

City of Salem, Massachusetts



**“Know Your Rights Under the Open Meeting Law, M.G.L. c. 30A ss. 18-25 and
City Ordinance Sections 2-2028 through 2-2033.”**

The City Council Committee on Community & Economic Development

will met in the Council Chamber on July 2, 2024 at 6:00 PM

for the purpose of discussing the matters(s) listed below. Notice of this meeting was posted on

June 28, 2024 at 9:29 A.M.

(This meeting is being recorded)

ATTENDANCE

ABSENT WERE: None

Also in Attendance: From the City of Salem Gail Kubick, Building Inspector;

SUBJECT(S)

#338 Amend existing licensing agreement to allow Bambolina Restaurant, 288 Derby St., to occupy 440 s.f. of City property for outdoor dining.

Discussion

C Stott opened meeting explaining the matter before the committee to amend the existing approval of 380 sq ft, which council approved during the March 28th meeting, to 440 sq ft. Backup documentation provided to councillors included correspondence from the Building Commissioner confirming the sq ft, from The City Solicitor confirming the property lines, and from the building owner, Irishea Trust, confirming the approval of use by the Restaurant. Today an additional measurement was taken by the Building Inspector and an architect representing the restaurant, landing on 447 sq ft, which was also available for viewing. C Stott opened the floor to questions.

C Jerzylo asked about the property lines and where the patio fell beyond the Bambolina storefront. C Stott stated that the city solicitor noted that to the left of the storefront was still private property (not city cemetery) and to the right was the Wax Museum, which had submitted the letter of allowance / approval as per the outdoor dining policy.

C Jerzylo asked if Bambolina will be paying for the extra sq ft (A: Yes)

C Jerzylo asked if the SRA approved the wooden posts that are up there now, which is not the metal posts that were a part of their original application presented to SRA. C Stott noted she believes they will be back in front of the SRA, but our approval is just one part, If other approvals are needed (SRA, etc) the business has the onus for completing.

C Jerzylo asked if the number of seats will change. C Stott noted that looking at the application, the number of seats did not change, but not sure. Requested if the Building Inspector had anything to add.

Gail Kubick, City of Salem Building Inspector; stated current occupancy is for 84; they have requested 104. Occupancy is looked at based on plumbing count. And also looking at the physical space and how many seats and tables can fit. According to the policy, in inclement weather, they are supposed to bring the number of diners outside, inside, so increasing to 104 does not work as that number cannot fit inside. It can't be both inside and outside.

C Varela asked for confirmation on the sq ft. G Kubick noted it was 447 and some change.

C Varela noted the new patio is great for accessibility, adds a little more room for diners.

C Harvey is concerned for setting the precedence. What was designed and submitted is not what was built, they are asking for forgiveness and that is not fair. There will be more to come if we say “go ahead and build it and come ask us after the fact”. Permission should have been granted first.

C Davis noted it is important to align our decisions with what is within the outdoor dining policy. Health and Safety, Accessibility. Etc. Rather than saying we should hold a mistake over the business's head and punish them. When it comes to precedence, the more dangerous one is Boards and Commissions not making decisions based off of policy. This makes things more political.

C Varela asked for details on the review process for outdoor dining – is a stamped drawing required? Gail Kubic noted that yes, it is required for the building permit. It is not required for SRA. We are following up now that was what built is what was approved, we are doing this weekly. If others are over, we advise they need to wrangle it in, move planters, etc. This is part of our review every week.

C Stott asked about the timeline of events – SRA approval was back in Feb / March, and the building permit was much later in the process, which is the one that requires the drawing.

C Jerzylo – Agrees that this will set a precedence – Concerned other business will encroach on other available space. Council set parameters and rules, and people need to follow the rules. And now they are requesting additional occupancy – give them an inch and they will take more. C Jerzylo asked if they need to go to the state for the occupancy requirements? (G Kubic noted they will come to the city building department) C Jerzylo noted there were too many mistakes with this one, they should go back to the 380 and do it correctly.

C Harvey – The ordinance states they can build what was approved They were approved for 380 sq ft. This is not favoritism, this is according to what they were allowed to build, and they went above and beyond

C David – Noted that during the council meeting, it was mentioned that the council is not responsible for questioning the decisions of boards and commissions. I disagree with that – if it is in front of us, we should question it. He asked if the occupancy was over what was the capacity, what enforcement is completed?

C Stott stated we are not here to discuss occupancy rules. There is a whole other set of rules and processes that need to be followed for that and not prepared to dive into that, nor is it posted on the agenda.

C David commented that is what his comment is – we have our approvals, and the occupancy approvals have a different channel that will be followed. It sounds like our changing the sq ft amount does not immediately change the occupancy numbers.

C Varela noted that every applicant has the ability to come back and amend their application.

Public Comment

Justin Bates, 313 Essex St, supports the change in sq footage. There should not be a punitive response, but a collaborative response. Information and education should be robust.

Tim Haigh, Owner of Bambolina, acknowledged mistakes were made, was under the impression the emergency COVID outside dining orders were still in place. He stated lost income so far, and showed the history of the jersey barriers delivered May 11th with a much larger area, so it was confusing what was allowed. The jersey barriers really set the space and it is being maximized.

Discussion

C Jerzylo asked if T Haigh owns a measuring tape. T Haigh stated yes, many. C Jerzylo asked how such a big mistake was made then? T Haigh said one side ended up being 7 feet versus 6, which was the error.

S Stott reminded the committee that all questions should be addressed through the chair.

Motions

C Varela made a motion to amend the order to state "450" sq ft, in place of the "440". 2nd by C Davis.

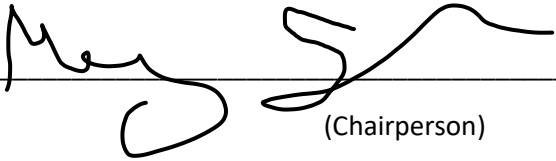
No further discussion on motion; hand vote; 3 in favor (Stott, Varela, Davis) 2 opposed (Harvey, Jerzylo)

C Varela made a motion to refer this back to council with a recommendation of adoption as amended. 2nd by C Davis

No further discussion on motion; hand vote; 3 in favor (Stott, Varela, Davis) 2 opposed (Harvey, Jerzylo)

On the motion of C. Varela

the meeting adjourned at 6: 32 P.M.



(Chairperson)