

Joint Public Hearing with the Planning Board

Appropriations Committee

Chairman Brodeur, Boisselle, Mortimer, Infurna, Tramontozzi, Forbes, Wright, McAteer-Margolis, Seaboyer, Medeiros, Conn; City Planner Denise Gaffey, Planning Board Chairman Mike Cassavoy, Planning Board members Richard Connelly, Tom Pawlina, Anne DeSouza-Ward, Edward Cassidy, John Sadowski, Robert Mercado, Gerry Marcus, Carla Francazio

The public hearing is called to order by Chairman Brodeur at 7:45 p.m.

Order No. 09-060, Amending Melrose Revised Zoning Ordinances, Chapter 235, Article II, Section 235-5. Definitions as set forth herein. (A-3)

Order No. 09-061, Amending Melrose Revised Zoning Ordinances, Chapter 235, Article V, Section 235-15. Permitted uses (Table of Use and Parking Regulations) set forth herein. (A-3)

Chairman Brodeur says City Planner Denise Gaffey will give a brief presentation on the ordinances and the Planning Board's meeting on the two orders that were forwarded to them by the Board of Aldermen. Public participation will follow and Board members' dialogue will take place. He expects the order will be held in committee for possible further dialogue on Thursday night.

Ms. Gaffey says this public hearing came about as a result of an initiative by the Board of Aldermen to amend the zoning ordinances due to the ballot questions passed by the public in November. The orders are relative to the zoning and parameters of locating the businesses in the City. The zoning subcommittee and the Planning Board have met to discuss the proposal and have drafted a letter dated December 10, 2008. There are two related proposals. The first is to create a new definition for Specialty Food Stores to sell beer and wine incidental to food. The Planning Board recommends some slight changes to the proposal. The italicized texts are additions made by the Planning Board members and the struck-through texts are suggested deletions. Ms. Gaffey reads the letter into the record. One suggestion made by the Planning Board is to replace the term "Specialty Food Store" with "Retail Food Establishment" because that term is more closely associated with the language of the ballot question. Another is to omit the word "primarily" and add "but not be limited to" and "incidental to the sale of food products therein" again to tie it with the ballot question language. The Planning Board also suggests adding "or confections" to the list which would expand the types of food products that could be sold. Another major component undertaken by the Planning Board was inserting the proposal into the Table of Use and Parking Regulations. The Aldermen proposed that the Planning Board create a new category No. 27 and add it into the principal use; the Planning Board thought it belonged closer to the existing Retail category and numbered it 1.1. The language defining the use is straightforward. The table shows what is allowed by right, by Special Permit or not at all. Under the

Aldermen's proposal, no establishment would be allowed as of right and five districts would have to go through a Special Permit process. The Planning Board thought it would make sense to make these establishments as of right in the business districts. If it is a new establishment or building, the Site Plan Review process is involved. Another issue raised as presented, the Aldermen's proposal prohibits locating this type of establishment in the BB zone but allows it by special permit in the BB-1 zone. There are only two BB zones in the City; on Tremont Street near the Middle School/High School complex and on the Malden/Saugus lines on Route 99. The Planning Board is not averse to permitting these establishments as of right in either area and does not recommend making a distinction between the BB zone and the BB-1 zone. The Planning Board also clarified that the Building Commissioner would interpret the floor area limitation of 3,000 square feet to be net floor area or sales area, exclusive of any office, storage or kitchen/prep space.

Chairman Brodeur opens the floor for Public Participation. No one comes forward. Alderman Mortimer motions to close the public input portion of the hearing, 2nd by Alderman Boisselle. All in favor.

Chairman Brodeur asks if the definition suggested in the order is more restrictive than what is in the Act. Ms. Gaffey says the purpose of the definition is to better define the intent of the ballot question. Chairman Brodeur asks about the cost and anticipated length of time of the Special Permit process. Ms. Gaffey says if the use requires a Special Permit, the fee is \$500 plus the cost of advertising in the local newspaper and the review period by the Zoning Board of Appeals would be about 90 days.

Alderman Wright says he is the maker of the orders. He wasn't intending to be more restrictive; he was trying to flush out the definition of a Specialty Food Store and to get a dialogue going. He asks if the Planning Board generally considers the cost involved for an applicant; these establishments stand to make a substantial amount of money with this license and the cost of the application is of minimal concern. Ms. Gaffey says the Planning Board did not have so much difficulty with the application costs, however there is some logic looking at existing business areas rather than creating a barrier to entry with the special permit process. She says the community was clear in their support for the ballot question and that the zoning amendment process is the opportunity for discussion concerning the appropriate location for the use. Alderman Wright says the Tremont Street corridor in relation to the High School is not necessarily conducive to a food establishment. Located there is Knight Harrison Oil Company, a car wash, auto body and auto mechanic shops. Last year the City filed a lawsuit against the MBTA for posting beer advertisements at the commuter rail station in that area. He says he is able to justify his concerns in putting a retail store by right on Tremont Street with signs in the window selling beer and wine due to its proximity to the Middle School/High School complex. It's a little more remote and off the beaten path and more conducive for a minor to buy alcohol. He asks if there is any way to break up the BB and BB-1 zones; he says that the BB area along Route 99 would be an appropriate area for the use. Ms. Gaffey says it could be broken out.

Alderman Boisselle asks if the term "confections" refers to candy. Ms. Gaffey says the idea behind the term is Sweet Thoughts; the Planning Board did envision them selling wine. Alderman Boisselle says the BD district is the Medical District; he doesn't see that district as being appropriate for this use. Ms. Gaffey says the Planning Board felt

conflicted because there are already businesses in that area: Caruso's, the jewelers, and hair salons. As proposed, it would be prohibited.

Alderman Mortimer asks if the district shown on the map that reaches almost down to Oak Grove is a BB zone. Ms. Gaffey says that is the Smart Growth District which is shown as a separate zone. There is a BB-1 zone within Oak Grove Village; all retail is located there. Alderman Mortimer asks what the Planning Board's position would be regarding a piece of property in a residential zone that is not currently in use but that has been grandfathered as a business use. Ms. Gaffey says she knows the concern the Alderman has; she doesn't see any entities in a residential district being grandfathered for this use as it's a totally new use.

Alderman Medeiros says Alderman Wright did a great job with the language. People are wondering what exactly it is they can sell. In terms of zoning changes, she asks where people are able to get a retail beer and wine license by right. Ms. Gaffey says this use would fall under category 1A under Retail Service Commercial, and would be allowed as by right in categories BA, BA-1, BB, BB-1, BC, and BD. Alderman Medeiros asks if it would be allowed in the Medical District; Ms. Gaffey says yes. Alderman Medeiros says it seems like the issue is coming down to NIMBY – not in my back yard – but people voted for it. She says she is not inclined to change the Table of Use and Parking Regulations but requiring a Special Permit would require a public hearing. Ms. Gaffey says the Site Plan Review process would kick in for any new establishment under this ordinance. Chairman Brodeur says there would always be a public hearing aspect for the approval process and recommends that the Liquor Licensing Commission send notice of the public hearing to abutters.

Planning Board member Ed Cassidy says everyone speaking has thus far focused on procedural matters. He speaks to the issue of giving downtown Melrose the most advantage to locate these businesses since they would be supplemental to other downtown businesses. When it comes to this issue, Melrose is at war with Route 1 and the Middlesex League and these businesses should be allowed downtown.

Alderman McAteer-Margolis says she thinks what Mr. Cassidy just said is why there was so much support for this on the ballot. She asks if the Washington Street corridor is zoned I-A; Ms. Gaffey says it is. Alderman McAteer-Margolis says it is the old industrial zone and asks if it still exists. Ms. Gaffey says it does by designation on lower Washington Street; it protects the existing businesses there. There is also a I-A zone on Route 99. Alderman McAteer-Margolis asks if there would be ramifications if the City allows a specialty store by right but the Liquor Commission denies the license. Ms. Gaffey says the first stop in the application process would be with the Building Commissioner. He would determine if it is as of right. The second stop would be the Liquor Commission. Alderman McAteer-Margolis asks what would happen if the Liquor Commission decided not to grant a license to that establishment. Ms. Gaffey says the application would not be able to go forward. Alderman McAteer-Margolis asks if there would be any legal ramifications. Ms. Gaffey says she can't answer that. Alderman McAteer-Margolis asks if use by right would be allowed in certain zones and by special permit in others; Ms. Gaffey says yes.

President Conn says he was not in favor of the referendum but the Aldermen have the responsibility to craft the best zoning amendment possible. It is necessary to hammer

out what works best with the City's zoning and the most responsible thing to do is to create a new definition within the zoning ordinances. He says as a zoning issue he wants to require a Special Permit for these uses. Zoning and licenses are different and distinct. Zoning should not interfere with licenses. Looking at the zoning map the residents of Melrose should understand that 90% of zoning districts in Melrose do not allow this use. There are very limited geographic locations where these businesses could be located.

President Conn motions to retain the orders in committee, 2nd by Alderman McAteer-Margolis.

Chairman Brodeur asks if the medical district includes the area where Caruso's is located; Ms. Gaffey says yes.

Alderman Seaboyer says the ballot question stated "not to exceed 3000 square feet" but the definition proposed by the Planning Board is 3000 square feet of sales area. He thought the 3000 square feet was total size. Ms. Gaffey says it's an interpretation. In speaking with the Building Commissioner he interpreted it as net sales area, not gross area. If the Aldermen want the 3000 square feet as gross floor area it should be stated as such.

Alderman Forbes asks if the Linden Street garages would still be designated a business area or if that location would have to start from scratch. Ms. Gaffey says she can check with the Building Commissioner but it would constitute a change of use and not offer the owner any protection.

Alderman Wright says he would like to clarify that the original order that was filed required a Special Permit for this use in all zoning districts. He now supports the use by right in the downtown district and the Oak Grove and Washington Street districts but he has concerns for allowing the use by right in the neighborhood commercial districts of Wyoming, Cedar Park and the Highlands. Alderman Wright asks for this consideration by the Planning Board in their report.

On the motion to retain the order in committee, All in favor.

The public hearing adjourns at 8:45 p.m.

Maribeth Harrington
Clerk of Committees