

APPROVED

**Planning & Development Committee Meeting
Minutes of January 25, 2010
City Council Chambers – 7:00 p.m.
Lorraine H. Morton Civic Center**

ALDERMAN PRESENT: D. Holmes, A. Rainey, D. Wilson, M. Wynne

ALDERMAN ABSENT: L. Jean-Baptiste

STAFF PRESENT: L. Walker, D. Marino, J. Chambers, B. Dunkley, G. Farrar, J. Brownlee

PRESIDING OFFICIAL: Ald. Wynne, Chair

DECLARATION OF QUORUM

Chair Wynne called the meeting to order at 7:05 p.m.

APPROVAL OF THE JANUARY 11, 2010 MEETING MINUTES

Ald. Rainey moved approval, seconded by Ald. Holmes. The vote was unanimous in favor of approval of the January 11, 2010 minutes.

ITEMS FOR CONSIDERATION

(P1) Ordinance 5-O-10 – Major Variance Application for 2433 Cowper Avenue

Ald. Rainey moved approval of Ordinance 5-O-10 as drafted. Ald. Wilson seconded the motion. Chair Wynne noted for the record that the special condition with this ordinance is that the applicant (Mr. Klein) shall benefit from the major variation only for the duration of the life of his mother; also the variance will terminate upon the sale of the property as well and should only be valid while Mr. Klein is in residence. **The vote was 4-0 in favor of the motion.**

(P2) Resolution 9-R-10, Building Official’s Modification of Section 1009.3 of the 2003 International Building Code as it Pertains to 415 Howard Street

Ald. Rainey moved approval, seconded by Ald. Wilson.

This building is located in Ald. Rainey’s Ward and she expressed her support for the Building Official’s determination due to practical difficulties as summarized in staff’s memorandum. She said that people are already living in the building and the existing

condition created with the stairs being one inch less than the code requirement, will not lessen the health, accessibility, life or fire safety or structural requirement.

The vote was 4-0 in favor of the motion.

ITEMS FOR DISCUSSION

(PD1) Aldermanic Reference: Report on Amended Definitions for Restaurant Type 1 and 2

This reference was made by Chair Wynne during the City Council meeting held on December 14, 2009. The previous definitions were read for the record.

Restaurant, Type 1: An establishment in which the principal use is the service of prepared food and beverages for consumption on the premises. All service of prepared and beverages for consumption on the premises shall require customers to order at a table, booth, or dining counter with service by a waiter or waitress at said table, booth, or dining counter and shall also require the use of reusable (nondisposable) flatware and dishware. Drive-through facilities are prohibited.

Restaurant, Type 2: An establishment in which the principal use is the service of prepared food and/or beverages for consumption on and/or off the premises and that is not a “restaurant, Type 1” as defined herein. This definition shall not include establishments where incidental prepared food and beverage service is accessory to a bakery, food establishment, convenience store, food store establishment, convenience store, food store establishment, meat market, or similar principal use nor shall it include cafeterias that..... Mainly fast food establishments.

Chair Wynne noted that in December, 2009, changes were made to these definitions. The current definitions are:

Restaurant, Type 1: A restaurant wherein less than thirty percent (30%) of food and beverages served is consumed off the premises, excluding food and beverages delivered directly to the residence or workplace of the consumer, and where food and beverages are not served as a drive-through facility.

Restaurant, Type 2: A restaurant where thirty percent (30%) or more of food and beverages served are consumed off-premises, excluding food and beverages delivered directly to the residence or workplace of the consumer, or where any food and beverages are served at a drive-through facility.

Chair Wynne is concerned with the potential impact of these changes. Also these changes were made without any reference from Council. She questions why this change was made and asked for staff explanation. Mr. Bill Dunkley, Zoning Administrator,

explained that these changes were made as an administrative decision for purely operational reasons and being able to have definitions concretely in determining zoning cases for new restaurant applications. He said there was a need for something in the middle of the two previous restaurant type 1 and 2 definitions in determination of the typical type of restaurants coming in today. Staff has been challenged in applying definite determination of the restaurant use because many of the new typical restaurants seem to have a more mixed format, which an administrative opinion was made that required the need for a more definitive threshold to be made. He referred to the list of the most recent restaurant applications that have come in since the text amendment was adopted and what the determination that was made for these establishments.

Chair Wynne said that she is especially concerned under the new definition where it states "30% consumed off premises. Specifically with "I Dream of Sweets" where the applicant claims that 60% of consumption will be on-premises. She noted that this specific percentage is an assumption and seems to be an apparently close number to fit under the type 1 restaurant definition. In this case, the applicant and restaurant are already in and the use has been granted. She is very concerned with the legal issues involved with such cases. Mr. Farrar agreed that such cases could be considered as a detrimental asset and he will have to review further.

Ald. Rainey referred to staff's memorandum where it states under "Further Steps" that over the next 3-4 months staff will monitor the application of the updated restaurant definitions and report back to the Planning & Development Committee with any recommendations for subsequent changes. She questions what exactly will staff monitor over this time period. Mr. Dunkley responded the 3-4 months is the typical time frame from the initial zoning application, usual internal review process, presentation before the Zoning Board of Appeals and subsequently presented for final approval before Council. Ald. Rainey stated that this too has been an on-going concern of hers with the lengthy time-frame of the entire application process. She would like to see a comparison review of what other communities application process involves and the typical time frame from beginning to end. Mr. Farrar agreed that it might be beneficial to review jurisdictional concepts in this case. He said there may be a need to recalibrate the ordinance.

Ald. Holmes asked staff's opinion in the case of I Dream of Sweets; and if they feel this restaurant should have been considered a type 2 use. Mr. Dunkley responded affirmatively that the 69% on-premise consumption is extremely border-line. He noted that this would be one of the cases where staff will monitor the use and require the applicant to come back through the process if it is determined that the use is indeed under the type 2 definition. Mr. Farrar added that legal will have to look at options for streamlining the entire application process and possibly the due process considerations that are recognized by the ZBA.

Ald. Fiske spoke on this issue in consideration that the downtown area is in her ward. She thought that there was once a special category definition for specialty use restaurants or some type of middle threshold definition that was in place before the 1993 Zoning

Ordinance. Ald. Rainey being the considered the “seasoned” Council member that was associated with City Council at that time, could not recall such a category. Ald. Fiske expressed her concern with the historical and on-going problems associated with the Burger King restaurant and its association with being considered a type 2 restaurant. She does not support the recent amendments to the type 1 and 2 definitions because she feels the old definitions give more control over the operational use of the restaurant establishments. Ald. Fiske requested to go back to the previous definitions, especially for the 1st Ward. The Committee members were in support of Ald. Fiske’s request.

Ald. Rainey motioned to restore the previous definitions of the type 1 and 2 restaurants and also encourages staff to develop a possible 3rd definition or category for the mixed use restaurants. Ald. Holmes seconded the motion. Mr. Walker suggested to the Committee that the previous definitions be restored and to incorporate some percentage figures with the two definitions for clarification purposes. Ald. Rainey agreed with this suggestion. She also feels that convenient stores be looked at because many of these uses are a big source of the problems with litter and debris.

The Committee directed staff to come back with definitions tailored to the restaurant operations including the new popular mixed use establishments. **The vote was 4-0 in favor of the motion.** Chair Wynne said that she would also like to know the normal length of time for any new restaurant application to obtain a permit.

ADJOURNMENT

With no further business, the meeting was adjourned at 7:50 p.m.

Respectfully submitted,

Jacqueline E. Brownlee