

AD HOC REPORT
Old Oak – Sidewalk Easement for Patio

Honorable Mark D. Boughton, Mayor
Common Council Members

June 25, 2012

Chairman Wetmore called the meeting to order at 5:45pm. Committee members Levy and Perkins were present. Robin Edwards, Asst. Corporation Counsel; Dennis Elpern, Director of Planning; Antonio Iadarola, P.E., Public Works Director; Sean Hearty, Director of Permitting and Zoning Officer; Farid Khouri, P.E., City Engineer and Wayne Shepperd, Chief of Staff. Joe Casimiro, petitioner and Ray Baptista, representing the petitioner and members of the public were also present.

Following introductions, Chairman Wetmore stated that the call of the meeting was to consider the request for a sidewalk easement for a patio at Old Oak Restaurant. Chairman Wetmore advised that a positive recommendation was received by the Planning Commission.

Atty. Edwards opened the discussion by stating that the committee was formed at the request of Sean Hearty to the Council on behalf of a letter submitted by Mr. Baptista on behalf of his client requesting to obtain a license from the City of Danbury to operate a seasonal, outdoor terrace on the existing sidewalk on Liberty St. A standard license agreement would be used for the purpose to enter into an agreement with the petitioner.

Antonio Iadarola advised that the proposal has been reviewed. The sidewalk is wide enough to facilitate good pedestrian flow and accommodate the request. There is an existing drain within the sidewalk and he stipulated that the grate be changed to accommodate the pedestrian traffic. Upon Mr. Iadarola's request, Mr. Baptista stated that the decorative fence would be footed to prevent drilling into the sidewalk, the fence would be removed at the end of the outdoor dining season and the area would be policed for litter and trash.

Sean Hearty expressed concern regarding the proposed awning extending over the City's right of way. It would set a bad precedent. An open air environment with umbrellas would more acceptable. Mr. Baptista offered two options. The first was to offer the opportunity of a three foot awning extension and the other, a new door with an awning over it with tables with umbrellas on the patio.

Dennis Elpern advised that a site plan showing the layout of the chairs and tables and emergency exit would be required.

Mr. Casimiro thanked everyone for their work on this project and will make Portuguese Square something that the City can be proud of.

Council member Levy spoke on the history of the Old Oak Restaurant and wished the petitioner well.

Council member Perkins requested clarification of ADA requirements. Mr. Iadarola advised that the Building Department reviews the ADA requirements as part of the plan review process. Upon the request of council member Perkins, Atty. Edwards advised that the agreement is revocable by the city and the lessee. There is a precedent set with other locations with similar outdoor areas. Any execution is subject to the satisfaction of Corporation Counsel.

Council member Levy moved to approve the license as presented in accordance with the required permits, stipulations and in accordance with the recommendations and comments of the Department Heads and further contingent upon the agreement being satisfactory to the Office of Corporation Counsel,
seconded by council member Perkins. **Motion passed by unanimous vote.**

Council member Levy moved to adjourn at 6:05pm, seconded by council member Perkins. **Motion passed by unanimous vote.**

Respectfully submitted,

Andrew Wetmore, Chairman

Warren Levy

Duane Perkins

/dg

LICENSE AGREEMENT

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THIS LICENSE is granted this ___ day of _____ 2012, by the City of Danbury, 155 Deer Hill Avenue (hereinafter "City") to Virgilio Martins and Maria Celeste Martins (owner/landlord) and Old Oak Restaurant (tenant), of the City of Danbury, County of Fairfield and State of Connecticut, (hereinafter "Licensees"):

WHEREAS, Old Oak Restaurant is a tenant of the Licensees Virgilio Martins and Maria Celeste Martins and occupies property located at 84-86 Liberty Street in Danbury, Connecticut (hereinafter the "Restaurant Property") as lessee and operates a restaurant known as Old Oak Restaurant thereon; and

WHEREAS, the City is responsible for maintenance and control of the sidewalk area adjacent to said property; and

WHEREAS, the Licensees wish to obtain a license from the City permitting Old Oak Restaurant to use a portion of said adjacent sidewalk area (approximately 175 sq. ft.) as described on Schedule A attached hereto and incorporated herein (hereinafter "Licensed Premises") for the purpose of providing additional restaurant seating to restaurant patrons.

NOW, THEREFORE, in consideration of the mutual promises, covenants, and conditions contained herein, the parties do hereby agree as follows:

1. The City does hereby grant a non-transferable, revocable license to the Licensees to allow Old Oak Restaurant to use the property described below for purposes of providing additional restaurant seating to restaurant patrons during the term of this license, subject to the further provisions hereof.
2. This license shall commence on the day first written above and shall continue, unless sooner terminated in accordance with the terms hereof, and shall continue until terminated as provided for herein, upon payment of an annual license fee of one dollar (\$1.00).
3. The Licensed Premises is shown as the hatched area on Schedule A.
4. The use of the Licensed Premises shall be limited to restaurant seating only. The Licensees shall obtain written approval from the Danbury Planning Director, or his/her designee, for the placement of any restaurant seating in the area of the Licensed Premises. Prior to making any improvements, alterations or modifications thereto, or placing any fixtures or personal property upon or above the area of the Licensed Premises, the Licensees shall submit a detailed site plan to the Danbury Planning Director, or his/her designee depicting the nature and location of the proposed improvements, alterations or modifications. All improvements, alterations or modifications shall be made in accordance with the approved plan. Prior to starting the work, the Licensees shall obtain all permits necessary from any state or local agency or department which may be required by law to make such improvements, alterations or modifications. Under no circumstances may a bar or food station be located within the Licensed Premises and no food or drinks may be dispensed to anyone except restaurant patrons seated with the Licensed Premises.
5. This license shall automatically terminate upon the expiration or termination of Old Oak Restaurant lease of the Restaurant Property. Further, either the Licensees or the City may terminate this license without obligation or liability of any kind to the other as a result of said termination, upon not less than thirty (30) days prior written notice to the non-terminating party. Notwithstanding the foregoing, the City shall have the right to terminate this license at its sole option and in its sole discretion without obligation or liability of any kind to the Licensees and with less than the aforementioned thirty (30) day's notice, in the event of an emergency or unforeseen condition if the interests of the public so require. For purposes of the termination provision of this license, the Mayor of the City shall have authority to exercise the City's right of termination on the City's behalf.
6. During the term hereof, Licensees shall take out and maintain such Comprehensive General Liability Insurance as will protect it and the City from claims from damages for personal injury, including action or omissions in the course of the use of this license property, whither such actions or omission are undertaken by the Licensees or by any contractor or subcontractor hired by or on behalf of the Licensees or any anyone directly or indirectly employed by or acting on behalf of any of the foregoing entities. The minimum limits of such insurance shall be as follows:

Bodily Injury Liability	
and	\$2,000,000.00 (combined)
Property Damage Liability	each occurrence

Prior to the execution of this license, certificates of such insurance shall be filed with the City for its review. All policies of insurance shall be subject to the approval of the City with regard to the adequacy of the protection they purport to provide. THE CITY SHALL BE NAMED AS AN ADDITIONAL INSURED ON EACH SUCH POLICY. Insurance companies providing coverage hereunder shall be licensed by the State of Connecticut or otherwise acceptable to the City. Full disclosure of all exclusions shall be provided with respect to all required coverages. All policies relating to this license shall be written so that the City shall be notified of cancellation or change at least ten (10) days prior to the effective date of such cancellation or change.

Certificates of insurance shall be filed in triplicate with the City and shall state the limits of liability and the expiration date for each policy and type of coverage. Renewal certificates covering the renewal of all policies expiring during the life of this license shall be filed with the City not less than ten (10) days before the expiration of such policies.

The Licensees agree that in the event that one or more claims are paid under policies containing an aggregate coverage limit, it shall immediately notify the City thereof and at the same time shall either reinstate the limits of said policy or policies or obtain a new policy or policies providing for full coverage in accordance with the limits established herein. Said replacement coverage shall be obtained within twenty-four (24) hours and the City shall be notified thereof within said time.

7. The Licensees agree that it shall indemnify and save harmless the City and any of its officers, agents, employees, Boards, Commissions and Representatives who may be named as co-defendants in any claim or suit, on account of any and all claims, damages, losses, judgments, litigation expenses and legal counsel fees arising out of injuries to persons (including death) sustained by or alleged to have been sustained by the officers, employees, agents, Boards, Commissions and Representatives of the City or by any officers, employees, agents of the Licensees, or by any business invitee or patron of the Licensees, or arising out of damage to property real or personal, including the occupancy of the Licensed Premises and/or the sidewalk adjacent to the Licensed Premises, alleged to have been caused in whole or in part by acts or omission of the Licensees or any business invitee of the Licensees or by anyone directly or indirectly employed or working for the Licensees, including volunteers, subcontractors, materialmen, suppliers and agents, in connection with the license or use of the Licensed Premises. The Licensees further undertake to reimburse the City for any damage to its real or personal property occurring in connection with the license or use of the licensed property by the Licensees or by any of its officers, agents or employees or any of its business invitees, unless the damage is caused by the City. The Licensees agree to immediately restore any damaged property to its original condition to the sole satisfaction and approval of the City.
8. The Licensees agree to comply with, and conform to all laws of the State of Connecticut, and to the ordinances, rules and regulations of the City and to obtain all necessary permits to make any improvements, alterations or modifications to the Licensed Premises, from any applicable authority, including but not limited to the State of Connecticut, the Department of Health, Housing & Welfare, the Fire Marshal and the Department of Planning and Zoning of the City.
9. The Licensees agree to restore the Licensed Premises to its original condition upon the termination of the license to the sole satisfaction of the City.
10. The Licensees agree that no accumulation of boxes, barrels, packages, waste paper, or other articles shall be permitted in or upon the Licensed Premises, and that it shall maintain the Licensed Premises in a neat and orderly condition.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals, and to a duplicate of the same tenor and date, this _____ day of _____ 2012.

Signed, sealed and delivered
in the presence of:

CITY OF DANBURY

Witness

By:

Mark D. Boughton, Mayor

LICENSEES

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Witness

By: _____
Virgilio Martins

Witness

By: _____
Maria Celeste Martins

Witness

By: _____
Old Oak Restaurant