

LICENSE HEARING MINUTES
Java Train, 1105 University Avenue West
Friday, October 14, 2011, 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: Kristina Schweinler and Corrine Tilley, Department of Safety and Inspections (DSI)

Applicant: Christine Finnegan and Steve Finnegan, co-owners

Others Present: Bill Sylvester, 1463 Midway Pkwy

Java Train: Upgrade from a Restaurant (3) - 13-50 Seats license to a Restaurant (4) - 51-150 Seats license; and add a Wine On Sale, Malt On Sale (Strong), and Liquor Outdoor Service Area (Patio) licenses

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 one (1) letter of concern from a resident and one (1) letter from the district council which triggered the hearing. 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 DSI was suggesting the following license conditions:

1. Five (5) off-street parking spaces shall be maintained in, accordance with the site plan on file with this office, for the restaurant.
2. The floor layout for the restaurant, per the floor plans on file with the Department of Safety and Inspections (DSI), shall not be changed, expanded or altered in anyway without the prior approvals of the City's Zoning Administrator and the Building Official.
3. Hours of operation are limited from 5:00 a.m. until 10:00 p.m.

Additional recommended license conditions:

4. 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.

5. 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.
6. 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 District 10 Community Council submitted a letter stating they support the addition of these licenses, and also recommended a waiver of the 45-day license notification review waiting period.

Ms. Vang asked whether the owners had obtained liquor liability insurance. Ms. Schweinler responded that they had not provided proof of insurance to date and they also needed to obtain the SAC determination and the amount of fees from the Metropolitan Council. Once they had this determination, they will need to obtain a building permit to change the swing of the front door.

Ms. Vang asked the owners whether they understood the license conditions and agreed to those conditions. Ms. Finnegan responded that they did understand the conditions and did agree to what was proposed by DSI. Ms. Vang reviewed the site plan map and asked for clarification on the tables, seating, delineation of outdoor seating, etc. Mr. Finnegan explained the layout of the interior and exterior dining areas of the establishment which could accommodate 64 seats.

Ms. Vang asked what percentage of signatures had been received on the petition. Ms. Schweinler responded that in counting the signatures on the petition, although she could not verify some of the signatures, she counted 63 percent in support of the license. They also had obtained approval from the district council.

Ms. Vang stated that although they were not required to meet any additional parking requirements, she asked whether they had considered availability of parking given the likely increase in traffic from customers. Ms. Finnegan responded that they had an agreement with the church across the street which had a total of approximately 50 parking spaces. They had put up banners or signs pointing patrons to park in the lot since street parking was at a premium. The garage in the back of the business was for the apartment units upstairs to the business. Basically, this parking was for employees and was not available to patrons. Mr. Finnegan acknowledged that parking was an issue during the summer given their close proximity to Como Zoo and the State Fair grounds. Most of their customers lived in the area and rode bicycles to their destination.

Ms. Vang asked about the hours of operation. Ms. Finnegan responded that they opened for business at 7 a.m. for breakfast and typically closed at 9 p.m. during the winter months; however, they generally stayed open until 10 p.m. during the summer. Ms. Schweinler responded that state law prohibits the sale of alcohol before 8 a.m. The license also prohibits sale of alcohol without the sale of a food purchase. She suggested she could identify this as a condition on the license.

Ms. Vang invited Mr. Sylvester to testify. Mr. Sylvester addressed his concerns identified in the letter he submitted in objection to this license. Said letter is made a part of this record. He had since read the ordinance and was concerned about the declining value of his property given the proposal of this business to sell alcohol. Mr. Sylvester submitted several photos of the business and of his property; he complained about patrons and delivery trucks driving onto his property to get to the Java Train.

Ms. Vang suggested putting up a sign alerting customers not to park in this area. Mr. Finnegan responded that they would need to get permission from Mr. Sylvester if he was agreeable to having a sign put up on his property. They would likely ask the other neighbor whose property abuts their

business if they could hang a sign on their fence. Ms. Finnegan stated that the parking pad on Mr. Sylvester's property was not shoveled in the winter so the issue of parking on his property was basically a problem during the summer months only. Mr. Sylvester concurred. He was still concerned with the business becoming a full blown bar and was opposed to the sale of alcohol next to his residence as he did not want to deal with inebriated patrons. He had a real concern with people who drank alcohol for the potential problems it created and he absolutely did not want any establishment that sold alcohol in his neighborhood.

Ms. Schweinler again stated that service of beer and/or wine could only be sold in conjunction with the sale of a food purchase. Mr. Finnegan stated that the building his business was located was built in 1926. He said that Mr. Sylvester, on the other hand, obtained numerous variances to build his house in 1986 on a 31 foot lot with a zero lot line. Mr. Sylvester countered that he did not obtain any variances when he built his house and it was perfectly legal for him to build his house on this lot.

Mr. Sylvester then pointed out that the basement was being used for conferences, meetings and that District 10 held their meetings in the basement of the Java Train. Mr. Finnegan responded that the rooms in the basement were used as community rooms which patrons were not charged a fee to use. District 10 held committee meetings there, kids birthday parties, etc. Ms. Schweinler responded that the permit which was pulled specifically indicated that the rooms in the basement would only be used for office space or storage; holding meetings or conferences was a prohibited use. Ms. Finnegan responded that they would discontinue using the basement for anything other than storage.

Mr. Sylvester then suggested that the parking was inadequate for this establishment. It was his contention that the church parking lot was not being utilized for customer parking and that the approximately 50 parking spaces that were suggested for use of the church lot was not true due to flooding of the lot which makes some of the lot unusable. There were also church services conducted other than just Sunday mornings when the lot could not be used by customers of the Java Train.

Ms. Vang questioned the parking requirements. Ms. Tilley responded that the business was granted a variance concerning parking after they applied and were granted their original license. The variance was still in effect for the upgrade of this license and did not change any parking requirements. Ms. Vang asked Mr. Sylvester whether he had appealed the decision of the City Council after the variance had been granted. Mr. Sylvester responded that he did not as it was a time-consuming and costly process. Ms. Vang responded that since this was a zoning matter, it was outside the purview of this license hearing.

Ms. Vang stated that after reviewing the documents of record, she recommended approving the conditions as proposed by DSI with an additional condition listing the allowable hours of service of alcohol.

The agreed upon license conditions are as follows:

1. Five (5) off-street parking spaces shall be maintained in, accordance with the site plan on file with this office, for the restaurant.
2. The floor layout for the restaurant, per the floor plans on file with the Department of Safety and Inspections (DSI), shall not be changed, expanded or altered in anyway without the prior approvals of the City's Zoning Administrator and the Building Official.
3. Hours of operation are limited from 5:00 a.m. until 10:00 p.m. No Wine and/or Malt (i.e., beer) service will be available before 8:00 a.m. each day of the week.

4. 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.
5. 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.
6. 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 hearing adjourned at 3:20 p.m.

The Conditions Affidavit was submitted on December 5, 2011.

Submitted by:
Vicki Sheffer