and records made available upon request to law enforcement.
7. There should be buffer zones at the perimeter of the property and these should be property landscaped and maintained.
8. Trash receptacles should be well maintained and available on the perimeter of the property.
9. The contact information for the owner should be visible and accessible.

She said that Payne Avenue was predominantly a commercial district and behind the store was an alley with residential homes.

Ms. Zaun stated that her client wanted to be a good neighbor and understood the concerns of the neighborhood; however, they did not agree with all of the conditions submitted by the district council.

Ms. Moermond read into the record letters of opposition received from the following: 1) Susan Forsberg, 666 Geranium Avenue East, concerning criminal activity and criminal element attributed to the store, volume of trash and failure to pick up litter; and she wanted the store to cease operations; 2) David Wilbanks, Wilburs Auto Service, 1138 Payne Avenue, concerning lack of security, loitering and panhandling, pollution, and litter/trash; 3) Gary and Janet Worden, 671 Geranium Avenue E; Ms. Worden was present to testify; and 4) concerns of the district council; Leslie McMurray was present to testify. Said letters are attached and made a part of this record.

Ms. Worden submitted a copy of the police report for the past year and noted that there were 258 calls for service related to this address. She said a new park (Sue's Park) was being developed at the end of the street on Payne/Maryland. She believed the store generated a tremendous amount of trash, foot traffic, drug sales and had a negative impact on the neighborhood. She believed the neighborhood would be a safer place if the store no longer existed.

Ms. McMurray highlighted the concerns of the district council and that the store tended to be a magnet for problems in the neighborhood. It was the concern of the district council that the patrons of the store generated a tremendous amount of litter in the neighborhood.

A copy of the police calls for service for this location was provided to Ms. Zaun. Ms. Zaun reviewed the report and said that in many cases, police calls for service could be misleading as activities may not have occurred as a result of incidents related to the store. Ms. Schwinler responded that she believed the police calls for service reflected neighborhood issues and not necessarily store issues.

Mr. Hawkins explained 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. He said that they also employed an off-duty St. Paul Police Officer for extra security at the store every Saturday from 8 p.m. to midnight and alternating Thursdays and Fridays every week at the same hours. He said this had negated a lot of the theft and loitering at this store. As far as video, they maintained digital surveillance copies on site for 30 to 45 days which would be available for viewing or copying upon request.

Ms. Worden stated that another concern was the maintenance of the alley in the winter and responsibility for snow removal behind the store to Sue's Park. She said currently, the neighbors were hand shoveling the alley and she believed this should not be the neighborhoods' responsibility. Mr. Hawkins responded that he would need to look at the alley and talk to the contractor they had hired for snow removal to see if this should be part of the store's responsibility. Ms. Schweinler suggested she would have Mr. Fischbach, DSI, contact Public Works to determine responsibility for snow removal in the alley.

Ms. Moermond reviewed the list of conditions requested by the district council and stated that she would not recommend changing the current hours of operation, that being 6 a.m. to midnight. She asked about addressing the trash problem. Mr. Hawkins presented a copy of the ECE (Exceptional Customer Experience) Worksheet and suggested this task could be added to the list for this store. A

copy of said worksheet is attached. Ms. Moermond agreed that this should be added to the form as the expectation of store management and the neighborhood would then be that employees were responsible for picking up trash and that it should be picked up within 100 feet of the store on the public areas at least one time per day. Ms. McMurray suggested store management also work with the district council on this issue. Ms. Moermond also recommended store officials meet with the Police Department's CPTED to ascertain advice on landscaping, noise buffering, and further security options for the store.

Ms. Moermond stated that she will recommend to the City Council that they approve the license with the conditions proposed from the hearing.

The hearing adjourned at 11:15 p.m.

On January 27, 2011, hearings were held regarding the SuperAmerica stores at 390 Maryland Avenue East and 756 Snelling Avenue North. Ms. Vang had questions concerning the conditions on the license for 1146 Payne Avenue from the January 20 hearing. She asked for clarification on agreement to the conditions and whether all of the conditions that the district council had recommended were agreed to.

Ms. Zaun and Ms. Schweinler responded that they did not have their files available for the hearing as they believed everything had been agreed to at the hearing on January 20. They believed there were no outstanding issues concerning the license application. Ms. Zaun stated that the district council had acknowledged that the conditions they were recommending were standard conditions they were requesting for all license applications. They had not agreed to all of them; however, they had agreed to clean up the litter a greater perimeter around the store; the sale of individual bottle/can language; and no sale of 40 ounce bottles/cans. They had also agreed to have the Police CPTED come out and look at security options for the store; however, this was not a license condition.

Ms. Vang stated that she would abide to the decisions agreed to at the January 20 hearing.

After the hearing, DSI submitted the following conditions to the license application:

1. Hours of operation are 6:00 a.m. to 12:00 midnight Monday through Sunday.
2. 3.2 Beer and beer products that are originally packaged with the intent to be sold together in multiples cannot be separated and sold by the individual bottle or can. Only 3.2 beer and beer products that are purchased from a licensed distributor, and are intended to be sold by the individual bottle and/or can, may be sold as an individual bottle and/or can.
3. The sale of 40 ounce bottles and/or cans of beer is not permitted.
4. The sale of wine and/or strong beer is not permitted with a Malt Off Sale license.
5. The licensee shall maintain video surveillance cameras inside and outside the establishment. The video recordings shall be kept by the license holder for at least thirty (30) days and shall be available for viewing by the Saint Paul Police Department (SPPD) immediately upon request. In addition, if the SPPD responds to a call at the licensed premises, and due to the serious nature of the crime, requests that a copy of the surveillance footage be immediately provided, license holder shall have technology available to make the copy at the time of the request and shall have it for the police without delay. In other cases, if the SPPD or the

Department of Safety and Inspections requests copies of the surveillance tapes, licensee shall have a 48-hour period in which to provide such copies.

6. The licensee shall remove trash, litter, and/or bottles and cans from the parking lot and public sidewalks and blvd. abutting the property daily.

The Conditions Affidavit was submitted on February 3, 2011.

Submitted by:
Vicki Sheffer