

LICENSE HEARING MINUTES
Scusi, 1806 St. Clair Avenue
Thursday, May 12, 2011, 10:00 a.m.
330 City Hall, 15 Kellogg Boulevard West
Nhia C. Vang, Deputy Legislative Hearing Officer

The hearing was called to order at 10:00 a.m.

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

Applicant: David Burley and Stephanie Shimp, owners

Others present: Fred Manning, Kleinman Realty, 1776 St. Clair Avenue; E. Joseph Newton, 1839 St. Clair Avenue; AvaDale Johnson, 1788 Sargent Avenue; Wendy Ruble, 1781 St. Clair Avenue; Mehran Farabi, 1805 St. Clair Avenue; and Betty Goihl, 226 Fairview Avenue South

Scusi: To add a Liquor Outdoor Service Area (Sidewalk) license to the existing Wine On Sale, Malt On Sale (Strong), and Restaurant (4) – 51-150 Seats licenses for Molto Inc, doing business as Scusi (#20100003233) at 1806 St. Clair Avenue

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 chance to voice their concerns. The City received nine (9) letters/emails 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.

DSI staff will explain their review of the application and state their recommendation. Ms. Vang 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. Schweinler stated that the existing license conditions were as follows:

1. Per City of Saint Paul Legislative Code 409.15(a)(2), On-sale wine license shall mean a license authorizing the sale of wine not exceeding fourteen (14) percent alcohol by volume, for consumption on the licensed premises only in conjunction with the sale and service of food (menu item only). The sale of Malt (Strong) will also take place only in conjunction with the sale and service of food.
2. Per City of Saint Paul Legislative Code 409.15(d), licensee must be able to show that gross receipts are at least sixty (60) percent attributable to the sale of food.
3. Licensee will submit to the Department of Safety and Inspections (DSI) annual gross receipts for food and liquor for each year the license is renewed.

The following were the recommended additional license conditions at the time of the license notification which were added with Liquor Outdoor Service Area (Sidewalk) License:

4. A new Department of Public Works Obstruction Permit must be obtained at the beginning of each year a licensee will put tables and/or chairs on the public sidewalk. The Obstruction Permit application will be submitted to DSI.
5. Only the following items as shown on the approved site plan on file with DSI may be located on the public sidewalk: tables, chairs, and bollards. Approved items must remain in the designated area which is physically delineated by a barrier device or by lines marked on the sidewalk. No additional tables, chairs, plant tubs, other furnishings, heating or cooking equipment, etc. shall be placed on the public sidewalk without the prior written approval of the Department of Public Works, and DSI.
6. No sidewalk café shall be permitted in any portion of the public sidewalk where normal pedestrian traffic flow is obstructed. A minimum clearance width of forty-eight (48) inches of clear, unobstructed pedestrian through walk zone (designated as "public walk" on the approved site plan), exclusive of the curb, shall be maintained on the public sidewalk at all times. The licensee acknowledges that the Department of Public Works may require the minimum public walk clearance width to be wider than forty-eight (48) inches if it's determined by Public Works that site conditions warrant, or City Ordinance requires this wider public walk.
7. Food and/or beverage preparation is not allowed on a public sidewalk without prior written approval and additional licensing from DSI.
8. Emergency exiting for the building shall not be obstructed.
9. If liquor is served on the sidewalk café, where possible, safety barriers or other enclosures shall be provided to protect patrons from any hazards, including vehicular traffic.

Since the original notification, the new license conditions for #4 and 5 would replace the previous language and states as follows:

4. 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.
5. No outdoor food and/or beverage preparation is allowed on a public sidewalk without prior approval and additional licensing from DSI.

The Macalester-Groveland Community Council submitted a letter recommending that if the applicant meets the required number of petition signatures, and the license were to be issued, the following conditions be placed on the license: outdoor service and consumption of food, wine, and beer will terminate at 9:00 p.m. on Sunday through Thursday nights, and at 10:00 p.m. on Friday and Saturday nights.

Ms. Schweinler stated that the applicant had obtained signatures on a petition supporting the license application and out of a possible 55 residents signatures, 34 were obtained equaling 62 percent approval of the license application. See list of signatures obtained on petitions by the applicant and presented to DSI.

Ms. Vang asked whether the site plan map had been approved by staff and whether it would be posted on the exterior of the building. Ms. Schweinler responded that she believed the site plan map had been reviewed and approved by Mr. Zangs. It was her information that the street obstruction permit would be posted as opposed to posting the map. A copy of the sample permit is made a part of this record.

Ms. Vang asked Ms. Shimp and Mr. Burley to explain their business plan: how they would address noise, litter, number of employees, hours of operation, etc.

Ms. Shimp stated that it was their desire to enhance their business by adding outdoor service during the summer so that they would be able to compete with other restaurants in the area. Currently, they only served dinner and planned to have seven tables outside. The proposed closing times for outdoor service would end at 9 pm on Sunday, 10 pm Monday through Thursday, and 11 pm on Friday and Saturday nights. Servers would stop taking orders a half hour prior to closing to ensure diners would be done with their meal at the time of closing. They currently had 25 staff and would employ an additional two to three people during the summer to accommodate outdoor service. As for parking, they currently had an arrangement with the chiropractic clinic, the dry cleaning business and the pilates studio to use their lots after their businesses closed for the day.

Mr. Burley stated that they were going through the City's STAR Program to purchase the lot on the corner of St. Clair and Fairview which formerly was a BP station. It was their intention to convert it into a parking lot with approximately 30 spaces; however, since it had been a gas station for many years, there were soil contamination issues which first needed to be resolved. They would maintain the lot picking up litter, plowing it in the winter and the lot would be available for use by all of the businesses in the surrounding neighborhood. He believed this made good business sense since there was insufficient parking for this mixed business/residential neighborhood.

Ms. Vang asked whether they understood and agreed with the license conditions. Ms. Shimp and Mr. Burley acknowledged that they understood the license conditions and would agree to end outdoor service at the times proposed by the district council; this would also coincide with the closing time for their other neighborhood business, the Groveland Tap. Mr. Burley also indicated that they would not allow smoking at any of the outdoor tables; however, there would still need to be an area outside of the restaurant for smokers.

Ms. Vang invited the audience to testify.

Mr. Manning stated that the main concern with the addition of the sidewalk café license was the lack of parking in the neighborhood. See email which is made a part of this record.

Mr. Newton stated that he was opposed to the sidewalk café license because of the congestion in the neighborhood due to the unavailability of parking.

Ms. Johnson stated that she was concerned about the preservation of the neighborhood with increased noise, litter and lack of parking. See letter which is made a part of this record.

Ms. Ruble stated that she lived across the street from the business and was concerned about traffic congestion and the lack of parking. She agreed with the suggested hours of operation proposed by the district council. See email which is made a part of this record.

Ms. Farabi stated that she lived across the street from the business and was opposed to the sidewalk café license. See email which is made a part of this record.

Ms. Goihl stated that she had signed the petition in favor of the license; however, she was concerned about the lack of parking in the neighborhood. See letter which is made a part of this record.

Ms. Vang read into the record an email received from Debra Que, 1784 Sargent Avenue, concerning noise and parking; and a letter from the Macalester Groveland Community Council concerning community input on the issuance of the sidewalk café license. See email and letter which is made a part of this record.

The hearing was recessed from 11:10 to 11:20 a.m.

Ms. Vang stated that after reviewing the documents of record, she will recommend to the City Council that they approve the license with the conditions proposed by DSI, including the condition made by the Macalester Groveland Community Council pertaining to the closing times of the outdoor service area. The proposed conditions were agreed to by the owners of Scusi and are as follows:

1. Per City of Saint Paul Legislative Code 409.15(a)(2), On-sale wine license shall mean a license authorizing the sale of wine not exceeding fourteen (14) percent alcohol by volume, for consumption on the licensed premises only in conjunction with the sale and service of food (menu item only). The sale of Malt (Strong) will also take place only in conjunction with the sale and service of food.
2. Per City of Saint Paul Legislative Code 409.15(d), licensee must be able to show that gross receipts are at least sixty (60) percent attributable to the sale of food.
3. Licensee will submit to the Department of Safety and Inspections (DSI) annual gross receipts for food and liquor for each year the license is renewed.
4. 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.

5. No outdoor food and/or beverage preparation is allowed on a public sidewalk without prior approval and additional licensing from DSI.
6. The outdoor service and consumption of food, wine, and beer will terminate at 9:00 p.m. on Sunday thru Thursday nights, and at 10:00 p.m. on Friday and Saturday nights.

The hearing adjourned at 11:25 a.m.

The Conditions Affidavit was submitted on May 12, 2011.

Submitted by:
Vicki Sheffer