



The City of Seattle

Pike Place Market Historical Commission

Mailing Address: PO Box 94649 Seattle WA 98124-4649
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MINUTES

Wednesday, March 12, 2008

4:30 p.m.

PDA Meeting Room, 85 Pike Street, Room 500

MHC 33/08

COMMISSIONERS

Joanne Herron

Howard Aller, Vice Chair

Karin Link, Chair

Alfred Collins

Sara Patton

Spencer Howard

Marilyn Bierman

Susan Lane

Kamyar Khoshdel

STAFF

Heather McAuliffe

Melinda Bloom

Absent:

Valerie Bystrom

Alex Rolluda

Allyn Stellmacher

Commission Chair, Karin Link, called the meeting to order at 4:35 pm.

031208.1 APPLICATIONS FOR CERTIFICATES OF DESIGN APPROVAL

031208.11 Charlotte's Web

1501 Pike Place #319, Fairley Building

Sharon Turner

Application: Install one sign on business's storefront and three off-premise signs.

Staff Report: Ms. McAuliffe provided relevant background information and distributed site plans, drawings and photos. The relevant guideline was 3.6 Signs.

DRC Report: Approve, except for sign proposed to be installed on a column – does not meet Guideline 3.6.6 (a).

Ms. McAuliffe said the sign for Antique Touch on the adjacent post was not approved and that most of the signs installed by businesses on the columns along the nearby corridor in the Leland Building were not approved.

Applicant/Landlord Comment: Sharon Turner showed on drawing the proposed placement of the signs. She stated that she was withdrawing the sign she had proposed on the column near the stairway.

Matt Holland from the PDA said the business is just replacing existing signs and it is all in scale.

Public Comment: There was no public comment

Commission Discussion: Mr. Aller asked for clarification on one of the sign replacements. Commissioners concurred that they had enough information to make a decision.

Howard Aller made a motion to adopt a resolution approving the application as presented.

MM/SC/HA/SP

7:0:1 Ms. Bierman abstained.

031208.2 APPLICATIONS FOR CERTIFICATES OF USE APPROVAL

031208.21 Pike Place Market PDA – Summer Sundays Zach Zink

Application: Street use/right-of-way approval to close Pike Place from Stewart Street to Virginia Street on consecutive Sundays from June 8 to September 28, 2008 for the Summer Sunday events highlighting Washington farm products. Street to be closed between 10:00 a.m. and 6 p.m.

Staff Report: Ms. McAuliffe said this was an annual temporary use request from the PDA, similar to the request last year. She distributed a letter from PDA and a map. The relevant guidelines were 2.1 General Principles for Uses in the Market, 2.9 Temporary Uses, and 2.11 Street Use, Street Vendors, Sidewalk Cafes & Parks.

URC Report: Ms. McAuliffe stated that the Use Review Committee cited the application's conformance with Guidelines 2.1.1, 2.1.2, 2.9 and 2.11.2. The Committee recommended approval.

Applicant comment: Mr. Zink explained that farmers would be selling on the street and there would be occasional live music and chef activity.

Public Comment: Dave Martin, owner of the Champion Building, spoke in support of the application. He said it was good for the businesses in his building.

Commission Discussion: Commissioners concurred that they had enough information to make a decision.

Alf Collins made a motion to adopt a resolution approving the application as presented.

MM/SC/AC/JH

9:0:0

031208.22

Pike Place Market PDA – Seasonal Farm Tables

Zach Zink

Application: Street use/right-of-way approval for overflow farm selling spaces on Pike Place between Pine Street and the end of the North Arcade, from April 1 to December 31, 2008. 24 parking spaces will be displaced during this time.

Staff Report: Ms. McAuliffe explained that this application was another temporary use approval request from the PDA. She distributed a letter from the PDA and a map. The relevant guidelines were 2.1 General Principles for Uses in the Market, 2.9 Temporary Uses, and 2.11 Street Use, Street Vendors, Sidewalk Cafes & Parks.

URC Report: Ms. McAuliffe said the Use Review Committee had reviewed the application and cited Guidelines 2.1.1, 2.1.2, 2.9 and 2.11.2. The Committee recommended approval.

Applicant/Landlord Comment: There were no comments from the applicant or the landlord.

Public Comment: There were no comments from the public.

Commission Discussion: Commissioners concurred that they had enough information to make a decision.

Alf Collins made a motion to adopt a resolution approving the application as presented.

MM/SC/AL/SH

9:0:0

031208.23

Kells Irish Restaurant & Bar

1916 Post Alley, Butterworth Building

Karen McAleese

Application: Change in street-use/right-of-way approval for outdoor seating from seasonal to 363 days/year.

Staff Report: Ms. McAuliffe provided the following background information:

- Kells Irish Restaurant currently has seasonal approval for its outdoor seating area.
- The Commission has never attached a clear definition to “seasonal”.
- The Commission denied a request from Kells in 2007 for the seating to be out year round.
- The applicant maintains that the seating area attracts customers to the alley and makes the alley safer by slowing down traffic.

History of approval for outdoor seating area at Kells:

Kells applied to the Commission in 1986 and 1987 for 90-day approvals for their outdoor seating area. The Commission approved those requests. Kells applied retroactively in July 1988, this time for approval for the outdoor seating area without a 90-day expiration date. The Commission discussed limiting hours of operation for the seating area at that time due to complaints about noise from residential tenants, but decided that such a limitation “is not needed because weather conditions usually would control hours sufficiently” (per minutes from 7/27/88 Commission meeting). The Department of Planning and Development (then called the Department of Construction and Land Use) approved an application from Kells for the seating area to be out from April 1 to October 31 each year from 11:30 a.m. to 10:00 p.m., Monday through Saturday. In 2002 the Commission approved an expansion of the seating area; the application was for “seasonal” use.

- Kells is now applying for 363-day use of the seating area from the Commission in order to obtain a modification to the original permit issued by the city’s land use department, DPD. This is required for Kells to be in compliance (with their permit from DPD).
- The Commission has received complaints over the years about the impact of the outdoor seating area at Kells Irish Restaurant. The complaints have been two-fold: 1) late-night noise; and 2) negative impact to vehicles using the alley due to fence/umbrellas being too far out.
- The seating area must allow 10’ of clearance in the alley; No umbrellas may be protruding into the clearance. The Seattle Department of Transportation enforces that clearance.
- Guideline 2.8 applies to this request for an expansion of use. Per this guideline, the Commission may modify the original use approval for the outdoor seating, including hours of operation.

Exhibits Reviewed:

- Existing approval for use and design of outdoor seating area, MHC 122/02 and MHC 123/02.

- Land use permit and related information for the seating area issued by the Department of Planning and Development (formerly DCLU) in 1988.
- Written consent from adjacent businesses: 1914 Post Alley and Wines of Washington Tasting Room
- Supplemental written information from the applicant
- List of businesses approved to have outdoor seating on sidewalks and in Post Alley
- Definitions of “seasonal” from www.dictionary.com

Ms. McAuliffe stated that there were other Market businesses approved for outdoor seating, that some had stated “seasonal” in their applications and some had not, and that many had their seating out now.

She confirmed that the applicant still needs written consent from the adjacent landlords. Ms. McAuliffe said that apparently the one from the Alaska Trade Building is on its way and the one from the other adjacent landlord is being worked on. She explained that the Commission could approve the application with the condition that these written consents would be turned in to staff.

The relevant guidelines were 2.8 Existing Uses and Businesses and 2.11 Street Use, Street Vendors, Sidewalk Cafes & Park

URC Report: Ms. McAuliffe explained that the Committee did not cite guidelines or make a recommendation because it needed more information on what “seasonal” actually means.

Applicant/Landlord Comment: Ms. McAleese explained that they had put out planter boxes in the 1980s, and since they are hard to remove, that is why they installed the fence. She stated that the fence is also up as a barrier for safety. She talked about past efforts by the merchants to close Post Alley to through traffic. People drive through Post Alley. She said that activity in the alley provides security for people and that the residents feel safer with people sitting in the alley. She said they have tried to do a good job with regard to the noise, safety and security. During President’s Day weekend, the patio furniture was not out and people didn’t come down the alley. People go toward the light, toward the colorful and she said that is the attraction, it makes the alleyway look clean. She said that Kells keeps it clean and power washed.

Public Comment: Dave Martin, owner of the Champion Building, said that people using the parking garage on the roof of his building enter from Post Alley, near Kells Bar. He said that Kells is only approved for seasonal seating but they have never taken their seating down during the winter. The problem is during the winter it is outdoor storage. He said it is really just a drinking, smoking place at night. The railing has not been down in years; the only time it comes down is St. Patrick’s Day. Mr. Martin said they are affected by what happens in the alley. The outdoor seating backs up beer trucks and the Medical Clinic uses the alley.

Ms. McAuliffe responded to Mr. Martin that the Commission's decision needs to be based on guidelines; lack of compliance in the past cannot be an influencing factor on their decision.

Alec McArdle, a Stewart House resident, spoke in support of the application. He said he loves to hear the music and noise.

Hannas Schindler, owner of a new restaurant next door at 1914 Post Alley, said he is in favor of outdoor seating because it slows traffic down, the pedestrian area is friendly and the outdoor patio has been well-maintained and adds a feel to an alley that is otherwise not so nice. He said since the smoking laws have changed; people will be outside regardless, so the patio creates a safer environment.

Ben Collins, owner of Rose's Chocolates, said he is in favor of the outdoor seating area during the summer because it draws people in to the alley for lunch and it is good for his business.

Ms. McAuliffe confirmed that additional written comments were forwarded to the Commission from the Perennial Tea Room, The Pink door, and Market residents Paula Adams and Mike Higgs.

Commission Discussion:

Ms. Herron asked the applicant to elaborate on the proposal for 363 days.

Ms. McAleese explained that Kells is closed Thanksgiving and Christmas. Given the time, she decided to apply for 363 days. She said she knows several people who work for the ambulance 911 and they don't come down the alley unless they are coming to Kells. When they come to an address they come by either looking at the place or a known route and most of the ambulances come directly to the senior center or to the Pike Place Clinic. She said a lot of the people who park in the garage above (the Champion Building) use the Virginia end; she said a lot of them won't use Stewart because it is always backed up because it is used as thoroughfare to the market. She added that the majority of people who want to get to the parking garage will come up Virginia. She said people are amicable regarding the loading zone; if someone is parked there longer than a short period of time, people ask them to leave and they do.

Mr. Aller said he was concerned with the meaning of what a seasonal permit was and that there seems to be no definition of "seasonal". He said Kells is currently operating under a valid permit that allows them to be open from April 1 through October 1 every day but Sunday during certain hours; that is their operating permit. He asked staff to confirm if Kells was now asking to alter this permit.

Ms. McAuliffe confirmed that it was correct.

Mr. Aller asked how the Commission approved a closing time of 2:00 a.m. if their operating permit says 10:00 pm.

Ms. McAuliffe said that the Commission never discussed specific limits when it approved the original use request, but that Kells requested those hours (11:30 to 10:00 p.m.) in their application for the permit from DPD. She said that there has never been anything concretely recorded with the Commission about the operating hours and that it should be clarified now.

Karen McAleese explained that at the time her father applied for the permit, Kells only served dinner until 10 p.m.; now they serve it until 1:00 a.m.

Mr. Aller asked for more information about the Commission approval/DPD permitting process. Ms. McAuliffe explained that the DPD and MHC jurisdictions are separate and that the Commission's approval comes first before the DPD permit can be issued.

Ms. Lane asked the applicant what time the outdoor seating currently closes.

Ms. McAleese said the restaurant closes at 2:00 a.m., but they prefer to have "everyone clear off at 1:00 a.m." in order to comply with the noise ordinance and for security purposes. She indicated that the weather limits it also.

Mr. Aller said that Kells' permit says 10:00 pm.

Ms. McAleese explained that the permit they renew with the city each year says "annual permit" and that the hours are not written on it.

Ms. McAuliffe explained that DPD issues the original permit after the Commission approves it, and then each year SDOT renews it. She said that the applicant is now trying to straighten out the differences so that their DPD permit reflects what is actually going on.

Ms. McAleese explained that they used to be open six days a week and closed on Sundays. Over time they started catering to a different clientele and serving dinner until 11:00 p.m. They also serve food until 2:00 a.m. because it is required if you serve liquor, she said.

Ms. Patton cited a concern that Guideline 2.11.1 requires the consent of the abutting landlord before the Commission can consider a Certificate of Approval.

Ms. McAuliffe explained that they do have written consent on record from the adjacent businesses and landlords for having a seating area out there but are now asking for a change.

Mr. Howard asked about the alley's use as a right-of-way, the Commission's jurisdiction over its use, and how the uses should be managed. He said that

having a permanent seating area in a public right-of-way seems a conflict of uses per Guideline 2.8.1 (c).

Ms. McAuliffe said it is an open alley way but the Commission has allowed the seating to be out there.

Mr. Howard said that it had been based on a seasonal use.

Ms. McAuliffe said as long as they are meeting the clearance of 10 feet they are in conformance with the City policy on how the alleys are used.

Ms. Lane asked to what degree the Commission's decision establishing either a seasonal or an annual use would be binding for the future.

Ms. McAuliffe said the Commission has the authority to determine if allowing the seating to be out 363 days a year is appropriate. She referred the Commission to Guideline 2.8 and advised that Guideline 2.8.1 would apply, since the business's specialty nature (restaurant with a Class H license) would not change. She pointed out that per this guideline, the Commission could specify which uses would be allowed to continue. She said that the existing Certificate of Approval says that they can have a seating area out there but does not state anywhere what time or when it can be operated. She explained that Kells has returned for clarification.

Ms. Lane said the implication in the last sentence of 2.8.1 is that the Commission could not deny the approval for the outdoor seating area. Ms. McAuliffe agreed.

Mr. Khoshdel asked if even time of usage could be modified.

Ms. McAuliffe said yes, the hours of operation, but that the amount of clearance is governed by the city's requirement that 10' be allowed there.

Ms. Herron asked if the 10' clearance is enforced. Ms. McAuliffe said it is by enforced by SDOT on a complaint basis.

Mr. Howard asked if it was within the Commission's ability to have the applicant come back annually when renewing their permit.

Ms. McAuliffe confirmed that the Commission could make it a temporary use approval but that it would mean that the applicant would have to return each year and that staff has to make sure they come back. She recommended against it.

Ms. Lane clarified that the existing permit is for five months each year, from April to October.

Mr. Aller pointed out that despite what permit says, they are open all year long, until 2:00 am and they are asking our permission to do what they have already been doing for some time.

Ms. McAuliffe explained that the applicant is taking steps to comply.

Mr. Aller said there are complaints for current conditions and they will become permanent complaints.

Ms. Link asked if the Commission can limit time.

Ms. McAuliffe said the hours of operation can be modified.

Ms. Bierman said she was confused and asked what the philosophy of the Market is: to encourage or discourage business? She said we are looking at grueling little points as to what they did that was not so great but what about the whole picture of the Market.

Ms. McAuliffe said that was analyzed thoroughly; the Commission has received complaints regarding noise and traffic issues so that is why she is asking the Commission to examine those issues and then to consider how your approval will read.

Ms. Bierman asked what the bottom line is.

Mr. Khoshdel said to have businesses and residents live in harmony.

Ms. Patton said that the guidelines do not ban noise; the Commission just has control through permitted/non-permitted uses. She said Guideline 2.7 states that a permitted use is one that conforms to Market Zones and Styles and Methods. She said there is no question that this is not a non-permitted use in this zone.

Ms. McAuliffe said as stated in 2.8 you can make a decision about which uses can be allowed to continue.

Ms. Link referred to Guideline 2.8.1 (c) where it states that the change in use “must not lead to an undesirable mix of uses in the Market”. She talked about the positive impact of having tables outside but that there were also complaints about people not being able to sleep. She said that it seemed to be more of a problem after a certain hour.

Mr. Khoshdel said there are noise ordinances in the City.

Ms. McAuliffe said she is not sure if it applies in commercial areas.

Mr. Khoshdel said when he had his business (Vivanda Ristorante) he was only allowed to operate his outdoor seating until 10:00 p.m. because there were residents above him. He pointed out that there are residents near Kells.

Ms. McAleese said there are no residents above Kells. She cited the issue of their inability to control people who go outside if the hours were limited to 10:00 p.m. She said they've posted that there is a noise ordinance so she can walk up to her customer and tell them. She said usually at 1:00 am the patio is cleared.

Mr. Khoshdel pointed out that she has the right to cut people off.

Ms. McAleese said if people are loud, she has the right to ask them to be quiet and at least will have control.

Ms. Lane asked if there was amplified music. Ms. McAleese said there is no amplified music outside but the music inside uses speakers.

Ms. Lane said she is looking at 2.6.9 it says amplification for electronics, amplification of sound in public areas will be denied except in special circumstances in public areas. So, none would be allowed outside.

Mr. Aller said he lives near there, that the noise is not musical and that it is "brouhaha" noise. He asked if hours could be limited; right now they are now operating in a non-compliant manner. He asked how to enforce if they are noisy after 10:00 pm.

Ms. McAuliffe said if the Commission specifies they can only use the outdoor seating until 10:00 p.m., they would have to stop at 10:00 pm. She said that DPD is the agency that would enforce it.

Mr. Aller said DPD has not been doing it for 20 years.

Ms. McAuliffe explained that DPD conducts enforcement on a complaint basis. She added that it requires someone to research the permit history on the outdoor seating area. This has occurred recently, which is why Kells is before the Commission for a change to their approval now.

Mr. Khoshdel said the vote should be broken down to those in favor of allowing the seating area to be operated until 2:00 a.m. versus 10:00 p.m.

Ms. Link pointed out that the applicant still needs the other landlord's approval.

Ms. McAuliffe said the Commission could approve the application with the condition that these approvals were submitted. She said that Kells has repeatedly obtained the adjacent landlords' written consent for the changes to the outdoor seating area; this is a minor change. She added that, in general, they are in compliance; it is just that they need one more sign-off.

Ms. Link asked what people thought and if they want to divide this into a couple votes.

Ms. Link asked how the Commission felt about seasonality.

Mr. Khoshdel pointed out that the Commission does not have much control over it.

Mr. Collins said weather is the only control.

Ms. Link asked if the Commission still wants the outdoor seating to be seasonal or not, and if it understands what “seasonal” means.

Ms. McAuliffe said she had provided definition with her staff report.

Ms. Link said it did not help to define what it means in the e Market.

Mr. Khoshdel said it means whenever the sun comes out.

Mr. Howard suggested voting on first on whether or not it should be allowed to operate 363 days and then vote on the operating time.

Ms. Patton asked which guideline applied to these issues.

Ms. Link said the Commission needed to determine if it would be an undesirable mix of uses in the Market per 2.8.1(c).

Action: I move adopt a resolution to approve the portion of the proposal for 363 days per year operation provided that we receive written consent of last property owner.

MM/SC/SL/SP

7:2:0 (Ms. Link, Mr. Howard opposed)

Ms. McAuliffe said specifically the language in Guideline 2.8 states that the Certificate of Approval granted for application for change of use will specify which if any of the previously approved uses will be permitted to continue. That would be an outdoor seating area and currently there are no restrictions on the hours so it needs to be said how that is being altered.

Mr. Aller said that we can make the proposed changes in the hours as presented to us.

Ms. McAleese said current operating hours are 11:30 am until 2:00 am.

Ms. McAuliffe said that at the time of their original application, they were only open until 10:00 pm and the Commission needs clarify it (the allowable operation hours) for the record.

Ms. McAleese said 10:00 pm was picked because they serve dinner until that time and now they are open until 11:00 pm for dinner.

Action: I make a motion to adopt a resolution approving to continue current existing permitted hours which are 11:30 am until 10:00 pm seven days a week.

MM/SC/HA/SH 6:2:1 (Ms. Link and Ms. Bierman opposed; Ms. Herron abstained,)

Ms. McAuliffe told Ms. McAleese that Kells is approved for 363 days a year and to not be operating outside past 10:00 pm but that Kells could apply to the Commission to extend that to 2:00 am.

031208.4 APPROVAL OF MINUTES: February 27, 2008
MM/SC/HA/KL 7:0:2 (Ms. Lane and Mr. Khoshdel abstained)

031208.5 REPORT OF THE CHAIR

Ms. Link thanked the outgoing Commissioners Alf Collins and Kamyar Khoshdel for their service on the Commission.

031208.6 REPORT OF STANDING COMMITTEES:

031208.7 STAFF REPORT

Ms. McAuliffe said this morning Alex Rolluda, Joanne Herron, Sara Patton were recommended for re-appointment by the subcommittee of the Seattle City Council and also the appointment of Sharron Shinbo to replace Mr. Collins and Sue Zuege replace Mr. Khoshdel. City Council will make final confirmation on Monday March 24, 2008; the new commissioner will attend the March 26, 2008 Commission meeting.

Ms. McAuliffe thanked Mr. Collins for his assistance to her on use issues over the years. She thanked Mr. Khoshdel for his loyalty and service to the Commission and for bringing the experience of a business owner.

031208.8 NEW BUSINESS
There was no new business.

The meeting was adjourned at 5:55 pm.
MM/SC/HA/SL 9:0:0

Issued: March 24, 2008

Heather McAuliffe
Commission Coordinator

