LICENSE HEARING MINUTES
Gabe's By The Park, 991 Lexington Parkway North
Monday, August 12, 2019, 10:00 a.m.
Room 330 City Hall, 15 Kellogg Boulevard West
Nhia Vang, Deputy Legislative Hearing Officer

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

Staff Present: Jeff Fischbach, Department of Safety and Inspections (DSI)

Licensee: Rick Montpetit, Applicant/Owner

License Application: Modify existing license conditions to permit amplified sound outdoors on the outdoor patio

Legislative Hearing Officer Nhia Vang made introductory comments about the hearing process: This is an informal legislative hearing for a license application. This license application required a Class N notification to inform neighbors and the District Council about the application and provide them with an opportunity to submit comments. The City received correspondence of concern/objection, which triggered this hearing.

The hearing will proceed as follows: DSI staff will explain their review of the application, and state their recommendation. The applicant will be asked to discuss their business plan. Members of the community will be invited to testify as to whether they object to or support the license application. At the end of the hearing, the Legislative Hearing Officer will develop a recommendation for the City Council to consider. The recommendation will come before the City Council as a resolution on the Consent Agenda; the City Council is the final authority on whether the license is approved or denied.

There are three possible results from this hearing: 1) a recommendation that the City Council issue this license without any conditions; 2) a recommendation that the City Council issue this license with agreed upon conditions; or 3) a recommendation 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.

Minutes:
Jeff Fischbach, Department of Safety and Inspections (DSI) gave a staff report. He reviewed the conditions and said DSI had received a letter of support from District 10 Community Council. Inspections status: Building not applicable, License approved with conditions, Zoning approved, DSI recommended approval with conditions.

Existing License Conditions to Remain
1. Closure of the patio must be by 11:00 p.m.
2. The licensee agrees that it will not contract with Topline Credit Union (976 Lexington Parkway North) for use of its parking lot

Recommended License Conditions to be Added

3. Any activities taking place outdoors (including those taking place on the outdoor patio seating area such as music being played over a speaker system) shall comply with applicable State and Local rules and regulations, including but not limited to Chapter 293 Noise Regulations of the City of Saint Paul Legislative Code.
4. The patio speakers shall be turned off when the patio is closed and/or there is no food/beverage service provided directly by waitstaff.
5. Amplified sound shall be controlled at all times so that it will not be audible at the residential properties across Lexington Parkway

Ms. Vang asked how the request to play music outdoors differed from any restaurant playing music over a sound system on their patio. Mr. Fischbach said the difference was that the establishment had an existing condition specifically prohibiting outdoor music, and the request was to remove that condition.

Ms. Vang asked Mr. Montpetit to talk about his request.

Mr. Montpetit said they were looking to have some background music on the patio, similar to what was inside the restaurant and not meant to be heard over the level of conversation. They had a sound system vender/designer come out in March to run sound tests; Mr. Montpetit provided a packet with the report. Sound was monitored at several spots between the patio and the closest neighbor across Lexington. Based on the conclusions, if the sound was capped at a certain level, it would not be audible across the street. Mr. Montpetit noted that the tests were done in March when it was cold and dry and there was no vegetation, and were run on different days and at different times of the day.

Ms. Vang asked what was the highest recommended level that wouldn't create an impact. Mr. Montpetit said 65 dB was the maximum before a sound variance. He said the sound system vender would be the one dialing in the sound level and setting it up if they were approved. Mr. Montpetit referred to the report and said 68 dB would be the level inside the patio. Three options were tested: deck post speakers; planter speakers, which would be low and facing the building and he felt would be ideal for them and the neighbors; and rock speakers. Either way, the level was down to 30 dB by the time it was across the street, and that was without any vegetation.

Ms. Vang said it appeared they were moving towards the planter speakers; she asked about the number and placement. Mr. Montpetit said they would probably have one on each end facing in towards the building. He referred to the report and said with the planter speakers the level would be set between 55 and 60 dB. Ms. Vang asked whether staff could adjust the level if there were complaints. Mr. Montpetit said it would be capped and locked, and there wouldn't even be a volume knob for staff to adjust.

Ms. Vang noted the existing Entertainment B license; she asked what type of events there were and whether the door was open during that time. Mr. Montpetit said they had a variety of events like birthday and graduation parties. He said the door to the patio was propped open during the day. Events were held back in the game room and the level there didn't typically get too loud,

but some sound might travel a little out to the patio. He said he had never been able to hear the music from inside out on the patio.

Ms. Vang asked Mr. Montpetit how long they'd been operating. Mr. Montpetit said they'd been there 2 ½ years. Ms. Vang asked whether there had been any complaints about events or enforcement action taken. Mr. Montpetit said no.

Ms. Vang noted that the patio had to close by 11:00 p.m.; she asked what time the patio opened. Mr. Montpetit said the business and patio opened at 11:00 a.m. daily. The patio was open from March or April through September or early October.

Ms. Vang asked whether the patio was enclosed. Mr. Montpetit said it was enclosed by an 8-foot black iron fence.

Ms. Vang asked whether the patio could be accessed from the parking lot and whether patrons seated themselves. Mr. Montpetit said yes, there were two outside accesses. He said people seated themselves and there were signs directing them to see a hostess.

Ms. Vang asked how many tables were on the patio. Mr. Montpetit said 12 or 13. Ms. Vang asked whether they'd ever had to ask patrons to reduce their volume. Mr. Montpetit said no.

Ms. Vang asked about staffing numbers. Mr. Montpetit said they had 35-40 staff, with two servers and a food runner on the patio. He said either he or one of his brothers was always there.

Ms. Vang said it was a large restaurant, and they'd been there 2 1/2 years with no enforcement actions; she asked whether they'd had the need to work with the district council on any problems or had to call the police. Mr. Montpetit said not for events, but just for the typical issues. He said they'd recently called the police on a woman who was "out there" on the patio who was not a patron. Ms. Vang asked about what processes or procedures were in place to handle problems. Mr. Montpetit reiterated that he or one of his brothers were always available to assist staff with any problems. He said the business was family-owned and they shared management.

Ms. Vang reviewed the district council letter. She reviewed the email of objection from Diana White expressing concerns about music outdoors until 11:00 p.m. and its effect on her quality of life and on her Airbnb unit. Ms. Vang asked whether Ms. White was the nearest neighbor. Mr. Montpetit said she was across the street and four houses north from Hatch. He said if the sound system designer didn't think the residents directly across Lexington would hear any noise, he didn't imagine Ms. White would. Ms. Vang confirmed that Mr. Montpetit was aware of the concerns related to the mixture of music, patrons talking, and traffic. Mr. Montpetit said the sound system was being set up so the existing outdoor ambient noise would drown out the music, so they didn't disturb the neighbors. He said they didn't want to disturb the neighbors.

Ms. Vang asked whether they ever had bands playing indoors. Mr. Montpetit said rarely, maybe once a year; the space was not conducive for a band.

Ms. Vang asked Mr. Montpetit whether his contact information was available for neighbors so they could work with him directly on any issues. Mr. Montpetit said it was.

Ms. Vang asked Mr. Fischbach whether he had anything to add. Mr. Fischbach said he didn't.

Ms. Vang said given that Mr. Montpetit was taking the recommendation of the independent industry report, the plan seemed reasonable. She said she liked the idea of the planters positioned facing the building. She said she was satisfied with what had been presented and would recommend that the City Council support the application as recommended by DSI.

The hearing adjourned at 10:21 a.m.

The Conditions Affidavit was signed and submitted on June 22, 2019.