

MINUTES OF PUBLIC HEARING ON AN ORDINANCE PERMITTING
TEMPORARY SEASONAL OUTDOOR DINING AS AN ACCESSORY USE TO
RESTAURANTS IN THE BC AND BG ZONES

June 13, 1995

Council Chambers

999

Vice President Eagan called the hearing to order at 7:26 p.m.

Present were Councilors Robert Bouvier, Owen Eagan, Bernard Kavalier for Sandy Klebanoff, Charles R. Matties, Patrick McCabe, Madeline S. McKernan, Larry Price, Andy Schatz and Alfred Turco.

Vice President Eagan: Mr. Feldman, does the town have a presentation.

Mr. Feldman: Mr. Eagan, just very briefly, Don has one.

Mr. Foster: Deputy Mayor and members of the Council, the Town Plan and Zoning Commission has recommended favorable but conditional approval of this regulation. In the Commission's discussion they noted perhaps a little lack of clarity in the definition of exactly what seasonal, temporary seasonal outdoor dining was all about and suggested exploration of perhaps a clearer definition defining the seasonal period was one suggestion they made in their recommendation to you as a use that would be permissible. For example, May 15th to September 15th.

They also suggest to you that you incorporate perhaps in the performance standards associated with the regulation provisions for specific levels of action that you would expect during the summer period for these temporary uses. They reference in their recommendation to you application statement that the administration had been using in authorizing the uses on an experimental basis in the town center area.

As a matter of background on this use, about five years ago after having received numerous requests for a bench out front, a table, a chair, something where someone could sit down, this applied to the town center area, the staff with the concurrence of our Council authorized on an experimental, temporary basis, some ten different businesses in the town center area to have up to three tables and a total of twelve chairs in varying locations provided they met certain criteria. I think in your packet of information we sent out with the recommendation is included the list of those uses, just to quickly review with you, Ann Howard, Baskin Robbins, Edelweiss, Green Mountain Coffee, Hilliard's, Malibu, Nanchee's, Natures, Peter B's, Sally & Bobs, Top Nosh and Val's Restaurant. All were authorized on

a temporary basis that limited one, two, three tables and a few chairs. Some of the uses have converted to more permanent outdoor dining areas as witnessed Top Nosh and then authorization for Edelweiss to do something in the back area which they have not done at the present time.

The other noticeable outdoor dining area in the town Center area is the Butterfields, that was a special use permit use for permanent conversion and a larger number of tables with fence enclosures, cover over the uses and so on. That is not what this regulation will deal with. That provision still exists. What the regulation suggests is a temporary entitlement during the summer period for a very limited, low key number of convenience seats for people to come in and be able to sit down or sit in front of the businesses and for us to be doing it legally as opposed to continuing on an experimental basis.

We felt that rather continue to do this, we had to bring this to your attention and get your feeling about it and we do recommend that you consider at least some number of seats associated with the restaurants and perhaps utilize the performance standards as they are suggested by the Commission which deal with issues like litter control, the seating outside 9 a.m. to no later than 10 p.m., table, seats and trash cans must not be located in the public right of way, table service is not permitted, outdoor dining in this case effective May 15th to September 15th which are some suggestions that we have for you.

The Planning Commission, again, has recommended favorably on this outdoor dining use with a few suggestions. This may necessitate going back to the drawing board. I haven't had a chance to talk about this with Corporation Counsel's office the suggestions they made last Monday night really haven't been drafted in the new ordinance format and you may want to discuss this and send it back to committee.

Vice President Eagan: Mr. Foster, what is considered the public right of way? For instance on Farmington Avenue in front of the restaurants there.

Mr. Foster: It varies in town Center. In some cases along LaSalle the public right of way, the street line is right at the building face. In the case of uses like maybe, the sidewalk on the south side of Farmington Avenue, where Hilliard's Candy is located, Sally and Bob's on North Main Street where there is a very, very deep sidewalk, there is at least a ten foot public sidewalk and then another ten or fifteen feet of public sidewalk in private ownership. The general criteria really is as long as you don't obstruct the public segment and we got each applicant to give us a drawing showing us where they are going to locate their chairs. Where we got complaints we immediately let them

Public Hearing
June 13, 1995

know that they had to move back out of the public way and leave an unobstructed walkway.

Generally after about the first year we had very good response from the public and we had very good cooperation from each of the applicants. I think our worst problem came out of the Natures enterprise which as part of the numbers of seats was not particularly a problem but late night activity associated with outdoor entertainment got to be a growing problem. The applicant in that case did not cooperate with us in restricting hours or the nights of operation and is no longer in business. It did become a significant police problem. I don't know if that was as much a problem of the outdoor dining as was the entertainment and the youthful users and the lack of supervision on the part of that particular operator at the time. Generally, operations are very successful.

Vice President Eagan: What would be your club so to speak to make people submit or conform, for instance the Natures situation?

Mr. Foster: Basically that whole aspect as soon as it became more than a temporary use or began to expand to a zoning violation, we threatened and did issue some tickets on that for infractions and they did comply as best they could. We did get them out of there.

Vice President Eagan: Did they violate rules or whatever that the permission be pulled, the privilege to have outdoor dining was it pulled?

Mr. Foster: If they violate conditions of approval, the violation could be enforced as an infraction or the permit could be revoked in this instance. Clearly as a temporary use it can be done that way. I have to look to Corporation Counsel for guidance on that.

Councilor Price: He is looking down at his book, Mr. Foster.

Mr. Foster: I noticed. To help him out, I think it is evident that there are a lot of questions associated with the use and particularly the questions the Commission raised. It probably does need a little more work and probably should go back to committee.

Vice President Eagan: Mr. Price.

Councilor Price: Actually this to Madeline, she raised a point but I will throw it on the table, I would assume that the season is upon us to try to make provisions for people to sit outside now as opposed to later.

Public Hearing
June 13, 1995

Mr. Foster: To anticipate your question, we are authorizing on a temporary, continuing basis experimentally those entitlements but it is a flat violation of the zoning regulation. Outdoor dining provisions are clearly defined and they do say you have to be in an enclosed area, has to be fenced, can only operate certain hours, has to have a special use permit approved by the Town Plan and Zoning Commission, and it has to be in an area away from the street, on private property completely. This is a little nuance of that regulation that we are experimenting with.

Councilor Price: Given that, and your comments it is clear to me that certainly operators who are currently in the experimental stage can continue to experiment with their outdoor service pending a Council review.

Mr. Foster: Unless I hear other direction from the Council tonight, it would be our intention to continue at least within the parameters of the operational sheet that I indicated to you which is a fairly small number.

Councilor Price: Let me ask you then in terms of a recommendation, following along with a lot of recommendations that accompany this, that aren't formed yet, the recommendations aren't firmed up where I don't think we are ready to pick one from group a and one from group b, or list all in the same way and adopt them all, and given some of Owen's questions, it seems to me that more work needs to be done as to the specifics that will encumber this particular notion.

Mr. Foster: I think you are right.

Councilor Price: I don't want to interfere, whatever we do as a Council I don't want to interfere with the ability of people to, I mean I like to go outside and sit down and have a cup of coffee. The point is though we are not going to interfere with that if we continue to discuss this approval process, and that is what I want to make clear.

Mr. Foster: That would not be my intention to stop authorizing the temporary uses.

Vice President Eagan: Mr. Turco.

Councilor Turco: Just for clarification, your last sentence was it wouldn't be your intention to stop authorizing those uses, so if a new player came to you, that new facility could establish on a temporary experimental basis an outdoor eating facility.

Mr. Foster: That is correct. Just to illustrate very specifically to you, what we are dealing with is we are almost dealing with another evolution of what we have been

authorizing. Michael's Bookstore is proposing now that we authorize six tables and four chairs at each table plus outdoor music in the patio where we had problems with Natures previously. I am little uncomfortable with that one, again, because I don't have real clear ordinance direction. I have some policies that I have been operating under. My inclination now is to say, no, you can't do that and yet I would like to hear what the Council has to say about whether we should provide convenient seating and outdoor activities of this sort. Lurking in the background, and I want you all to understand all of this aspect, is McDonalds, Burger King, and others that I think may not be all that acceptable if we were to get one of those in town Center in the BG zone which this ordinance suggests at the request of some restaurants moving this opportunity out to locations like the Elmwood area, Park Road and so on so there are some other ramifications of this regulation.

Vice President Eagan: Mr. Turco.

Councilor Turco: The May 15th and September 15th was that an example that was provided for us or were those dates the product of some thought, discussion?

Mr. Foster: We have been operating, we meaning the administration, on a parameter of May 15th to mid September. We have let it slip if the weather has been good. We haven't just said you have to stop right now so we let it go based on the weather and haven't really enforced it very strictly. The Planning Commission felt there should be a little better definition than parameter. It could be October 1 as easily. We have lovely days in October and November so there is a question of how far you go with something as purely supposed to be seasonal and temporary versus what you adopted as a regulation for your more permanent outdoor dining. They begin to get quite away a part if you extend the more permanent aspect.

Vice President Eagan: Mr. Bouvier.

Councilor Bouvier: Don, how many applications do you expect to be receiving with regard to outdoor dining this spring for instance?

Mr. Foster: I hesitate to estimate. I think you all can just sit and think of the examples I gave. We have BG zone, if this ordinance was adopted, BG zones and BC zones, in the Elmwood area, so that is all that little restaurant complex that I referenced that we were talking about in the last application, it is all of Park Road, parts of Prospect, New Britain Avenue, any of the restaurants in those areas could seek a temporary permit provided they meet the parameters of the performance that you are asking for. That was brought forth because we had a significant request from restaurants

in those streets. Now, some of those people are no longer in business and some of them are waiting and some of them probably haven't gotten permanent, special permanent entitlements, Tappa's has one on New Britain Avenue and there are several others.

Vice President Eagan: Are there further questions?

Councilor Bouvier: Just as a follow up, we are trying to look at the performance standards that we all develop and look at and consider, maybe it would be prudent to let this thing go a little bit and see if there is any disadvantages or any problems that develop. Do you feel comfortable with that or would you prefer a decision right away?

Mr. Foster: With the understanding the Council knows what we are doing, I don't mind letting it go another season but I do think that, I don't like to violate the zoning regulation and I'm on that edge with this. I think calling something a temporary use we have a lot of latitude but a temporary use that repeats itself every single season for five years is kind of permanent.

Councilor Bouvier: We should have sufficient information. Thank you.

Vice President Eagan: Are there further questions? Is there a sign up sheet? Mike Mahoney, please state your name and address for the record.

Mr. Mahoney: Hi. I am Mike Mahoney. My address is 88 Brittany Farms Road in New Britain. I represent Street Retail Inc. and the Andrews Company who are property owners in West Hartford. We are all very much in favor of this ordinance. As was mentioned, it has been a temporary ordinance that has been going on for quite a long time. I think there should be ample information for you folks to make a decision I would hope. It seems to have worked out pretty well. The major problem that we have seen, if there is one, is a problem of people not throwing trash in the trash cans. With that exception, outdoor service is not allowed. You have to get your food inside and come out and sit down. I think that is a nice thing to be able to do. We all like to have a cup of coffee or eat a sandwich outside and it seems to work pretty well.

I agree that there might be some problems in other parts of town perhaps or people might not like to see the fast food restaurants with outdoor service, although I don't really know as it as been working pretty well, how you can avoid letting them do that if you are letting other businesses do it. We think it is a positive thing certainly for West Hartford Center and we would hope to see it throughout the town if we could work it out.

Councilor Price: Have you had complaints from other merchants?

Mr. Mahoney: The only instance of complaint we had had not to do with the fact that, it has more to do with people dropping cigarette butts and that kind of thing and which people do. There seems to be ample trash cans and ash cans around town to me but you will see somebody smoke a cigarette and drop it on the ground if there is a trash can right next to them anyway. This is the only thing we have heard from any of tenants is gee we wish people wouldn't smoke a cigarette and throw it on the ground in front of my front door. I don't know that that specifically related to seating.

Vice President Eagan: Mr. Price.

Councilor Price: And it is your feeling that it generates business.

Mr. Mahoney: Absolutely. Given a choice on a nice day, if you can sit outside and eat a sandwich or have to be inside, I think most people would choose to sit out.

Councilor Price: And if the sky were the limit, what would you do then, besides just having to do with tables?

Mr. Mahoney: I think that expanding it to more tables is not a good idea. I think it seems to work. If the sky is the limit, we are going to have a problem. You are going to have Farmington Avenue littered with tables and people sitting around everywhere and it going to become a hang out which there are some problems as was alluded to with Natures. There have been some problems with large groups of young adults hanging around and what have you and to give them a place where there is twenty tables, I don't think that makes a tremendous amount of sense.

Councilor Price: How about the hours and the months that have been discussed?

Mr. Mahoney: Given that it is a temporary, I would hate to see the tables go on September 15th because we are just getting to the beautiful part of the fall around here.

Councilor Price: Hot apple cider time.

Mr. Mahoney: But the hours it seems sensible to control that because at a certain point in time the businesses around town are closing down and the people that are there are simply hanging around and eating or having their coffee or what have you and there should be some regulation on that it seems.

Councilor Price: Thanks.

Vice President Eagan: Mr. McCabe.

Councilor McCabe: Do you think it makes sense to look at this a while longer?

Mr. Mahoney: No, I'm at a loss to understand why after five years we can't, we haven't seen enough to know whether it works or it doesn't and if it doesn't to make a decision in that respect I don't know what one more season is going to teach us. That would be my only comment.

Vice President Eagan: Any further questions? Thank you. Next is Domenico Genduso.

Mr. Genduso: Domenico Genduso, 80 Blue Ridge Lane, West Hartford. I have some experience about that stuff because I regulated those open eateries outside, coffee shops or restaurants many years ago before you were born and I will tell you you don't know what trouble you will get especially with our way of living in this country. We are free and we can do anything we want. BG zone, I don't know where they are all located. There are some probably that are located close to a neighborhood where people live and pay their taxes and they want to be in a residential area and they have quiet. That type of business is hard to control. I don't know the ordinance how it is worded.

When I used to enforce, we gave the permit and at once we had a protest, somebody called that there was too much noise and I personally thought to give the owner a chance for the first time to abide. The next time they got closed. The next time I will make a report to the Police Commissioner of the city that we had the jurisdiction over 175,000 people out of 350,000 in the area. When I said let's close the place the place would be closed. There is no recourse no nothing because that was the law.

People drink even coffee sometimes they get drunk with coffee because they start talking loud and things like that, you have to have first of all a time period that they cannot go from morning 8 o'clock or 9 o'clock until 8 o'clock at night. No music, no orchestra, and no loud noise because the owner if you really want to keep the business open then they talk to the customer and said if they start being rowdy or start laughing loud, we have a neighborhood and people have to sleep. I had the same kind of experience even though they have no outside tables with the steak restaurant, at Hong Kong at Bishops Corner, the west side of Bishops Corner. They used to open the door. People would go out and they would start screaming and that is at night. What do you do? Call the police. By the time the police come

they go inside, the area inside and that's it. There was no proof that they disturbed the peace.

If we had for instance a restaurant that is way out of the town, in the country side, they can have music or anything they want because they don't disturb the rest of the people because West Hartford is not made of restaurants, it is made of 61,000 people living here and today I got my bill for taxes and I will tell you \$4,594.88 just for the house. It is a lot of money and I pretend that I have quiet around my house, my backyard and everything, if I want to sit outside I want to enjoy it, the quiet, otherwise there is no sense to live in this town. If you go ahead with this ordinance and you have to, because I didn't have time to read it, you have to have the time limit until they can stay outside, especially when it is close to the neighborhood and not to make any noise. That's my recommendation. Thank you.

Vice President Eagan: Thank you, Mr. Genduso. Is there anybody else in the audience who would like to address the Council on this issue? Further comment from the Council? Hearing none, I will close the hearing.

The hearing adjourned at 7:50 p.m.

Norma W. Cronin
Recording Secretary