



Special Use Permit #2019-0016
4610 King Street – Silver Diner

Application	General Data	
Public hearing and consideration of a request for a special use permit to establish a full-service restaurant use with outdoor dining.	Planning Commission Hearing:	May 7, 2019
	City Council Hearing:	May 18, 2019
Address: 4610 King Street	Zone:	CRMU-H/Commercial Residential mixed-use (high)
Applicant: Silver Diner Alexandria LLC	Small Area Plan:	Alexandria West

Staff Recommendation: APPROVAL subject to compliance with all applicable codes and ordinances and the recommended permit conditions found in Section III of this report.

Staff Reviewers:

Femi Adedokun, Urban Planner, femi.adedokun@alexandriava.gov

Sara Brandt-Vorel, Urban Planner, sara.brandtvorel@alexandriava.gov

Robert M. Kerns, AICP. Development Division Chief, Robert.kerns@alexandriava.gov

PLANNING COMMISSION ACTION, MAY 7, 2019: On a motion by Commissioner Lyle and seconded by Commissioner Brown, the Planning Commission voted to recommend the approval of Special Use Permit #2019-0016 subject to revisions to condition #4 and #8; and the removal of condition #9. The motion carried on a vote of 7 – 0.

Reason: The Planning Commission agreed with the staff analysis and with the recommended changes to the conditions noted below.

Condition #4: **CONDITION AMENDED BY PLANNING COMMISSION:** The **permitted** indoor hours of operation shall be **24 hours** ~~limited to between 7 a.m., and 3 a.m., daily. Meals ordered before 3 a.m., may be served, but no new patrons may be admitted, no new alcohol may be served, and all patrons must leave one hour after the closing hour.~~ (P&Z) (PC)

Condition #8: **CONDITION AMENDED BY PLANNING COMMISSION:** Outdoor dining, including all its components such as planters and barriers, shall not encroach upon the right-of-way, unless an encroachment permit is granted. The applicant shall ensure that access to the restaurant and outdoor dining is provided in accordance with building and fire requirements. The applicant shall retain a minimum 5-foot wide area of unobstructed walkway between the building face and seating area at the restaurant frontage facing King Street. **During the period of time when the outdoor dining is not operational, the outdoor seating shall be made available to the public.** (P&Z)(PC)

Condition #9: **CONDITION DELETED BY PLANNING COMMISSION:** ~~Outdoor furniture and enclosures may not be stored in front of the business and must be removed daily when the restaurant is closed to the public, and between the Monday before Thanksgiving and March 31. (P&Z)~~

Commissioner Lyle requested clarification if the outdoor dining area counting towards open space and expressed concern about applying the King Street outdoor dining standards in the West End of the City. She also expressed concerns over restricting outdoor dining during winter months, stating that recent temperature changes now allow people to dine outdoors during the winters. She also noted that she found inconsistencies in the staff report with regards to the open space discussions.

Commissioner McMahon asked for further clarification on the rooftop open spaces across the entire site and who could use such spaces.

Chair Macek asked for clarification on what was anticipated in the outdoor area during the original approval of the DSUP. He also noted that there are several locations in the City where businesses are allowed to occupy and use public open space for private dining, including Vola's on the waterfront and Lena's in Del Ray.

Vice-chair Wasowski noted that the outdoor dining would accomplish many of the goals intended for the area, including increased activity and vibrancy. She expressed concern about whether the SUP or the DSUP would take precedence in this instance.

Commissioner Lyle noted that the space was never really intended to be active and useable open space such as a playground, and so she welcomed the proposal for outdoor dining at the location as she viewed it as an excellent use of outdoor open space.

Commissioner Koenig noted the challenge of balancing regulations but stated a desire to see the space be activated as frequently as feasible.

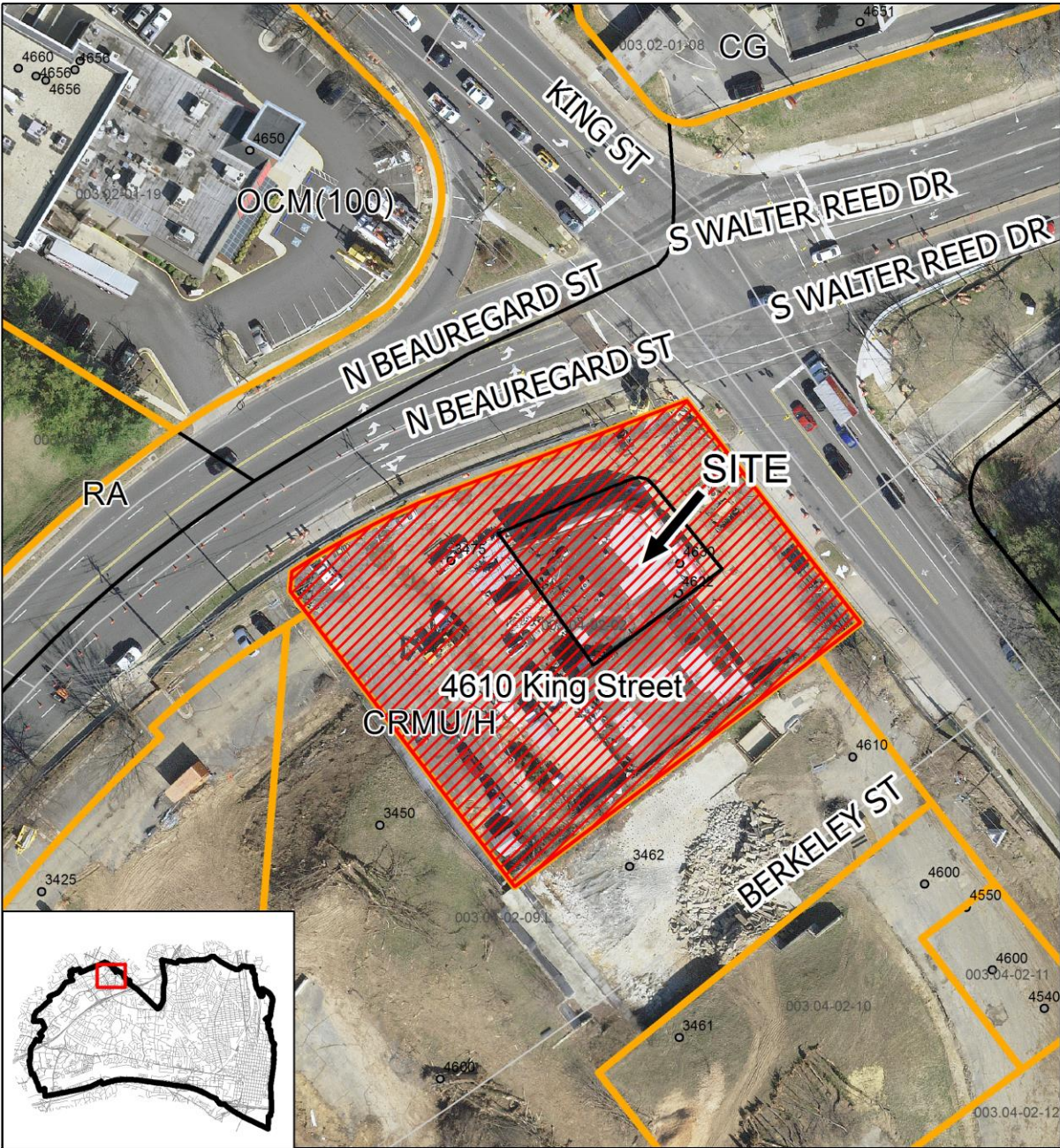
Chair Macek explained he did not think the commercial nature of a space necessarily made it incompatible to function as an open space, as long as it addressed other objectives of open space. He agreed with Director Moritz's suggested modification to allow the public to use the space outside outdoor dining hours. The Chair also suggested a modification to the indoor hours of operation to allow the indoor restaurant service to run for 24 hours, which staff and the applicant agreed was reasonable and appropriate.

Commissioner Goebel asked whether exterior speakers could be utilized; the applicant noted that these are prohibited within the existing DSUP for the site, and that a change to this restriction may be pursued if the DSUP is amended in the future.

Commissioner Brown noted that he supported Chair Macek's recommendation that the business's interior hours be expanded to 24 hours, and that he found that the outdoor space to be more useful to the site as outdoor dining than as unprogrammed open space.

Speakers:

Duncan Blair, attorney, spoke in support of the project. He noted that New Year's Day was one of the busiest days for outdoor dining for the restaurant chain in 2019. He argued that the area occupying the open space is approximately 1% of the total open space required for the site and that proposed use would make the site more vibrant and that the public would be allowed to use the seats whenever the restaurant was not serving outside. He asked that condition # 9 be removed from the staff report.



Special Use Permit #2019-0016
4610 King Street



0 30 60 120 Feet

I. REPORT SUMMARY

REQUEST

The applicant, Silver Diner Alexandria LLC, represented by Duncan Blair, attorney, requests a special use permit to operate a 300-seat restaurant with outdoor dining.

SITE DESCRIPTION

The property is located on the redevelopment site identified in the Alexandria West Small Area Plan as the Gateway at King & Beauregard. The 5.20 acres (226,671 square feet) site is located at the intersection of King Street and N. Beauregard Street and serves as a gateway parcel to the City from both Arlington and Fairfax Counties. The parcel has approximately 100 feet of frontage along King Street and 150 feet on N. Beauregard Street. The subject site is currently under construction and is poised to feature a mix of uses, including market rate and affordable residential, retail, office, and a grocery store, supplemented by open space and pedestrian friendly infrastructure and design.



The subject site is located immediately south of the City's border with Arlington County and is bound by King Street and Bolling Brook Tower to the east, N. Beauregard Street to the west, and the Bolling Brook Condominium community to the south. In addition to residential uses, the surrounding neighborhood consists of medium scale commercial offerings, and office uses along King Street, on the corner parcel at the intersection with N. Beauregard Street, and all the way west to the City boundary limits. Other key locations close by include the Northern Virginia Community College and Larchmont Village apartments located along N. Beauregard Street. In addition, the subject site is proposed as a future West End Transitway stop, located at the edge of the subject site by N. Beauregard Street.

BACKGROUND

City Council approved the site's redevelopment proposal with DSUP #2013-0001 in September of 2015. Concurrently with the approved DSUP was a Master plan Amendment #2015-0001, Rezoning #2015-0001 and a Transportation Management Plan SUP #2015-0002. The site was previously home to the Jefferson Memorial Hospital, which was demolished in 2007. The site has been under active construction since early 2017.

PROPOSAL

The applicant proposes a restaurant use within a 6,563 square foot space on the ground floor of the corner building of the site, now renamed as West Alex. The corner building is located directly adjacent the intersection of Beauregard Street and King Street and the proposed

restaurant would be situated on the corner. The diner style restaurant, part of the Silver Diner franchise, will offer a traditional American diner menu along with mixed drinks, wine and beer. The space will feature 236 indoor seats, both table and countertop, and outdoor dining seating up to 64 people. The proposed space for the restaurant was previously approved for a commercial use with DSUP #2013-001.



Figure 1: Exterior Finishes – Corner Perspective from King St. and N. Beauregard St.

The outdoor portion of the proposed restaurant would have seating to the left of the restaurant entrance, along King Street and outside of the public right-of-way. To allow enough space for outdoor dining and to preserve pedestrian access, the applicant proposes to convert a portion of their outdoor planting areas into terraces to allow the installation of tables and chairs.



Figure 2: Exterior Finishes – Aerial Perspective from King St.

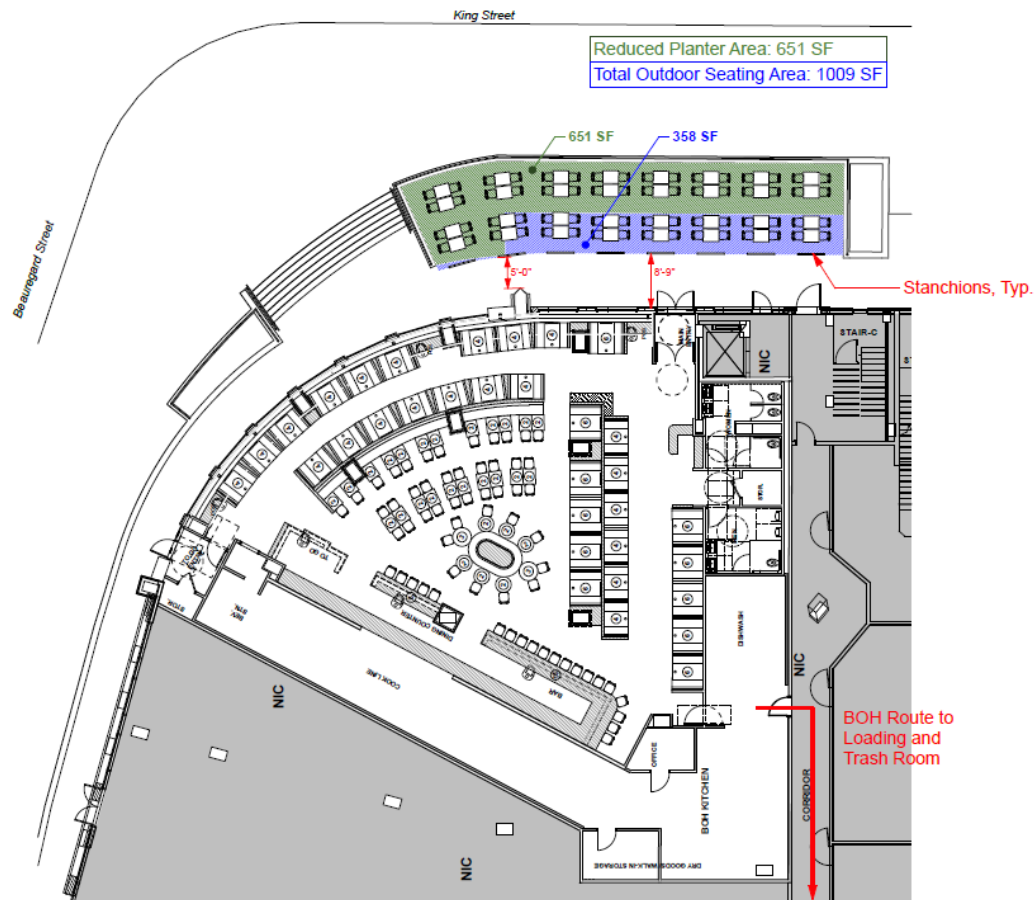


Figure 3: Restaurant Seating Plan

By converting the planting area, the applicant reduces the potential disruption to the flow of pedestrian traffic from both King Street and N. Beauregard Street and serve as open space accessible to the general public as well as restaurant patrons, when outdoor seating is not set up. More details regarding the applicant's proposal are as follows:

Hours of Operation: Indoor: 7 a.m. – 12 midnight, Sunday through Thursday
7 a.m. – 3 a.m., Friday through Saturday
Outdoor: 7 a.m. – 12 midnight, daily

Number of Seats: 236 Indoor Seats
+ 64 Outdoor Seats
Total Seating = 300

Type of Service: Dine in and carry-out service

Alcohol: On-Premise only

Employees: Fifty Employees per day

<u>Entertainment:</u>	Indoor limited live entertainment
<u>Delivery:</u>	An Independent third-party delivery service is proposed
<u>Noise:</u>	Noise levels typical of average restaurant but not to exceed those permitted under existing Alexandria City Code.
<u>Trash/Litter:</u>	Trash will be collected twice week with arrangements for more frequent collection if necessary.

PARKING

Staff does not anticipate any parking impacts related to the operation of the proposed restaurant. Per DSUP #2013-0001, a two-story underground parking garage of 865 spaces was constructed to provide adequate parking for all residents, visitors and patrons of the Gateway at King and Beauregard development proposal. To manage on-site parking and demand, the applicants team developed a shared parking management plan which identified parking demand by users and time of day in order to right-size the parking required for the site. As the uses in the Gateway site continue to evolve over time, the applicant team has managed and updated the parking management plan to account for changes in uses and parking requirements which meet the City's parking requirements.

Pursuant to Section 8-200 (A)(17) a restaurant within the enhanced transit area is required to provide a minimum of one parking space for every 1,000 square feet of space. Section 8-200(A)(17)(c) excludes the first 20 outdoor dining seats. The minimum parking requirement would therefore be seven spaces as the applicant indicates 6,563 square feet of restaurant space. Per parking management plan, the applicant will reserve 15 surface and 222 garage parking spaces, a total of 240 parking spaces to be used as shared visitor and retail parking for the entire development. This parking provision includes the seven required restaurant parking spaces, hereby meeting the minimum parking requirement for a restaurant within the enhanced transit area. The restaurants parking spaces would be located on the first level of the parking garage and would operate 24 hours a day. Restaurant patrons would be able to access the ground floor entry of the restaurant from the parking garage through an elevator located on the first level of the garage. The underground garage would be managed and operated by the property management company, and parking spaces would be provided to restaurant patrons at no cost.

ZONING/MASTER PLAN DESIGNATION

The subject site is located in the CRMU-H/Commercial residential mixed use (high) zone. Section 5-303(N) of the Zoning Ordinance allows a restaurant in the CRMU-H zone only with Special Use Permit approval unless it complies with the standards of Section 11-513(L) for administrative SUP approval. As the request exceeds the administrative SUP standards for hours of operation and total number of indoor and outdoor seats, the case must be reviewed through the full-hearing SUP process.

The proposed use is consistent with the West Alexandria Small Area Plan chapter of the Master Plan which designates the property for commercial use.

II. STAFF ANALYSIS

Staff supports the applicant's request for a restaurant with outdoor dining at 4610 King Street. The proposal for the Silver Diner would further diversify the mix of uses proposed for the West Alex development. The restaurant's proposed location and outdoor dining facing King Street, would improve the pedestrian experience along a corridor which is currently primarily auto-oriented. In addition, the proposal is in line with the goals and objectives of the Alexandria West Small Area Plan, which highlights the need to maintain a balance between residential and commercial uses. The proposed outdoor dining would occupy 1,009 SF of open space, while the entire project site would still meet the 78,494 SF open space requirement approved with DSUP #2013-0001. The proposed restaurant presents an opportunity for activating the street fronts while also supplementing the existing handful sit down restaurants along the corridor. Staff also supports the proposed 3 a.m. closing time as the proposal is not anticipated to generate noise impacts from patrons, as the restaurant and outdoor dining maintain an estimated 135-meter radius from the nearest residential building.



Figure 4: Map showing a 135-meter radius proximity from the nearest residential building

In order to ensure an improved pedestrian experience, storefront activation, and the preservation of public access, the design of the outdoor dining area and all its components, are conditioned to be substantially consistent with the King Street Outdoor Dining Guidelines. While this site falls outside the traditional boundaries of the established King Street Outdoor Dining program, the extension of the program's principles to this site on King Street will extend the balance of public-private use of outdoor space and contribute to the vibrancy of a new retail and community destination. Staff has included conditions # 5, # 6 and # 7, to regulate the

general operation of the proposed outdoor dining. Conditions #8 and # 9 have been included to replicate the programming success of outdoor dining in Old Town, by drawing from elements of the King Street Outdoor dining standards that are both appropriate for the subject site, and that ensure pedestrian access, while preserving publicly accessible open space, as envisioned in the design of the approved site plan for the corner building and the entire West Alex development in DSUP #2013-0001.

Following further discussions during the Planning Commission hearing of May 7, 2019 about the definition of open space, and its application to the subject site, the commission voted to amend the condition language of conditions # 4 and # 8, and to delete condition # 9. These changes are captured in section III of this staff report. As recommended by the planning commission, condition # 4 will permit the applicant to operate the indoor section of the restaurant for 24 hours daily, condition # 8 ensures that the applicant permits the public use of the outdoor dining area when it is not in operation, while condition # 9 was deleted as requested by the applicant.

At the Planning Commission hearing of May 7, 2019, there was discussion about the definition of open space, and its application to the subject site. Staff recommended that Condition 9 be amended to read: *Outdoor furniture and enclosures must be removed between the Monday before January 1 and March 31, unless allowed through an amendment of the open space requirements of DSUP#2013-0001.* Staff felt that this would allow the applicant use of the space for much of the year, while limiting the full commercialization of the area, unless or until the DSUP could be amended. As noted in the action, the Commission understood staff's concern, but felt that the benefits of outdoor dining activated the limited open space, which is approximately 1000 square feet.

The Commission recommended to amend the language of Conditions # 4 and # 8, and to delete Condition # 9. These changes are captured in Section III of this staff report.

As recommended by the Planning Commission, Condition # 4 would permit the applicant to operate the indoor section of the restaurant for 24 hours daily, Condition # 8 ensures that the applicant permits the public use of the outdoor dining area when it is not in operation, while Condition # 9 is proposed for deletion, as requested by the applicant.

Subject to the conditions contained in Section III of this report, staff recommends approval of the Special Use Permit request.

III. RECOMMENDED CONDITIONS

Staff recommends **approval** subject to compliance with all applicable codes and ordinances and the following conditions:

1. The Special Use Permit shall be granted to the applicant only or to any business or entity in which the applicant has a controlling interest. (P&Z)
2. The maximum number of indoor seats shall be 236. The maximum number of outdoor seats shall be 64. (P&Z)

3. The applicant shall post the hours of operation at the entrance of the business. (P&Z)
4. **CONDITION AMENDED BY PLANNING COMMISSION:** The **permitted** indoor hours of operation shall be **24 hours** ~~limited to between 7 a.m., and 3 a.m., daily. Meals ordered before 3 a.m., may be served, but no new patrons may be admitted, no new alcohol may be served, and all patrons must leave one hour after the closing hour.~~ (P&Z) **(PC)**
5. The outdoor hours of operation shall be limited to between 7 a.m., and 12 midnight, daily, and shall be cleared of customers by the closing hour. (P&Z)
6. The outdoor dining area shall be cleaned and washed at the close of each business day that it is in use. (P&Z)
7. The design of the outdoor dining area and all of its components shall be substantially consistent with the King Street Outdoor Dining Guidelines to the satisfaction of the Director of Planning and Zoning. The outdoor dining area shall not include advertising signage. (P&Z)
8. **CONDITION AMENDED BY PLANNING COMMISSION:** Outdoor dining, including all its components such as planters and barriers, shall not encroach upon the right-of-way, unless an encroachment permit is granted. The applicant shall ensure that access to the restaurant and outdoor dining is provided in accordance with building and fire requirements. The applicant shall retain a minimum 5-foot wide area of unobstructed walkway between the building face and seating area at the restaurant frontage facing King Street. **During the period of time when the outdoor dining is not operational, the outdoor seating shall be made available to the public.** (P&Z) **(PC)**
9. **CONDITION DELETED BY PLANNING COMMISSION:** ~~Outdoor furniture and enclosures may not be stored in front of the business and must be removed daily when the restaurant is closed to the public, and between the Monday before Thanksgiving and March 31.~~ (P&Z)
10. The layout of the outdoor seating shall be generally consistent with the plans submitted on March 20, 2019. (P&Z)
11. Loudspeakers outside and musicians are prohibited, unless allowed through an amendment of condition # 129 and # 130 of DSUP #2013-0001. Indoor limited live entertainment shall be permitted for restaurant patrons during the hours of 7 a.m., to 12 midnight, daily. All entertainment shall be subordinate to the principal function of the restaurant as an eating establishment and no amplified sounds shall be heard from the property line. The use must comply with the city's noise ordinance. (P&Z) (T&ES)
12. Design of all signage shall be subject to specifications in section G of DSUP #2013-0001.

13. On-premises alcohol service shall be permitted, consistent with a valid Virginia ABC license. (P&Z)
14. The applicant shall conduct employee training sessions on an ongoing basis, including as part of any employee orientation, to discuss all SUP provisions and requirements and on how to prevent underage sales of alcohol. (P&Z)
15. No food, beverages, or other material shall be stored outside, with the exception of materials specified in other conditions. (P&Z)
16. All windows shall remain transparent to the satisfaction of the Director of Planning and Zoning. The placement or construction of items that block the visibility through windows of the interior of the commercial space from the street and sidewalk, including but not limited to walls, window film, storage cabinets, carts, shelving, boxes, coat racks, storage bins, and closets, shall be prohibited, unless otherwise approved. This is not intended to prevent retailers from displaying their goods in display cases that are oriented towards the street frontage. (P&Z)
17. Exterior power washing of the building shall not be completed using any kind of detergents. (T&ES)
18. If used cooking oil is stored outside, the drum shall be kept securely closed with a bung (a secure stopper that seals the drum) when not receiving used oil, it shall be placed on secondary containment, and it shall be kept under cover to prevent rainwater from falling on it. (T&ES)
19. Trash and garbage shall be stored inside or in sealed containers that do not allow odors to escape, invasion by animals, or leaking. No trash or debris shall be allowed to accumulate outside of those containers. Outdoor containers shall be maintained to the satisfaction of the Directors of Planning & Zoning and Transportation & Environmental Services, including replacing damaged lids and repairing/replacing damaged dumpsters. (P&Z) (T&ES)
20. Kitchen equipment, including floor mats, shall not be cleaned outside, nor shall any cooking residue or wash water be washed into the streets, alleys or storm sewers. (T&ES)
21. The applicant shall control cooking odors, smoke and any other air pollution from operations at the site and prevent them from leaving the property or becoming a nuisance to neighboring properties, as determined by the Department of Transportation & Environmental Services. (T&ES)
22. All waste products including but not limited to organic compounds (solvents and cleaners) shall be disposed of in accordance with all local, state and federal ordinances or regulations. (T&ES)

23. Supply deliveries, loading, and unloading activities shall not occur between the hours of 11:00pm and 7:00am. (T&ES)
24. The applicant shall require its employees who drive to use off-street parking. (T&ES)
25. The applicant shall encourage its employees to use public transportation to travel to and from work. The business shall contact Go Alex at goalex@alexandriava.gov for information on establishing an employee transportation benefits program. (T&ES)
26. The applicant shall provide information about alternative forms of transportation to access the site, including but not limited to printed and electronic business promotional material, posting on the business website, and other similar methods. Contact Go Alex at goalex@alexandriava.gov for more information about available resources. (T&ES)
27. Litter on the site and on public rights-of-way and spaces adjacent to or within 75 feet of the premises shall be picked up at least twice a day and at the close of business, and more often if necessary, to prevent an unsightly or unsanitary accumulation, on each day that the business is open to the public. (T&ES)
28. The Director of Planning and Zoning shall review the special use permit after it has been operational for one year, and shall docket the matter for consideration by the Planning Commission and City Council if (a) there have been documented violations of the permit conditions which were not corrected immediately, constitute repeat violations or which create a direct and immediate adverse zoning impact on the surrounding community; (b) the Director has received a request from any person to docket the permit for review as the result of a complaint that rises to the level of a violation of the permit conditions, or (c) the Director has determined that there are problems with the operation of the use and that new or revised conditions are needed. (P&Z)

STAFF: Robert Kerns, AICP, Division Chief, Department of Planning and Zoning
Sara Brandt-Vorel, Urban Planner III
Femi Adelakun, Urban Planner II

Staff Note: In accordance with section 11-506(c) of the zoning ordinance, construction or operation shall be commenced and diligently and substantially pursued within 18 months of the date of granting of a special use permit by City Council or the special use permit shall become void.

IV. CITY DEPARTMENT COMMENTS

Legend: C - code requirement R - recommendation S - suggestion F - finding

Transportation & Environmental Services:

- R-1 Chemicals, detergents, cleaners and used cooking oil shall be stored inside the building. (T&ES)
- R-2 The use must comply with the city's noise ordinance. Amplified sound for outdoor dining will be in the form of background music only and no amplified sound shall be audible at the property line after 11:00 pm. (T&ES)
- R-3 The applicant shall encourage patrons to park off-street through the provision of information about nearby garages on advertising and on the restaurant's website. (T&ES)

City Code Requirements:

- C-1 The applicant shall comply with the City of Alexandria's Solid Waste Control, Title 5, Chapter 1, which sets forth the requirements for the recycling of materials (Sec. 5-1-99). In order to comply with this code requirement, the applicant shall provide a completed Recycling Implementation Plan (RIP) Form within 60 days of SUP approval. Contact the City's Recycling Program Coordinator at (703) 746-4410, or via e-mail at commercialrecycling@alexandriava.gov, for information about completing this form. (T&ES)
- C-2 The applicant shall comply with the City of Alexandria's Noise Control Code, Title 11, Chapter 5, which sets the maximum permissible noise level as measured at the property line. (T&ES)
- C-3 Section 5-1-42- Collection by Private collectors. (c) Time of collection. Solid waste shall be collected from all premises not serviced by the city at least once each week. No collections may be made between the hours of 11:00 p.m. and 7:00 a.m. (6:00 a.m. from May 1, through September 30) if the collection area is less than 500 feet from a residential area. (T&ES)

Code Enforcement:

- C-1 A building permit, plan review and inspections are required prior to the start of construction. (Code Administration)

Fire:

- C-1 Due to occupant load, a fire prevention permit is required for this assembly occupancy.

Health Department:

- C-1 An Alexandria Health Department Permit is required for all regulated facilities. A permit shall be obtained prior to operation, and is not transferable between one individual, corporation or location to another. Permit application and fee are required.
- C-2 Construction plans shall be submitted to the Health Department located at 4480 King Street and through the Multi-Agency Permit Center. Plans shall be submitted and approved by the Health Department prior to construction. There is a \$200.00 plan review fee payable to the City of Alexandria.
- C-3 Construction plans shall comply with Alexandria City Code, Title 11, Chapter 2, The Food Safety Code of the City of Alexandria. Plans shall include a menu of food items to be offered for service at the facility and specification sheets for all equipment used in the facility, including the hot water heater.
- C-4 A Food Protection Manager shall be on-duty during all operating hours.
- C-5 The facility shall comply with the Virginia Indoor Clean Air Act and the Code of Alexandria, Title 11, Chapter 10, Smoking Prohibitions.
- C-6 In many cases, original wooden floors, ceilings and wall structures in historical structures may not be suitable for food service facilities. Wood materials shall be finished in a manner that is smooth, durable, easily-cleanable, and non-absorbent.
- C-7 Facilities engaging in the following processes may be required to submit a HACCP plan and/or obtain a variance: Smoking as a form of food preservation; curing/drying food; using food additives to render food not potentially-hazardous; vacuum packaging, cook-chill, or sous-vide; operating a molluscan shellfish life-support system; sprouting seeds or beans; and fermenting foods.
- C-8 Bar sections located within an open-air dining area will be limited in preparation activities. The bar section shall be placed in a location that reduces the potential adulteration of beverages served at the establishment. To the maximum extent possible, the location shall be free from dust, dirt, vermin, animals, birds, overhead leakage, or other contamination. Overhead protection shall be provided that fully extends over all beverages, condiments, utensil holding facilities and equipment associated with the bar section. All food, other than beverages, shall be prepared inside an approved, fully enclosed food establishment. No food preparation shall take place in the outdoor dining area. If the facility intends to have food preparation outdoors then the submission of construction plans and a plan review process are required.

Parks and Recreation:

No comments received

Police Department:

No comments received