

CAMBRIDGE LICENSE COMMISSION HEARING

CITY OF CAMBRIDGE

IN RE: LICENSE COMMISSION DECISIONS HEARING

LICENSE COMMISSION BOARD MEMBERS:

CHAIR ANDREA JACKSON

POLICE COMMISSIONER ROBERT C. HAAS

FIRE CHIEF GERALD REARDON

STAFF: EXECUTIVE DIRECTOR ELIZABETH LINT

AT: Michael J. Lombardi Building
Basement Conference Room
831 Massachusetts Avenue
Cambridge, Massachusetts 02139

DATE: March 27, 2014

TIME: 10:09 a.m.

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posted earlier?

CHAIR ANDREA JACKSON: 1:00 or 2:00, I believe.

2:00.

EXECUTIVE DIRECTOR ELIZABETH LINT: Yes.

FIRE CHIEF GERALD REARDON: Knowing the area and the clientele, I find that to be reasonable and make a motion to approve.

CHAIR ANDREA JACKSON: Second? All those in favor signify by saying "aye."

POLICE COMMISSIONER ROBERT HAAS: Aye.

FIRE CHIEF GERALD REARDON: Aye.

APPLICATION: UPPERWEST

EXECUTIVE DIRECTOR ELIZABETH LINT:
Application continued from March 18, 2014, Coffee Shop, LLC doing business as Upperwest. Kimberly Courtney, manager, has applied for a new all

alcoholic beverages as a restaurant license at

1001 Massachusetts Avenue, basement level.

Proposed hours of operation of 8 a.m. to 1 a.m.

Sunday through Wednesday and 8 a.m. to 2 a.m.

Thursday through Saturday. The proposed seating capacity is 20.

CHAIR ANDREA JACKSON: Good morning.

ATTY. WALTER SULLIVAN: I know this is the decision process and not a hearing. I represent the abutter, Stephen Casellis (phonetic), and I'm only speaking about the issue about whether you can amend the license down to a -- the application down to a beer and wine. The statute is clear that you only can hold a hearing --

CHAIR ANDREA JACKSON: Did you identify yourself for the record?

ATTY. WALTER SULLIVAN: I apologize.

Walter Sullivan.

The statute is clear that you have to hold a hearing and give notice on the specific license they are applying for. They are applying for an all alcoholic beverages license. The Commission doesn't have the authority to amend it down without doing a new notice and new application.

I believe you already took enough testimony in relative to the common good and public need along with the cap issue. Thank you.

CHAIR ANDREA JACKSON: Thank you.

Good morning. If you can please state your name for the record.

KIMBERLY COURTNEY: Kim Courtney,
C-O-U-R-T-N-E-Y.

XAVIER DIETRICH: Xavier Dietrich,
D-I-E-T-R-I-C-H.

CHAIR ANDREA JACKSON: This matter was continued from our March 18, 2014 hearing in which there was an application for a new all alcohol beverage license located at 1001 Mass Ave. As counsel Sullivan has previously stated, we did receive a fair amount of testimony at the March 18th hearing as it related to this application.

And it's my understanding that -- Ms. Lint, was it yesterday?

EXECUTIVE DIRECTOR ELIZABETH LINT: Yes.

CHAIR ANDREA JACKSON: -- an amended application was submitted to change the application from an all alcohol to a wine and malt license, is that correct, Ms. Lint?

EXECUTIVE DIRECTOR ELIZABETH LINT:
That's correct. And it also amended the hours.

CHAIR ANDREA JACKSON: And that was from

8 to 2 -- 8 to 1 Sunday through Wednesday and 8 to 2 Thursday through Saturday, and the amended hours now being sought are changing the closing time to 1 a.m. everyday, is that correct?

EXECUTIVE DIRECTOR ELIZABETH LINT:

That's correct.

CHAIR ANDREA JACKSON: So based on the testimony received, documentation submitted, I have great concerns about whether or not this plan would work in terms of whether it's an all alcohol or a wine and beer license.

When I look at the documentation that's been submitted, particularly of concern to me is the oven that's supposed to be in the kitchen. And I'm assuming, maybe I printed out the wrong one, but is this the oven?

KIMBERLY COURTNEY: That looks like it from here. I had this approved by the Fire

Department already.

CHAIR ANDREA JACKSON: That's fine that you had it approved by the Fire Department, but that has nothing to do with me.

KIMBERLY COURTNEY: This looks like the correct oven.

CHAIR ANDREA JACKSON: So, again, my concern is whether or not the plan as submitted would work.

So I guess I'm looking at it in terms of the options available this morning. You can either, or we can take a vote on it, and we can go forward with what has been submitted to us, and see if the ABCC would uphold whatever decision we take, or we could act on it.

And understand that if we act on it that includes a denial, a possible denial, and if we do deny it, then you're prohibited from

reapplying again for a year.

So it's your decision in terms of which way you want to go with this, but I'm not -- again, I'm speaking for myself. I can't speak for the Chief or the Commissioner. I'm not convinced with the documentation that I have received this far, that I can approve this.

KIMBERLY COURTNEY: May I ask -- so what is your concern about the oven?

CHAIR ANDREA JACKSON: It's, quite frankly, your whole plan.

I really feel that the testimony that was provided to us on the 18th was tailored towards whatever questions we asked. It was along the lines of We could do that. It just don't seem as though your plan for this wine bar has really been thought out.

My concern initially was with an all

alcohol license, whether or not the food that would be served, was sufficient to support the notion of a restaurant, so to speak.

And to me it seemed as a bar with some appetizers, quite frankly.

When I look at the stove -- and I'm not in the cooking business by any stretch -- but to me it almost looks like a glorified taster.

KIMBERLY COURTNEY: Oh, no, not at all that's a commercial grade oven. It's for baking.

CHAIR ANDREA JACKSON: That's fine, but --

KIMBERLY COURTNEY: We're open breakfast and lunch as well. So we were planning on making baked goods in the morning in that oven.

Which, again, everything has been approved by all of the departments. We have been through this. And as I pointed out in my letter,

we went through this process before we even signed our lease. We went to all the different departments and made sure that everything could be done.

So this has been a very long process for us of getting everything verified. Our kitchen is already approved.

CHAIR ANDREA JACKSON: I would say to you, while I understand that, I think in terms of your timing, it have might have been a little off. I think initial step, quite frankly, should have been before signing a lease and before doing a buildout, you should have come here --

KIMBERLY COURTNEY: I understand that.

CHAIR ANDREA JACKSON: -- to make sure it would have been approved first.

KIMBERLY COURTNEY: Unfortunately, I was provided with incorrect information about the

process. I was told that I had to wait until I received all of my building permits until I could come here, which apparently is not correct.

We only waited because of that. We would have certainly come here immediately if we had known that we had the potential to do so.

CHAIR ANDREA JACKSON: Okay. Before I make a motion, do you have anything you would like to add?

POLICE COMMISSIONER ROBERT HAAS: I'm not satisfied with the overall plan as you're proposing.

In fact, now you're coming in at the 11th hour to change your permit to downgrade it to a beer and wine license gives me more rise for concern.

I listened to the testimony. There was some inconsistencies, in my view, in terms of the

last testimony that I'm not satisfied that I'm prepared to move forward on this application.

KIMBERLY COURTNEY: May I ask what inconsistencies are that remain at this point?

POLICE COMMISSIONER ROBERT HAAS: The whole thing about that website got me a little bit concerned. You blamed it on the webmaster and things like that, in terms of dates of operation and things like that.

And, again, looking at your operation, it looks to me like it's principally a bar operation with two tables. I appreciate you're saying that it's some kind of European cuisine.

KIMBERLY COURTNEY: There's three service times, right, breakfast and lunch and dinner, and there's only alcohol served in the evenings.

POLICE COMMISSIONER ROBERT HAAS: And you're inviting cooks in to run their own

operation.

KIMBERLY COURTNEY: I'm the cook and chef. I'm not inviting chefs in to run my operation, that's not correct.

POLICE COMMISSIONER ROBERT HAAS: That's not the way I read the website.

KIMBERLY COURTNEY: It was misconstrued, right? Of course, there's many things --

POLICE COMMISSIONER ROBERT HAAS: You can accuse me of misconstruing the website, but that's the way I interpreted it.

KIMBERLY COURTNEY: Well, that's not correct. That's what is happening.

FIRE CHIEF GERALD REARDON: I think I indicated the other night, I can't support an all alcohol license at this location. Whether or not I could -- I, frankly, feel as though I would be willing to support a CV, but not an all alcohol

-- I mean, not even a beer and wine, it's only 20 tables.

KIMBERLY COURTNEY: We're not currently seeking an all alcohol license.

FIRE CHIEF GERALD REARDON: I think I said beer and wine, but at this time, I can see it as a restaurant operation, but I don't understand the tremendous need for an alcohol license of any type at that location right now especially in light of the ones around you. The people -- the ones for no value, the people have -- I think if you went on the open market and paid even, say, \$50,000 for a beer and wine licence at that location and we granted someone, your neighbor next door one for free, I don't think you would be happy over that either.

KIMBERLY COURTNEY: I'm a little confused because Cancun Taqueria was issued an all alcohol

license for the purpose of serving margaritas. And they are in the same building. They have three other establishments that already are serving alcohol. So I'm confused why in our building where we have none, and it's a very large building, I'm confused why that doesn't harm the neighboring licenses but we would. I don't understand.

FIRE CHIEF GERALD REARDON: Yours seems to be a much smaller operation.

KIMBERLY COURTNEY: Smaller than Cancun?

FIRE CHIEF GERALD REARDON: Uh-huh.

KIMBERLY COURTNEY: Not substantially smaller I would say. Is that a negative?

FIRE CHIEF GERALD REARDON: Well, for the public need, there has to be overwhelming, overwhelming public support.

KIMBERLY COURTNEY: I think we provided

evidence the public need is overwhelming.

FIRE CHIEF GERALD REARDON: I just don't think the food menu needs and supports an all alcohol license at this time.

XAVIER DIETRICH: You don't think 532 signatures and almost 30 letters of support is overwhelming?

FIRE CHIEF GERALD REARDON: Well, you also had a great deal of opposition.

KIMBERLY COURTNEY: From one individual who has an alcohol license.

CHAIR ANDREA JACKSON: And many of the people who were in support of the petition did not live in the area. There were some that lived, quite frankly, outside of Cambridge.

KIMBERLY COURTNEY: We had many people that did live in the area. I would like to find out how Cancun Taqueira walked into this hearing

with not a single individual in support of them and they were granted an all alcohol license. They went across to the Oberon Theater and they obtained signatures, but we put a lot of work into getting support from the community. We worked very hard. And we have done everything that's been asked of us. We have really worked hard to make this happen.

Charcuterie and cheese is going to be impossible to serve without wine. It's just something that no one is going to want to come there, you know, dessert and coffee and -- I don't know how we would survive if we don't get at least a beer and wine license at this point.

We're bound at this point to open. I understand that the process could have been -- we could have done it in a different order and I wish we had. You know, if we don't obtain a beer

and wine license, I'm not sure how we can survive.

Also, we have been required to speak to the public about this. It's a difficult position to be in as opening a business and having to portray it to the public as potentially having alcohol and now if we don't, people will be disappointed, and I'm afraid they won't come in or they will come in and won't come back because they are expecting it at this point.

CHAIR ANDREA JACKSON: So I go back to my original comment. Ms. Lint, I don't know procedurally the best way to do this. So again, if I'm to make a motion, I can't support this, which means you will again be precluded for a year from reapplying.

Ms. Lint, if the application is withdrawn, does that preclude them from coming

back?

EXECUTIVE DIRECTOR ELIZABETH LINT: No.

CHAIR ANDREA JACKSON: There's no time limit, so it could be withdrawn and they can come back to us?

EXECUTIVE DIRECTOR ELIZABETH LINT:
That's correct.

KIMBERLY COURTNEY: May I ask in the event that we were able to find an investor to try to purchase a license, if it were denied today, would we be able to come back for a purchase or is that -- or would we be precluded from that as well?

CHAIR ANDREA JACKSON: If we take a vote -- and again, I can't speak for my colleagues -- if we were to take a vote and it's denied, you're precluded from coming back. You can appeal to the ABCC, is that correct, she has

appeal rights?

EXECUTIVE DIRECTOR ELIZABETH LINT: Yes.

CHAIR ANDREA JACKSON: You would have appeal rights if it's denied or you can withdraw and that preserves you additional time.

KIMBERLY COURTNEY: I see. And then in terms of the common victualer and entertainment licenses, what would be the status of those? Could we withdraw a portion of our application and obviously not have to withdraw those as well?

CHAIR ANDREA JACKSON: Is that correct?

EXECUTIVE DIRECTOR ELIZABETH LINT: Yes.

CHAIR ANDREA JACKSON: Do you want a moment to think about it?

KIMBERLY COURTNEY: Yes. May we have a few minutes to discuss it?

CHAIR ANDREA JACKSON: We can take a two-minute break. That's different from what we

have done procedurally. We'll take a quick two-minute break and go off the record. If you would like to step out into the hall, feel free.

(Short Recess Taken.)

CHAIR ANDREA JACKSON: Are we set to go back on the record? We're back on the record.

KIMBERLY COURTNEY: So we would like to withdraw the application for a wine and malt license and ask that you decide on the common victualer and entertainment applications today.

EXECUTIVE DIRECTOR ELIZABETH LINT: I would suggest, based on Attorney Sullivan's comments, that actually what was being withdrawn was an application for the all alcoholic beverages license because the wine and malt --

KIMBERLY COURTNEY: I'll change my withdrawal. I would like to withdraw my application for an all alcoholic beverages

license.

CHAIR ANDREA JACKSON: I'm not taking any additional testify this morning.

ATTY LISA BELANGER: Misrepresentations have happened before.

CHAIR ANDREA JACKSON: I'm not taking any additional testimony.

What's before us, Ms. Lint, is the application for a CV and entertainment?

EXECUTIVE DIRECTOR ELIZABETH LINT:
That's correct.

FIRE CHIEF GERALD REARDON: What about the change in hours, is that consistent?

EXECUTIVE DIRECTOR ELIZABETH LINT: Hours you can amend down.

FIRE CHIEF GERALD REARDON: We should be clear on the requested hours.

CHAIR ANDREA JACKSON: Should we have

them withdraw everything and have them resubmit it? Have a new hearing on everything, and it provides them the opportunity --

EXECUTIVE DIRECTOR ELIZABETH LINT: It would be cleaner.

CHAIR ANDREA JACKSON: It's completely their choice, but...

KIMBERLY COURTNEY: I'm concerned we're getting -- I'm concerned for a number of reasons about the process, the notification process to the abutters is extremely time-consuming and costly. This will cause a delay. At least we would be able to open in the meantime while we prepare to reapply if you allow us to have the food and entertainment.

CHAIR ANDREA JACKSON: I understand that, and I think I need you to hear that we're trying to be fair with you, because, quite frankly, we

can make a motion right now on what has been submitted to you and we can flat out deny it.

We're trying to be fair and work with you.

So we're doing our part, and I would strongly suggest you take heed and listen to the guidance we're trying to provide to you.

KIMBERLY COURTNEY: Okay. We're listening.

FIRE CHIEF GERALD REARDON: With the CV motion --

KIMBERLY COURTNEY: We haven't considered what the hours would be. We need to -- we could keep the hours until 1 a.m.

FIRE CHIEF GERALD REARDON: It has to be clear before we can make a motion.

POLICE COMMISSIONER ROBERT HAAS: That means you have to operate until 1 a.m. all seven days a week.

KIMBERLY COURTNEY: Right.

CHAIR ANDREA JACKSON: When are you looking at an estimated opening date?

KIMBERLY COURTNEY: It's difficult to estimate with construction. I would say about the end of May, June 1st. June 1st is probably a more realistic date.

KIMBERLY COURTNEY: Would it be possible to have a moment in regard to the common victualer license?

CHAIR ANDREA JACKSON: I'll give you two minutes and then I'm ready to vote.

Again, going off the record.

(Short Recess Taken.)

CHAIR ANDREA JACKSON: Are we all set? Going back on the record.

KIMBERLY COURTNEY: So I understand that you were saying about possibly we could withdraw

all of the applications and then resubmit them, I think that might be a good idea to take some time and think about what the hours should be. So I think that will give us the chance to think about that.

CHAIR ANDREA JACKSON: Okay. So if I'm clear, and we're on the record, you're withdrawing the application that has been submitted?

KIMBERLY COURTNEY: Yes.

CHAIR ANDREA JACKSON: Is there anything she needs to do, Ms. Lint? Does it need to be in writing?

EXECUTIVE DIRECTOR ELIZABETH LINT: No. It's on the record.

CHAIR ANDREA JACKSON: Whenever the applications are in, and when they are submitted, we'll hold another hearing. It will not be a

decision hearing. Testimony will be allowed at a new hearing.

KIMBERLY COURTNEY: Okay.

CHAIR ANDREA JACKSON: Thank you. You're all set.

KIMBERLY COURTNEY: Thank you.

CHAIR ANDREA JACKSON: Ms. Lint, that was it for our agenda?

EXECUTIVE DIRECTOR ELIZABETH LINT: That was it.

CHAIR ANDREA JACKSON: I make a motion to accept the agenda. All in favor signify by saying "aye."

POLICE COMMISSIONER ROBERT HAAS: Aye.

FIRE CHIEF GERALD REARDON: Aye.

CHAIR ANDREA JACKSON: So as a side note now that we're done with our decision-making hearing, I want to bring to your attention that