



CITY OF WAUWATOSA

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LEGISLATION, LICENSING & COMMUNICATIONS COMMITTEE

Meeting - Tuesday, November 10, 2009

Back of Council Chambers – 7:30 PM

PRESENT: Alds. Birschel, Dennik (8:20 p.m.), Herzog, Nikcevich, Organ – 4

ABSENT: Ald. Hanson

ALSO PRESENT: B. Weber, Chief of Police; Nancy Welch, Dir. Community Development

Ald. Birschel as chair called the meeting to order at 7:30 PM

Operator License application by Kevin T. Mitschke, 2136 N. 62nd Street, Wauwatosa, for the period ending June 30, 2010

Mr. Mitschke was present. Mr. Mitschke explained the incidents on the police report. Chief Weber had no other concerns. Ald. Nikcevich asked about the revocation and Mr. Mitschke explained satisfactorily. Ald. Herzog asked why Mr. Mitschke did not disclose everything that appeared on the police report. Mr. Mitschke said that he actually forgot about one of the items found, but he did disclose most of what the police report revealed.

Moved by Ald. Herzog, seconded by Ald. Nikcevich to recommend approval
of the Operator license –4

Class “A” Beer / “Class A” Liquor License applications by Walgreen Company for the period ending June 30, 2010 - the four stores in Wauwatosa:

- **2275 N. Mayfair Road, Brian S. Jablonowski, agent**
- **10800 W. Capitol Drive, Michael P. Matt, agent**
- **2656 Wauwatosa Avenue, Deborah J. Schuyler, agent**
- **6600 W. State Street, Sheila M. Jilot, agent**

Michelle Birch, District Manager, and Messrs. Jablonowski and Matt, and Mmes. Schuyler and Jilot were present. Ms. Welch submitted a memo to the committee regarding the issue of whether all sales of liquor require a conditional use permit. Ms. Welch explained that the Zoning Ordinance is not clear on the regulation of liquor sales, which are listed as both a permitted and a conditional use. In many cases, sales of liquor are related to other businesses that require conditional use approval such as drinking establishments, restaurants or grocery stores. Typically, such approvals have not specifically addressed liquor sales. Certain uses such as gas stations and drive through establishments require a conditional use, which has also been used as a way to reinforce restricting liquor sales at those establishments, but not all approvals specifically refer to alcohol sales. It has not been standard practice to require existing businesses to go through a new conditional use approval when adding liquor sales. In these cases, the liquor sales are viewed as an accessory use, not the primary use of the property.

The purpose of conditional use approvals is to provide the opportunity to review certain uses that may create additional negative impacts on city services or neighborhood properties. Typically these are uses that generate more traffic. In the case of consumption of alcohol, there are concerns with disorderly conduct,

drunken driving, or other inappropriate actions. The conditions placed on the approval tend to affect hours of operation, traffic controls, etc. Generally speaking, an existing business adding sales of packaged liquor does not have a noticeable effect on the traffic or other typical land use issues. Zoning affects the type of land use and not who is allowed to operate a business.

With alcohol sales, the concerns primarily tend to be limiting who can sell or purchase liquor, which is something that can be regulated via the licensing process along with hours of operation according to state laws. If, for some reason, a community experiences negative impacts resulting from these sales, an argument can be made for adding an additional layer of approval. Without a specific reason to moderate negative impacts caused by sales of packaged liquor, adding an additional layer of approval only complicates the process without a clear motivation for doing so.

Ms. Welch's recommendation is to continue to regulate sales of alcohol via the licensing process.

Ald. Herzog stated that he agreed with Ms. Welch and to continue to regulate sales of alcohol within the licensing process. Ald. Birschel suggested that Alan Kesner, City Attorney, should be contacted with any questions the committee may have regarding the zoning vs. licensing issues.

Ald. Organ asked if all employees need to have an operator license in order to check out a customer who is purchasing alcohol. Chief Weber explained that the agent of that store is the party responsible for the alcohol sales and they establish whether to require their employees to be licensed. Chief Weber also stated that it is state law that only employees 21 years of age and older can sell alcohol. Ald. Organ asked Chief Weber if he sees any potential problems with the sale of liquor in the Walgreens stores and he replied that he doesn't see this any differently than the other businesses that sell liquor. He stated that each store needs to control their security and take the necessary steps to prevent problems.

Ald. Nikcevich said she is concerned about granting five more liquor licenses in the city. She requested that Ms. Welch review the ordinance to clarify and consider addressing the number of liquor licenses issued in the city.

Ald Herzog commented to the committee that they are here to assess Walgreens for their liquor licenses and the zoning issues would need to go through community development at a later date. Ms. Welch explained that if the funds are available, the zoning ordinance would be re-evaluated next year. Ald. Organ concurred that addressing the zoning issues at a later date was acceptable.

Moved by Ald. Nikcevich, seconded by Ald. Birschel to recommend a review of the Zoning Ordinance before considering the issuance of the Class "A" Beer / "Class A Liquor" License -Ayes 2; Noes 2 (Herzog, Organ) – motion fails

Ald. Birschel asked Chief Weber if he had any concerns about Ms. Jilot's police report. Chief Weber had no other concerns. Ald. Herzog questioned Ms. Jilot about not disclosing any information on the agent license application and he questioned her ability to have discernment in the sale of alcohol. Ms. Jilot explained that she had not read the questions in their entirety on the application. She stated that she was not trying to hide anything, she was just negligent. Ms. Jilot told the committee that she had made full restitution of fines and completed the required classes. Ald. Herzog questioned Ms. Birch about the corporate policies with regard to employee behavior and/or disciplinary action. Ms. Birch stated that the corporation has a binding policy regarding employee behavior and does enforce discipline as required. Ms. Birch also said that any additional violations could be means for dismissal. Walgreens does have additional drug testing and counseling programs which also include a step program. Ald Herzog told Ms. Jilot and Ms. Birch that he wasn't trying to deny the license but it is very important that the manager/agent of each store is responsible and that they realize that the city entrusts them to abide by the law and can be trusted.

Ms. Birch concluded that all employees would undergo the responsible beverage service course and would provide proof of completion. She is also aware that the state law is that liquor can only be sold by persons 21 years of age or older and that their store policy also includes the employees that will be stocking the liquor.

Ald. Herzog then asked Ms. Birch what kind of security measures are in place for each Walgreens location. Ms. Birch said that the routine security is cameras and security management but Walgreens is willing to bring in additional security to any location if necessary. The additional security would be regular scheduled

security guards every day and security on a rotation basis which would be a plain clothed security guard at random hours. Ald. Herzog requested that Ms. Birch provide this additional security measure in writing for the Walgreens store located at 2656 Wauwatosa Avenue to Chief Weber on or before the next Common Council meeting. She agreed to forward the additional security plan to Chief Weber by the following morning.

Chief Weber was asked if there are any specific concerns regarding crime at the Walgreens locations and he stated that these stores do a high volume of business and the possibility of theft is always a matter of concern. He stated that the city shouldn't turn down additional security when it can be provided as it would help with the crime level. Chief Weber commented that perceptions do become reality for people and therefore additional security would create a greater sense of safety.

Ald. Nikcevich asked Ms. Birch where the alcohol would be placed within the store and limitations regarding the sale of alcohol. Ms. Birch said that the last aisle would have four cooler doors for beer and 12 to 18 feet plus an end cap for the set up of wine. Some stores may not have room for the four door coolers for beer. When asked about restraints on the physical accessibility Ms. Birch explained the possible options which are easily installed locks on cooler doors, a tarped off wine facility, a lockable tarp or gates around the alcohol displays and all are available as requested. The sale of alcohol would automatically stop at 9:00 PM. The cash registers are designed to not allow alcohol sales after 9:00 PM.

Moved by Ald. Herzog, seconded by Ald. Organ to recommend approval of the Class "A" Beer / "Class A" Liquor Licenses contingent upon the increased security at 2656 Wauwatosa Avenue. - 5

Ms. Birch asked if the committee would consider looking at each store location's security and the possible need for additional security on an individual basis. She concluded that the corporation would provide any additional security based on the City's preference.

Class "A" Beer / "Class A" Liquor License application by Aldi Inc. d/b/a Aldi, 12120 W. Burleigh Street, Maricela Garza, agent for the period ending June 30, 2010

No representative from Aldi Inc. was present. It was the consensus of the committee to hold this application until the next scheduled LLC meeting.

No License Applications forwarded for review

The meeting adjourned at 8:39 PM.

jp

Carla A. Ledesma, City Clerk
Wauwatosa, Wisconsin