

LICENSE HEARING MINUTES
Buffalo Wild Wings, 80 Snelling Avenue North
Thursday, May 16, 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: Tom Beach, Department of Safety and Inspections (DSI); Christine Rozek, DSI; Larry Zangs, DSI; and Monica Beeman, Public Works

Applicant: Katherine Becker, Attorney representing the Applicant, Buffalo Wild Wings; Susan Benson, Regional Manager, Buffalo Wild Wings

Others Present: Anne White, Chair of Land Use Committee, Union Park District Council; Mike Zipko, Goff Public Relations, representing the Midway Chamber of Commerce; Brian Quarstad, 1549 Ashland Avenue; Larry and Charlotte Hennessy, 1563 Ashland Avenue; Colin Fesser, 1358 Laurel Avenue #1; Josh Capistrant, 220 Fairview Avenue N; Fred Fabian, 1560 Laurel Avenue; Jackie Kelly, 1561 Laurel Avenue; Colleen Beagan, 1445 Ashland Avenue #7; Gretchen and Steve Robertson, 1562 Laurel Avenue; Roxanne Hart, 1531 Ashland Avenue; Al and Midge Sockel, 1553 Ashland Avenue; Elise Chahla, 1583 Portland Avenue; Al and Martha Hopeman, 1543 Portland Avenue; Dan Hintz, 1817 Ashland Avenue #1; R. Wm Reilly, property owner, 173 Stonebridge Road, Lillydale (*present but did not speak*); Albert Levine, 7400 Metro Blvd #100, Edina (*present but did not speak*)

Buffalo Wild Wings: Liquor On Sale – 181-290 Seats, Liquor On Sale – Sunday, and Restaurant (5) – 151 and Over

Ms. Vang 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 opportunity to voice their concerns. The City received several letters of concern/objection which triggered the hearing. There were three possible results from this hearing: 1) recommend the City Council issue this license without any conditions; 2) recommend the City Council issue this license with agreed upon conditions; or 3) recommend 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.

DSI staff will explain their review of the application and state their recommendation. Ms. Vang said she will then ask the applicant to discuss their business plan. At the end of the hearing, she will make a recommendation for the City Council to consider. Her recommendation will be on the Consent Agenda; the City Council is the final authority on whether the license is approved or denied.

Ms. Rozek stated that prior to the hearing, the applicant requested to withdraw their application for a 2:00 a.m. closing. At this time, staff was not recommending placing any conditions on the license and recommended approval of the license application. The district council, Union Park, sent a letter requesting a legislative hearing.

Ms. Vang asked the applicant's representatives to explain the business plan. Ms. Benson responded that the restaurant would employ approximately 100 personnel, most of which would be part-time employees. The hours of operation would be 11:00 a.m. to 1:00 a.m. Monday through Saturday and close at 12:00 a.m. on Sundays; the hours of operation were consistent with their other 24 stores located in Minnesota.

Typically, sales generated were 75 percent food with only about 25 percent being alcohol. The parent company was located in Golden Valley, Minnesota and they currently did not have a restaurant in St. Paul. She personally lived in the neighborhood and thought this was a great location. It fit with their business model as far as catering to a diverse clientele including families with children and college-age students.

Ms. Becker stated that at the very beginning of the process, they had many discussions with the residents of the neighborhood regarding plans for the restaurant. In December 2012, they sent out a notification inviting the neighbors to attend an open house they were holding at Dunning Rec Center and only two people from the neighborhood showed up. The district council invited them to speak at the land use committee meeting in February where many residents were present; however, they were not the only issue on the agenda for that evening. They took a lot of comments and questions at that meeting and then received a follow-up email with approximately 18 questions/items to address. Ms. Becker went on to address the list of issues as outlined in said email: 1) noise from the restaurant – they had no intention of applying for a patio or sidewalk cafe license; they would not install speakers on the exterior of the building that would emit music or noise; 2) designated smoking area – this area would be located as far away from the residential homes as possible; 3) doors to the establishment – per the request of the neighbors, the doors shall remain closed and will not be propped open at any time; 4) noise from exhaust fans and other equipment – all equipment is state-of-the-art and will be located on the roof so as to diminish noise into the neighborhood; 5) signage at doorway exit – signs will be installed reminding patrons they are in a neighborhood and to be respectful of noise when leaving the restaurant; 6) pedestrian safety – they didn't really have any control over pedestrians crossing at Snelling Avenue; 7) cooking odors emanating from the establishment – they planned to install a newly developed, enclosed cooking system to help reduce cooking odors from permeating into the neighborhood; 8) trash pick up – they planned to have trash and recycling pick up done at least three times per week after they first open and would have it more often if deemed necessary; the dumpsters will be screened by cedar wooden fencing and will be locked to access; 9) parking – according to zoning requirements, they were required to have 44 spaces for customer parking; the other two tenants in the strip-mall were required to have 26 spaces; there were a total of 94 parking spaces available in the lot which far exceeded the number of required parking spaces for all three tenants of the mall; 10) lighting – since the property was owned by someone else, this was out of their jurisdiction; 11) signage – the neighbors requested that there be no sign facing Ashland Avenue and the company agreed to honor that request. Ms. Becker asked Ms. Benson to address the company's training program and policy concerning alcohol consumption.

Ms. Benson stated that all employees and managers must attend a training program and are re-certified every three years. This training includes carding compliance for underage consumption which is done by all employees who touch alcohol. Employees are spot-checked for carding compliance on a monthly basis by managers and the police also conduct independent compliance checks. Managers will conduct check-audits where an individual customer's consumption of what alcoholic beverages they have ordered is monitored. If any patron enters the restaurant inebriated, they are not served any alcohol and the police may be contacted. All employees are trained to observe behavior of customers who may be inebriated and to contact authorities when necessary, particularly if a customer may be suspected of driving. Their program was nationally recognized and they did not experience problems at any of their other locations within the state.

Ms. Becker continued to address more of the concerns expressed by the neighbors. She explained that Snelling Avenue was a state highway and was under the jurisdiction of MnDOT. Initially, there had been three entrances/exits into the mall parking lot and MnDOT instructed that they needed to have one larger entrance off Snelling Avenue and that the other two entrance/exits, including Ashland Avenue, would be

closed. MnDOT since came back indicating that, for public safety reasons, the entrance/exit on Ashland Avenue would need to remain open for access to the property. The neighbors had requested a wrought iron fence be installed along Ashland Avenue if the entrance/exit were to close. She had since been informed by some of the neighbors that they now do not want a fence installed if there was going to be access off Ashland Avenue. She referred to the site plan for reference. The neighbors also took issue with the installation of a window facing Ashland Avenue. Through the site plan review process, the city requested they install a window on the side of the building facing Ashland Avenue. They did not have any control over this issue. Regarding security, the neighbors had requested they hire off-duty police officers to provide security at the restaurant. The company was unwilling to do so as they never had behavioral issues at any of their restaurants which would warrant having that level of security. A manager was always on duty and if a customer(s) got out of hand, they would call the police for assistance. It was the company's policy to call 911 for emergency situations and they would ask the neighbors to do the same if they observed an emergency situation. It was also the company's preference that if there was a problem at the restaurant, that neighbors would call the restaurant to report any concerns as opposed to calling a manager directly on a cell phone. Any manager on duty would be available to remedy a situation immediately if it was within their jurisdiction to do so.

Mr. Beach clarified that as part of the design guidelines, the installation of the window in the building was suggested to be more aesthetic in nature as opposed to being a requirement. Ms. Becker said that in conjunction with aesthetics, the neighbors had requested planting trees, vegetation and landscaping; they also requested bike racks be installed. The company was willing to do this and it was included in the site plan. Lastly, she wanted to point out that the company's competition, O'Gara's, Billy's on Grand, Dixie's on Grand, The Muddy Pig, Sweeny's, had outdoor patio service and had 2:00 a.m. closing times. There were others that had outdoor patio service, Blue Door Pub, Groveland Tap, W.A. Frost, and Salut, but had 1:00 a.m. closing. The only other establishment that had 1:00 a.m. closing and did not have outdoor patio service was Green Mill on Grand. Buffalo Wild Wings had diligently worked with the neighborhood to meet their concerns and she did not believe they should be restricted on their hours of service or should have any conditions placed on their license.

Ms. Vang invited members of the audience to testify.

Mr. Zipko, Chair of the Board of the Midway Chamber of Commerce, submitted a letter in support prior to the hearing (*said letter is made a part of this record*). They supported the business without any conditions being imposed on the license.

Mr. and Ms. Hennessy submitted letters/emails in opposition prior to the hearing (*said letters/emails are made a part of this record*). They requested the hours of operation be limited to 11:00 p.m. closing Sunday through Thursday and 12:00 a.m. on the weekends. They were also opposed to the entrance/exit onto Ashland Avenue.

Mr. Quarstad submitted a letter/email in opposition prior to the hearing (*said letter is made a part of this record*). He started an organization "Citizens for a Better Snelling Avenue" in which he also authored a Facebook page. He requested the hours of operation be limited to 10:00 p.m. closing Sunday through Thursday and 11:00 p.m. closing on Friday and Saturday. He also requested conditions on the license that the business is not allowed to put any neon signs in the window facing Ashland Avenue and they be prohibited from ever applying for a patio license.

Ms. Kelly was opposed to the business operating in the neighborhood as she believed it would damage the quality of life and diminish property values. Her issues were outdoor smoking and semi-trucks making deliveries of alcohol and food items throughout the day and night.

Ms. Chahla submitted a letter/email in opposition prior to the hearing (*said letter is made a part of this record*). She requested the hours of operation be limited to 11:00 p.m. closing.

Mr. and Ms. Hopeman submitted a letter/email in opposition prior to the hearing (*said letter is made a part of this record*). They requested the hours of operation be limited to 11:00 p.m. closing Sunday through Thursday and 12:00 a.m. on the weekends.

Mr. and Ms. Robertson submitted letters/emails in opposition prior to the hearing (*said letters are made a part of this record*). They requested the hours of operation be limited to 10:00 p.m. closing Sunday through Thursday and 12:00 a.m. on the weekends. They were also opposed to any operation of a patio or outdoor seating.

Mr. Capistrant requested that the hours of operation be restricted to an earlier closing time than 1:00 a.m.

Ms. Beagan requested the hours of operation be limited to 10:00 p.m. closing Sunday through Thursday and 12:00 a.m. on the weekends.

Mr. Hintz said he supported the license with no conditions. He authored a Facebook page “Citizens for Buffalo Wild Wings” after he was purged from the site created by another neighbor who was against the restaurant. He believed Buffalo Wild Wings should be allowed the same considerations as O’Gara’s with a 2:00 a.m. closing.

Mr. Sockel submitted a letter in opposition prior to the hearing (*said letter is made a part of this record*). He requested the hours of operation be limited to 11:00 p.m. closing.

Ms. White stated that she would not testify as to a position of the district council; however, she believed the process had been very open and fair; the applicants had been very willing to work with the residents regarding their concerns and were willing to make concessions where appropriate. She did have concern with the ruling by MnDOT that the Ashland Avenue curb cut now remain open particularly since the neighbors had wanted it closed. She asked for additional time to be able to explore other options.

The issue of neighborhood notification was discussed. Many of the neighbors had complained that they never received notice of any meeting to review the plans by Buffalo Wild Wings. It was determined that the initial meeting held by representatives of Buffalo Wild Wings was an informational meeting done as a courtesy to the neighborhood. Since variances were not required as part of the site plan review process, there was no need for the city to notify the neighborhood for that process. The district council, however, was notified of the business’ plans. When the liquor license application moved forward, the neighborhood (within 350 feet) was sent notification by the city which was mailed on March 13, 2013 and which precipitated this hearing.

Mr. Fesser submitted a letter in support prior to the hearing (*said letter is made a part of this record*). He was opposed to any conditions on the license; he was also opposed to the construction of a fence if there was no opening onto Ashland Avenue as he believed it would be a hazard to pedestrians. He was opposed to any neon signage in the window facing Ashland Avenue.

Ms. Benson responded that the window will have an awning-type covering; they did not have any intention of putting any neon or any signage in the window. Concerning deliveries to the business, all deliveries and trash pick up would be done during the day, or after 8 a.m. and before 10 p.m., to the extent possible.

Mr. Fabion was opposed to the granting of any liquor license for the establishment. He believed property values would substantially decrease as a result of the bar/restaurant locating in the neighborhood.

Ms. Hart requested the hours of operation be limited; she was opposed to any entrance/exit onto Ashland Avenue; she was also opposed to any outdoor dining.

Ms. Vang read into the record letters of objection/concern received from the following: Kathy Klietz, 1495 Ashland Avenue; Merle Greene, 1466 Ashland Avenue; Brenda Natala, 1549 Ashland Avenue; Jack Nelson, 1563 Portland Avenue; Bill Shea, Promotional Alliance, 2303 Wycliff Street; Eileen Haus, 1603 Ashland Avenue, Carl Craven, 1863 Selby Avenue; and Brian Millberg, 1504 Summit Avenue (*said letters/emails are made a part of this record*). Ms. Vang also read into the record an email of support from Kati and Tristan Lucey, 1717 Hague Avenue (*said email is made a part of this record*).

Ms. Vang offered Ms. Becker to respond to the testimony presented. Ms. Becker stated that they were opposed to any restriction of a closing time earlier than 1:00 a.m. They had already withdrawn their license for a 2:00 a.m. closing and wished to remain competitive with the other establishments in the surrounding neighborhood. They were also opposed to any condition indicating they could never apply for a patio license. She was aware of the city's ordinance which required a rigorous petition process with agreement from the neighborhood before any patio or sidewalk cafe license could be granted. This was a separate process from the liquor license which she believed was more than adequate to meet the concerns of the neighbors.

Ms. Vang closed the public hearing. She said there had been reference made to the Super America being prohibited from selling alcohol and closing at midnight. She asked what the differences were in restricting a gas station as opposed to a restaurant from selling alcohol and hours of operation. Ms. Rozek responded that a gas station was not allowed to sell alcohol and could only sell 3.2 beer; the sale of beer was not their main business. There were many gas stations across the city that did not sell beer. As far as limiting the hours under a liquor license for a restaurant, state law allows a business to sell alcohol until 1:00 a.m. The exception would be a business applying for a 2:00 a.m. closing time. Currently, there were no businesses with a liquor license in St. Paul who served alcohol that had an earlier closing time than 1:00 a.m.

Ms. Vang stated that there had also been a request to have a traffic study done on Snelling and Ashland avenues. Ms. Beeman responded that if a property is deemed to generate more than 100 trips in a peak hour, a traffic study can be requested. This particular property, Buffalo Wild Wings, did not meet the threshold to have a traffic study conducted. She referenced the letter from MnDOT concerning traffic safety along Snelling Avenue in that they found one main driveway access on Snelling to the businesses in the mall would not be adequate and therefore, they recommended the driveway access on Ashland Avenue remain open.

Ms. Vang asked Ms. Becker whether they would still be willing to construct a fence along Ashland Avenue regardless of whether the curb cut was to remain. Ms. Becker responded that they would still construct the wrought iron fence along Ashland Avenue since this had been an initial request by the neighbors.

Ms. Vang stated that she sympathized with the neighbors on their desire for an earlier closing time than 1:00 a.m.; however, state law allowed the business to serve alcohol until 1:00 a.m. and she was not in a position to impose an earlier closing time. She would consider placing a condition on the license requiring staff monitor patrons leaving the establishment at closing time. This should help alleviate behavioral issues that may arise when customers go to their vehicles later at night. She said she would also consider a condition not allowing neon lighting in the window facing Ashland Avenue. Ms. Vang requested the managers' cell phone numbers be given to the district council so that they would have a point person to contact with any issues and could work on behalf of the neighborhood (*this would not be a condition on the license*).

Ms. Rozek stated that since some of the neighbors had complained about construction debris, she suggested that there be a condition added to the license requiring the business pick up litter around the establishment on a daily basis.

Ms. Becker responded that she would agree to provide the district council with the phone numbers of the managers; however, she was opposed to the imposition of the other suggested conditions. Ms. Vang responded that she would not consider recommending approval of the license without the specified conditions given the numerous issues raised, particularly the issue of an earlier closing time. Ms. Rozek stated that the proposed conditions mentioned will be drafted and sent to Ms. Becker for consideration.

Ms. Vang recommended continuing the hearing for two weeks to allow the district council to work with the city staff and MnDOT regarding the curb-cut issue on Ashland Avenue; the installation of the fence along Ashland Avenue would also be discussed at the next hearing.

The hearing adjourned at 4:20 p.m.

The hearing would reconvene at 10:00 a.m. on Friday, May 31, 2013.