

LICENSE HEARING MINUTES
The Lexington, 1096 Grand Avenue
Thursday, February 28, 2013, 2:00 p.m.
330 City Hall, 15 Kellogg Boulevard West
Nhia Vang, Deputy Legislative Hearing Officer

The hearing was called to order at 2:00 p.m.

Staff Present: Larry Zangs, Department of Safety and Inspections (DSI)

Applicant: Michelle Hickey, owner/applicant

Others Present: Jeff Roy, Summit Hill Association; Maureen Flahaven, 1073 Lincoln Avenue; William Bartholme and Alice Medley, 1089 Lincoln Avenue; Michael Jurayj, 626 Goodrich Avenue; Darya Lucas, 1777 Lincoln Avenue; William O'Connell, 1082 Lincoln Avenue; Sue Evens, Grand Avenue Business Association; and Joe Spencer, Mayor's Office

The Lexington: Request to add a Liquor Outdoor Service Area (Patio) license to the existing Restaurant (5) - 151 and over, Liquor On Sale - 181-290 Seats, Liquor On Sale - Sunday, Restaurant (D) Add-on (Bar Only), Entertainment (A), and Sidewalk Cafe licenses

Ms. Vang stated that this was a continuation of the hearing which took place on November 15, 2013 wherein there were a number of unresolved issues which remained. The purpose of this hearing was to continue those discussions and hopefully come to some agreements in order to move forward on the license application. Ms. Vang again stated that this was an informal legislative hearing and the City Council is the final authority on whether the license is approved or denied. She asked Mr. Zangs for the department's report.

Mr. Zangs stated that the existing license conditions were as follows:

1. Sidewalk seating area is limited to a maximum of 18 seats.
2. Each year prior to the placement of table(s) and/or chair(s) in the public right-of-way (i.e., sidewalk), the licensee agrees to obtain a new Obstruction Permit from the Department of Public Works. Licensee agrees to maintain the sidewalk café in accordance with the conditions placed on an approved Obstruction Permit, acknowledges that an Obstruction Permit is effective on April 1 and expires on October 31 of each year, that table(s) and/or chair(s) may not be placed in the public right-of-way before or after the effective/expiration dates, and that a failure to comply with this condition will result in adverse action being taken against all of their licenses.
3. No outdoor food and/or beverage preparation is allowed on a public sidewalk without prior approval and additional licensing from DSI.
4. No liquor sales and/or service is allowed on a public sidewalk without prior approval and additional licensing from DSI.

5. Per City of Saint Paul Legislative Code 411.02, the definition of Entertainment A is, "Amplified or nonamplified music and/or singing by performers without limitation as to number, and group singing participated in by patrons of the establishment." (includes karaoke). Entertainment A license does not allow for patron and/or performance dances.

Since the last hearing, staff was proposing the following conditions be added to the license for the rooftop patio:

6. Sunday through Thursday all food and beverage service, including alcohol service, will stop at 9:30 p.m.; the Patio will close and all patrons will vacate the Patio area by 10:00 p.m.
7. Friday and Saturday all food and beverage service, including alcohol service, will stop at 11:30 p.m.; the Patio will close and all patrons will vacate the Patio area by 12:00 a.m.
8. Licensee will offer food service during Patio hours.
9. Licensee will retain an acoustic engineer to perform a noise impact analysis and follow all recommendation for mitigation of noise impacts in compliance with state and local rules and regulations.
10. Licensee will install signs at its rear entrance reminding patrons that the restaurant is located in a residential area.
11. The Liquor-Outdoor Service Area (Patio) licenses will not be issued until the City approves a building certificate of occupancy for the patio area.

Ms. Vang invited Ms. Hickey to discuss the proposed conditions. Ms. Hickey stated that she had not been privy to the conditions that were shared by Mr. Zangs and asked to see them in writing. Ms. Vang responded that she had not reviewed the newly proposed conditions either. Ms. Hickey stated that she was happy to hear that the recommended hours of operation had been increased from what had been previously proposed. She believed that having to close the patio service by 9 p.m., as was previously proposed, would be too much of a financial hardship considering the revenue that will be needed to build the patio on the roof. She requested the hours of service be extended by a half hour with service ending at 10:00 p.m. and the patio vacating by 10:30 p.m. Sunday through Thursday and service ending at 12:00 a.m. and the patio vacating by 12:30 a.m. Friday and Saturday.

Ms. Vang confirmed with Ms. Hickey that she was in agreement with conditions 8, 9, 10, and 11. Ms. Hickey responded that she was in agreement with the remainder of the proposed conditions.

Ms. Vang invited members of the audience to testify.

Mr. Bartholome, a neighbor, presented a letter and petition signed by the neighbors; he also included photos of the restaurant taken from his property (*said letter, petition and photos are made a part of this record*). He said he had attended the meetings held by the owners with the

neighbors last summer concerning a proposal to expand their business to a rooftop patio. At one of the meetings, he expressed concern regarding problems such as those experienced with Billy's, and that he didn't want another business in the neighborhood with similar issues. The owners assured the neighbors that what they were proposing would be a low-key operation with the intent to increase dinner traffic during the summer months; it would be nothing like Billy's. The owners took the neighbors up to the roof to look at the area they were proposing to put in the patio; where they would install planters and other sound barriers so that the noise would have minimal impact on the neighborhood. Many of the neighbors, including him, were somewhat in support of the proposal. In November, he became aware that the owners were proposing an outdoor bar with seating for 70 people that would be open until bar closing time, 1:00 a.m. He and his wife, Alice Medley, asked their neighbors if it had been their understanding when they originally signed the applicants' petition in support that the proposed patio was going to be small and would close at 9:00 p.m. The neighbors they spoke to concurred that this was their understanding at that time. It was his contention that if the neighbors had known the owners had planned to have seating for 70 people and would close at 1:00 a.m., they would have never signed the original petition in support. Almost all other businesses on Grand Avenue who have patios face Grand Avenue; the exception is The Wild Onion which has caused problems in the neighborhood. Since this was a residential neighborhood, he believed the neighbors were compromising by offering a 9:00 p.m. closing in contrast to the many neighbors who were strongly opposed to any rooftop patio.

Ms. Vang said that in looking at the conditions proposed by the department, she asked if he would be willing to accept a closing time of 10:00 p.m. rather than 9:00 p.m.; she also asked if there were any concerns regarding any of the other proposed conditions. Mr. Bartholome responded that he couldn't speak for the other neighbors but would be willing to compromise to a 10:00 p.m. closing. He said many people do not have air conditioning and like to have their windows open at night during the summer months. They don't wish to be kept awake at night having to listen to noise from a bar crowd. He believed the rest of the proposed conditions were fair.

Ms. Hickey responded that she believed the testimony offered by Mr. Bartholome was merely rehashing of the same conversations from the hearing in November. The restaurant had operated in the neighborhood long before any of the residents had lived there. Although she sympathized with the neighbors, they chose to live near the restaurant and Grand Avenue. She did not appreciate the inference that they were being deceitful when they made their original presentation to the neighbors to expand their business or that their plans had in any way changed. She also took great offense to the possibility of having customers such as Billy's as they clearly were an upscale restaurant catering to a more refined clientele. She noted that in the past eight years since they had owned the restaurant, not one complaint had ever been received from any of the neighbors.

Ms. Vang stated, for clarification purposes, that city staff had received the applicants' petition and had verified they had met the required number of signatures – 39 signatures out of possible 65 supportive signatures which equaled 60 percent in support. Since the petition had been validated by city staff, she was accepting that the applicants had met the requirements under the petition process.

Ms. Harris, a resident of the neighborhood, stated that she had been a resident of Lincoln Avenue for the past 13 years and chose to live in the Grand Avenue neighborhood because she enjoyed the charm and close proximity to all the businesses on the avenue. She believed The Lexington had always been a good neighbor and had a long-standing positive relationship with the neighborhood. She wished to see the owners of The Lexington to prosper and was in favor of granting the license.

Ms. Flahaven, a resident of the neighborhood, stated that she and her husband had lived in the neighborhood for the past 40 years and were patrons of the restaurant. In addition to the concerns about the patio closing time, she also wanted to be sure that the requirements regarding acoustics, the engineering aspects of the roof and stairways, and handicap accessibility, be addressed prior to the grant of the liquor license. She had been present at the first meeting the owners had with the neighbors and when the question was asked about how many people they were planning to accommodate, the answer was 40 people; 10 tables of 4 people to a table. She was not the only neighbor who heard this who could also verify the conversation that transpired. As far as the closing time of the patio, most of the homes were very old and did not have air conditioning, thus, their windows needed to be open during the summer months for air to circulate. It was also a working-class neighborhood where most got up early in the morning for work and went to bed early on week nights. The neighbors did not like to have to be in this position; however, they had valid fears that another establishment could become problematic for the neighborhood such as Billy's and The Wild Onion. This was why they were asking that the owners/applicants be required to abide by all of the rules and regulations the city places on them. She said she also believed there would be more neighbors present at this hearing; however, due to work schedules, many could not attend a 2 p.m. hearing.

Ms. Hickey expressed great displeasure with Ms. Flahaven's testimony. The suggestion that they may some how circumvent the city's regulations in any way was very disconcerting. They also had never represented that they were limiting the number of seating to 40 people on the roof. She also took issue with the fact that the neighbors, her in particular, were not in support to the success of their business and were in fact, trying to thwart their efforts in this process. [There was discussion back and forth between the applicant and Ms. Flahvan; Ms. Vang interrupted to refocus the conversation to a civil decorum.]

Ms. Vang clarified for the record that the site plan map submitted by the applicants indicates seating for 70 people on the rooftop. She then asked Mr. Zangs to explain condition #11 regarding the certificate of occupancy and what the applicants were required to do before they could obtain their license.

Mr. Zangs responded that license for extension of liquor service to the rooftop would not be issued until a certificate of occupancy had been obtain which requires all building codes need to be in compliance. This means a structural engineer would need to determine the capacity of people to the square footage of the roof and the amount of weight that the roof could accommodate. The site plan that was submitted by the applicants was only a preliminary drawing; the design had not been done by an architect in consult with any engineers to determine what could be built given the parameters of the building code. Therefore, consideration for the

placement of mechanicals, electrical, plumbing, handicap accessibility, stairways, and acoustical barriers, in addition to any bar, tables and chairs would need to be included in the architectural plans. Since the roof was not that large, it was difficult to determine the actual number of patrons the rooftop patio eventually could accommodate.

Ms. Evens, GABA, stated that the mission of the business association was to assist in marketing, advocacy, and education that helps member businesses prosper and to enhance the quality of life of the avenue and surrounding community. This was a mixed use, residential and business community and the association was not in the position to advocate for the advancement of businesses at all costs. The business association supported the license application for the expansion of the liquor license to a rooftop patio for The Lexington. They believed it would be an asset to the other businesses in the neighborhood and to the community in general.

Mr. Roy, SHA, stated that the role of the district council was to balance the needs of the businesses and those of the residents who live in the area. At the November hearing, he had presented a letter in support of the business from the district council which included limiting the hours of operation to specific closing times. He was hopeful they could come to some workable solution that would be a benefit to everyone. He cited the problems the neighborhood had experienced with The Wild Onion with the noise and behavioral issues of their patrons. [Ms. Hickey attempted to interrupt Mr. Roy while he was speaking to no success]. Mr. Roy went on to say that they now had new management and installed sound barriers that helped mitigate some of the previous problems they had encountered. He asked for assurances that it would not take a protracted response from the city to take enforcement action against a business that was in violation of their license conditions and whether such a condition could be placed on this license.

Ms. Schweinler clarified that The Wild Onion did not currently have a patio license. Mr. Zangs responded that the noise ordinance would prevail as far as noise above a certain level after 10 p.m. Most of the time, it was difficult to determine whether a violation occurred because by the time the police are called and arrive at the location, the bothersome noise is usually gone. It also is in the “ear of the beholder” as far as noise being a nuisance and exceeding the decibel level allowed under the ordinance. Mr. Roy replied that he believed the acoustical design of the roof will be critical as far as blocking noise.

Ms. Hickey interjected and continued to state that they had abided by every rule and regulation; they had done everything the city had asked them to do. All they were requesting to move forward with their plan was to be granted the license to expand their service. She did not believe it was fair to base conditions on “what ifs” that may or may not occur in the future and she took great offence in being compared to Billy’s or The Wild Onion.

Ms. Vang responded and asked everyone to be mindful and to not make references to the Lexington becoming another Billy’s or Wild Onion and that it may not be fair to compare them to other establishments. However, the residents did have legitimate concerns about the impact the addition to the restaurant may have, particularly the issue of noise. It was her position to work with everyone to determine what the appropriate closing times would be that would be fair to both the neighbors and the establishment.

Ms. Medley, a resident of the neighborhood, stated that she enjoyed living in a mixed-use neighborhood. She wished to clarify that she believed the comparison to The Wild Onion was that the patio faced the back of the property abutting the residential neighborhood, Lincoln Avenue, which would be the case for The Lexington. She believed people who consumed alcohol tended to be more boisterous than they would be otherwise. Since she lived behind the establishment and her backyard abutted the alley to the restaurant, she believed this type of design would be better suited for a business that faced Grand Avenue.

Mr. Jurayj stated that he was in support of the license application of The Lexington. He enjoyed living in the mixed-use, Grand Avenue neighborhood and was aware that noise was going to be a factor when he purchased his home. He believed the clientele drawn to Billy's was a 'red herring' and that the patrons of The Lexington were a more genteel crowd. He did not believe it was fair to constrain a business in their plans to expand as they needed to prosper in order for the neighborhood to be viable.

Ms. Lucas stated that although she no longer lived near the restaurant, she previously had lived in a condo at 1060 Grand Avenue. She currently owned a business on Grand Avenue and personally knew the owners of the restaurant. She spoke in support of the license application of The Lexington as she believed they were an asset to the community; she feared what would happen to the neighborhood if the business were to close and the space sat empty for any length of time.

Mr. Bartholome spoke again and said he didn't believe it was fair to say that the neighbors were against The Lexington; they did support the business and wished to see it be successful. He asked if there wasn't a way in which the business owners and the neighbors could meet somewhere in the middle regarding the closing time. He also questioned the type of clientele the establishment was attempting to draw if they wished to be open until midnight. He did not believe it would be the type of clientele that currently frequents the restaurant as it was more likely to draw a younger, noisier drinking crowd. He also brought up the meeting conducted by the Summit Hill Association regarding the hours recommended for closing the patio. [There was indiscernible discussion amongst Mr. Bartholome, Ms. Hickey, and others regarding what had taken place at the neighborhood association meeting in October 2012.]

Mr. Roy explained what had happened at the district council meeting in October and the recommendation that resulted from that meeting. He had contacted Mr. Zangs the day of the meeting to find out if the applicants had obtained the number of required signatures on the petition. Mr. Zangs indicated that to the best of his calculations, it appeared that the applicant had not met the number of required signatures to meet the 60 percent threshold; therefore, the applicants' were required to have the support of the district council. Mr. Ryan, one of the business owners, was in attendance at that meeting and since it was believed that they had not met the 60 percent requirement, the district council requested a condition be placed on the license stating that liquor service on the rooftop patio end at 9:00 p.m. Sunday through Thursday nights; and end at 11:00 p.m. Friday and Saturday nights. Mr. Ryan agreed to those conditions since they needed the support of the district council to move forward. It wasn't until after the meeting that Mr. Zangs had contacted him again to let him know that in reviewing the petition, it was determined that the applicant had indeed obtained the 60 percent of required signatures. [Ms. Vang again indicated that since the previously submitted petition had since been validated

by city staff, she was accepting that the applicants had met the requirements under the petition process.]

Ms. Vang stated that she also recalled the conversation from the last hearing and asked Mr. Roy if the district council was still in support of the license application with the requested closing times. Mr. Roy responded that the district council did support the license application and were in agreement with the 9 p.m. closing time. He believed that some of the neighbors were not in agreement with the 11 p.m. closing time on Friday and Saturday nights.

Ms. Vang closed the public hearing. The outstanding issue was the closing time. Staff was proposing that alcohol service stop at 9:30 p.m. and the patio close at 10 p.m. Sunday through Thursday nights. She believed that this proposal was meeting in the middle for both the business and the neighborhood. For Friday and Saturday nights, it was proposed that alcohol service end at 11:30 p.m. and the patio close at midnight. She asked staff whether the conditions they proposed were conditions imposed on other establishments with patios.

Ms. Schweinler responded that conditions 6 through 11 were the standard conditions placed on all licenses with patio service. There were a number of establishments that had licenses to provide service on their patios prior to standard conditions being implemented. Many of the establishments on Grand Avenue who had patio service did not have any conditions placed on their licenses.

Ms. Vang asked Ms. Hickey whether she was agreeable to condition #6 that being alcohol service stop at 9:30 p.m. and the patio close at 10 p.m. Sunday through Thursday nights. Ms. Hickey responded that she wanted alcohol service to end at 10 p.m. and the patio close at 10:30 Sunday through Thursday. Ms. Vang stated that for Friday and Saturday nights, it was proposed that alcohol service end at 11:30 p.m. and the patio close at midnight. Ms. Hickey responded that she was agreeable to those times.

Ms. Vang asked the neighbors whether they were agreeable to the closing time Ms. Hickey requested to stop alcohol service at 10 p.m. and close the patio at 10:30 p.m. Sunday through Thursday nights. Mr. Bartholome responded that he did not agree with those times as the residents' desire was to have the patio close at 9 p.m. Closing at 10:30 p.m. was not a compromise in his opinion.

Ms. Vang stated that she would not recommend Ms. Hickey's request to have the hours of the patio closing at 10:30 p.m. on Sunday through Thursday. Ms. Hickey asked what her other options were if she disagreed. Ms. Vang responded that given the valid concerns of the neighbors, she would not be comfortable recommending a later closing time and so if Ms. Hickey disagreed with the earlier closing time recommendation, Ms. Hickey can appeal it when Ms. Vang forwarded her recommendation to the City Council to deny the license application. Ms. Hickey was very displeased by this response and said she felt her back was up against a wall and she had no choice but to agree to those times.

Ms. Vang stated that for Friday and Saturday nights, it was proposed that alcohol service end at 11:30 p.m. and the patio close at midnight. She asked the neighbors whether they were

agreeable to those times. Ms. Medley responded that they were not agreeable to those times. Ms. Schweinler interjected that the closing times for patios throughout the city was midnight and from an enforcement standpoint, it would be very difficult to enforce an earlier closing time on the weekends. Mr. Zangs stated that staff was very comfortable with the recommended conditions for #6 and #7.

The hearing was recessed from 3:20 p.m. to 3:40 p.m.

Ms. Vang stated that she appreciated everyone in attendance at the hearing and although the suggested conditions for closing times were not ideal, it was what the city had consistently implemented for establishments with a patio license. If there were any violations of the conditions, the city did have a process wherein the residents in the neighborhood needed to complain to the neighborhood association and to license staff. License staff would then determine the appropriate course of action. She then explained the process in the license application moving forward to the council for approval.

After reviewing all of the documents of record, Ms. Vang said she will recommend to the City Council that they approve the license with conditions. The proposed conditions were agreed to by Ms. Hickey and are as follows:

1. Sidewalk seating area is limited to a maximum of 18 seats.
2. Each year prior to the placement of table(s) and/or chair(s) in the public right-of-way (i.e., sidewalk), the licensee agrees to obtain a new Obstruction Permit from the Department of Public Works. Licensee agrees to maintain the sidewalk café in accordance with the conditions placed on an approved Obstruction Permit, acknowledges that an Obstruction Permit is effective on April 1 and expires on October 31 of each year, that table(s) and/or chair(s) may not be placed in the public right-of-way before or after the effective/expiration dates, and that a failure to comply with this condition will result in adverse action being taken against all of their licenses.
3. No outdoor food and/or beverage preparation is allowed on a public sidewalk without prior approval and additional licensing from DSI.
4. No liquor sales and/or service is allowed on a public sidewalk without prior approval and additional licensing from DSI.
5. Per City of Saint Paul Legislative Code 411.02, the definition of Entertainment A is, "Amplified or nonamplified music and/or singing by performers without limitation as to number, and group singing participated in by patrons of the establishment." (includes karaoke). Entertainment A license does not allow for patron and/or performance dances.
6. Sunday through Thursday all food and beverage service, including alcohol service, will stop at 9:30 p.m.; the Patio will close and all patrons will vacate the Patio area by 10:00 p.m.

7. Friday and Saturday all food and beverage service, including alcohol service, will stop at 11:30 p.m.; the Patio will close and all patrons will vacate the Patio area by 12:00 a.m.
8. Licensee will offer food service during Patio hours.
9. Licensee will retain an acoustic engineer to perform a noise impact analysis and follow all recommendation for mitigation of noise impacts in compliance with state and local rules and regulations.
10. Licensee will install signs at its rear entrance reminding patrons that the restaurant is located in a residential area.
11. The Liquor-Outdoor Service Area (Patio) licenses will not be issued until the City approves a building certificate of occupancy for the patio area.

The hearing adjourned at 3:45 p.m.

The Conditions Affidavit was signed and submitted on February 28, 2013.