

EXHIBIT NO. 1

15  
5-12-01

Docket Item #15  
SPECIAL USE PERMIT #2001-0014

Planning Commission Meeting  
May 1, 2001

**ISSUE:** Consideration of a review of a special use permit for a restaurant.

**APPLICANT:** Levi T. Durham, Jr.

**LOCATION:** 1104 Queen Street  
Levi's Restaurant

**ZONE:** CD/Commercial Downtown

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**PLANNING COMMISSION ACTION, MAY 1, 2001:** On a motion by Ms. Fossum, seconded by Mr. Komoroske, the Planning Commission voted to recommend approval of the request, subject to compliance with all applicable codes, ordinances and staff recommendation. The motion carried on a vote of 7 to 0.

Reason: The Planning Commission agreed with the staff analysis. Members of the Commission expressed concern about the double parking of vehicles on Queen Street in front of the restaurant which they have witnessed and encouraged the restaurant manager to monitor this situation and to discourage patrons from double parking.

Speakers:

Winston Gilchrist, general manager of the restaurant, stated that he will file an application to allow delivery service and stated that the Crime Prevention work required by Condition #22 had occurred at 10:00 a.m. on May 1, 2001.

Mark Latsios, on behalf of the family that owns the property, stated that he was responsible for Levi's restaurant coming to this location because he wanted a use that was compatible with the neighborhood. He stated that he thought delivery service was critical to the long-term survival of the restaurant and that he would assist Mr. Gilchrist in filing the appropriate application.



**SUP #2001-0014**

**05/01/01**



STAFF RECOMMENDATION:

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) (SUP #2000-0115)
2. No seating shall be provided. (P&Z) (SUP #2001-0115)
3. No outside dining facilities shall be located on the premises. (P&Z) (SUP #2000-0115)
4. No grilling or other food preparation is permitted outside. (P&Z) (SUP #2000-0115)
5. No live entertainment shall be provided at the restaurant. (P&Z)(SUP #2000-0115)
6. No music or amplified sound shall be audible at the property line. (P&Z)(SUP #2000-0115)
7. The hours of operation shall be limited from 5:30 a.m. to 8:00 p.m. daily, with the understanding that the applicant will open for business at 6:00 a.m. (CC) (SUP #2000-0115)
8. The applicant shall post the hours of operation at the entrance to the restaurant.(P&Z) (SUP #2000-0115)
9. No delivery service shall be provided. (P&Z) (SUP #2000-0115)
10. The applicant's employees shall not serve patrons who double park on Queen Street in their cars. (PC) (SUP #2000-0115)
11. The applicant shall prominently post a sign inside the restaurant stating that it is prohibited by the City from serving customers who double park on Queen Street. (P&Z) (SUP #2000-0115)

12. No alcohol service in the restaurant and no off-premise sales of alcohol are permitted. (P&Z) (SUP #2000-0115)
13. No public telephones shall be located on the property. (P&Z) (SUP #2000-0115)
14. No food, beverages, or other material shall be stored outside. (P&Z) (SUP #2000-0115)
15. Trash and garbage shall be placed in sealed containers which do not allow odors to escape and shall be stored inside or in a closed container which does not allow invasion by animals. No trash and debris shall be allowed to accumulate on-site outside of those containers. (P&Z) (SUP #2000-0115)
16. 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. (P&Z) (SUP #2000-0115)
17. The applicant shall install at least one trash container inside the restaurant for customers' use. (P&Z) (SUP #2000-0115)
18. The applicant shall obtain, at its expense, one city trash container model 2701-SP, for installation on the adjacent right-of-way and shall contact the Solid Waste division of T&ES at (703) 751-5130 for information. (T&ES) (SUP #2000-0115)
19. Kitchen equipment shall not be cleaned outside, nor shall any cooking residue be washed into the streets, alleys or storm sewers. (T&ES) (SUP #2000-0115)
20. The applicant shall control cooking odors and smoke from the property to prevent them from becoming a nuisance to neighboring properties, as determined by the Department of Transportation and Environmental Services. (T&ES) (SUP #2000-0115)
21. The applicant shall require that its employees who drive to work use off-street parking. (P&Z) (SUP #2000-0115)

22. The applicant shall contact the Crime Prevention Unit of the Alexandria Police Department for a security survey and a robbery awareness program for all employees prior to operation. (Police) (SUP #2000-0115)
23. Condition deleted. (CC) (SUP #2000-0115)
24. **CONDITION AMENDED BY STAFF:** The special use permit shall be reviewed by Planning Commission and City Council in ~~six months~~ one year. ~~(CC)~~ (SUP #2000-0115) ~~(P&Z)~~
25. **CONDITION ADDED BY STAFF:** The applicant shall screen the dumpster within one year of approval to the satisfaction of the Director of Planning and Zoning. (P&Z)

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**Staff Note:** Meals ordered before the closing hour may be served, but no new patrons may be admitted may be served after the closing hour, and all patrons must leave by one hour after the closing hour.

DISCUSSION:

1. This applicant, Levi T. Durham, Jr., is before the Planning Commission for a review of the existing restaurant located at 1104 Queen Street.
2. The subject property is one lot of record with 60 feet of frontage on Queen Street, 40 feet of frontage on North Henry Street and a total lot area of 2,400 square feet. The site is developed with a one story building, occupied by three businesses, including a restaurant, a barber shop, and Sykes Auto Machine Inc. The property is located in the Parker-Gray Historic District.

To the north and east of the site is residences. To the west of the site are several barber shops and beauty salons. To the south of the site is Liberation Books.

3. A carryout restaurant operated in this location for many years, predating the special use permit requirement for restaurants, and was therefore considered grandfathered. On November 18, 2000, City Council granted Special Use Permit #2000-0115 to the applicant permitting earlier hours of operation than allowed under the grandfathered restaurant rights. The applicant's request to provide delivery service was not approved by Council, and Council suggested that the applicant could return to Council at the six month review with a better developed plan for the delivery operation, including the provision of parking spaces for the delivery vehicles. Staff has not received any information or plans from the applicant regarding delivery service.
4. As approved by Council, the restaurant offers barbecue, ribs, fresh fish, macaroni and cheese, collard greens and similar selections. No alcoholic beverages are offered. No seats are allowed.
5. The restaurant's approved hours of operation are 5:30 a.m. to 8:00 p.m. daily, with the understanding that the applicant will open for business at 6:00 a.m. During staff's inspection of the property, the manager advised that the restaurant has not yet begun operating in the morning but hopes to do so in the near future.
6. On March 28, 2001, staff made an inspection of the subject property to determine if the applicant was in compliance with the conditions of the special use permit. Staff observed cardboard boxes and plastic containers that formerly held frying oil and barbeque sauce stacked adjacent to three full trash containers, a violation of Condition #15 which requires that all trash be placed in sealed containers or stored inside the restaurant. Staff also observed a stainless steel fryer stored adjacent to the trash containers, a violation of Condition #14 which prohibits the outdoor storage of food, beverages and other material.

Staff issued a citation for the violations and spoke with the manager at length about the necessity for additional trash pick-ups or trash containers.

Staff also spoke with the manager regarding Condition #21 that requires the applicant to require that its employees park off the street. In response to questioning by staff, the manager stated that he parks in a handicap parking space on the street and that he has the proper parking permits to allow him to park there. Staff advised him to secure a handicap parking space off the street in order to comply with language of the condition.

7. During its inspection, staff did not observe the new City standard trash container required by Condition #18. Staff spoke with the manager who advised us that he had been told by the Solid Waste division that he did not need to provide for the installation of the container because there is an existing trash container at the corner of Queen and Henry Streets. Planning staff contacted T&ES and was advised that because the restaurant offers carry-out service, T&ES staff continue to believe that an additional trash container is necessary in this location. Staff has contacted the applicant and advised him of this determination.
8. Code Enforcement staff have advised us that the applicant is currently working to resolve the code issues described in the Code comments (see attached comments).
9. As to the requirement that the applicant contact the Police for a robbery awareness program and security survey, the Police have advised us that the applicant was not able to meet them for a previously scheduled appointment. Staff has advised the applicant to contact the Police Department to make another appointment for the programs.
10. Zoning: The subject property is located in the CD/Commercial downtown zone. Section 4-503(W) of the zoning ordinance allows a restaurant in the CD zone only with a special use permit.
11. Master Plan: The proposed use is consistent with the Braddock Road Metro Station small area plan chapter of the Master Plan which designates the property for commercial downtown uses.

STAFF ANALYSIS:

Staff has no objection to the continued operation of the restaurant located at 1104 Queen Street. However, because of the violations noted above and because the restaurant has not been open during the morning hours which may be disruptive to adjacent residents, staff has included a one year review of the restaurant by the Planning Commission and City Council.

During its inspection, staff observed that the applicant's trash containers are located in a visually prominent location adjacent to the building and recommends that they be screened to the satisfaction of the Director of Planning and Zoning.

With these conditions, staff recommends approval of the special use permit.

STAFF: Eileen P. Fogarty, Director, Department of Planning and Zoning;  
Barbara Ross, Deputy Director;  
Kathleen Beeton, Urban Planner.

CITY DEPARTMENT COMMENTS

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

Transportation & Environmental Services:

F-1 No objections or additional recommendations.

Code Enforcement:

- F-1 The following comments were made with SUP2000-00115 and were not complied with as of this date.
- C-1 Alterations to the existing structure must comply with the current edition of the Uniform Statewide Building Code (USBC).
- C-2 A fire prevention code permit is required for the proposed operation. An egress plan showing fixture location, aisles and exit doors shall be submitted for review with the permit application.
- C-3 Alterations to the existing structure and/or installation and/or altering of equipment therein requires a building permit. Four sets of plans, bearing the signature and seal of a design professional registered in the Commonwealth of Virginia, must accompany the written application. The plans must include all dimensions, construction alterations details, kitchen equipment, electrical, plumbing, and mechanical layouts and schematics.
- C-4 When a change of use requires a greater degree of structural strength, fire protection, exit facilities or sanitary provisions, a construction permit is required.
- C-5 This structure contains mixed use groups and is subject to the mixed use and occupancy requirements of VUSBC 313.0.
- C-6 Required exits, parking, and accessibility for persons with disabilities must be provided to the building.

- C-7 The following code requirements apply where food preparation results in the development of grease laden vapors:
- (a) All cooking surfaces, kitchen exhaust systems, grease removal devices and hoods are required to be protected with an approved automatic fire suppression system.
  - (b) A grease interceptor is required where there is drainage from fixtures and equipment with grease-laden waste located in food preparation areas of restaurants. Food waste grinders can not discharge to the building drainage system through a grease interceptor.

Health Department:

- F-1 No objection to continued use.

Police Department:

- F-1 To date the security survey and robbery awareness program have not been completed. On December 15, 2000 an officer from the Crime Prevention Unit went to the business to complete the survey and robbery awareness program. The owner was not able to meet the officer for the scheduled appointment.

APPLICATION for SPECIAL USE PERMIT # 2001-0014

[must use black ink or type]

PROPERTY LOCATION: 1104 QUEEN ST

TAX MAP REFERENCE: 64.03-04-18 ZONE: CD

APPLICANT Name: Levi T DURHAM, JR.

Address: \_\_\_\_\_

PROPERTY OWNER Name: \_\_\_\_\_

Address: \_\_\_\_\_

PROPOSED USE: Review of Restaurant "LEVI'S"

**THE UNDERSIGNED** hereby applies for a Special Use Permit in accordance with the provisions of Article XI, Section 11-500 of the 1992 Zoning Ordinance of the City of Alexandria, Virginia.

**THE UNDERSIGNED**, having obtained permission from the property owner, hereby grants permission to the City of Alexandria to post placard notice on the property for which this application is requested, pursuant to Article XI, Section 11-301(B) of the 1992 Zoning Ordinance of the City of Alexandria, Virginia.

**THE UNDERSIGNED** hereby attests that all of the information herein provided and specifically including all surveys, drawings, etc., required to be furnished by the applicant are true, correct and accurate to the best of their knowledge and belief. The applicant is hereby notified that any written materials, drawings or illustrations submitted in support of this application and any specific oral representations made to the Planning Commission or City Council in the course of public hearings on this application will be binding on the applicant unless those materials or representations are clearly stated to be non-binding or illustrative of general plans and intentions, subject to substantial revision, pursuant to Article XI, Section 11-207(A)(10), of the 1992 Zoning Ordinance of the City of Alexandria, Virginia.

\_\_\_\_\_  
*Print Name of Applicant or Agent*

\_\_\_\_\_  
*Signature*

\_\_\_\_\_  
*Mailing/Street Address*

\_\_\_\_\_  
*Telephone #*

\_\_\_\_\_  
*Fax #*

\_\_\_\_\_  
*City and State*

\_\_\_\_\_  
*Zip Code*

\_\_\_\_\_  
*Date*

=====**DO NOT WRITE BELOW THIS LINE - OFFICE USE ONLY**=====

Application Received: \_\_\_\_\_

Date & Fee Paid: \_\_\_\_\_ \$ \_\_\_\_\_

Legal Advertisement: \_\_\_\_\_

Property Placard: \_\_\_\_\_

ACTION - PLANNING COMMISSION: \_\_\_\_\_

ACTION - CITY COUNCIL: \_\_\_\_\_



ALEXANDRIA DEPARTMENT OF  
PLANNING AND ZONING  
301 King Street, Room 2100  
Alexandria, Virginia 22314

**NOTICE OF VIOLATION**

YOU ARE CHARGED WITH VIOLATING THE  
ALEXANDRIA, VIRGINIA ZONING ORDINANCE

03/28/01 Wednesday 11:30  
Date ticket served Day of Week Time (AM/PM)

Location of Violation: 1104 Queen St.  
Levi's Restaurant

Ord. Section: 11-505

Description of Violation: Violation of  
SUP # 2000-0115 conditions  
#14 + #15 regarding outdoor  
storage and prohibition of  
trash & garbage to be stored  
outside; no trash is permitted  
to accumulate on site

Penalty \$: 50.00  
 1st  2nd  3rd/MORE

IF THE VIOLATION IS NOT CORRECTED BY  
10 days AN ADDITIONAL MONETARY  
PENALTY WILL BE ASSESSED. 4/1/01

Inspector's Signature: [Signature] ID Number: [Number]

I personally observed or investigated the commission of the  
violation noted above and/or violation was based upon signed  
affidavit.

- VIOLATORS COPY - WHITE
- CITY ATTORNEY COPY - YELLOW
- FINANCE COPY - PINK
- PLANNING AND ZONING COPY - ORANGE

SUP 2000-0115

Z-01

TICKET NO. 2162

NOTICE SERVED ON:  
NAME: LAST FIRST MIDDLE  
Gibbert Winston

PROPERTY OWNER  
 COMPANY  
NAME  
POSITION

ADDRESS  
CITY/TOWN STATE ZIP

SIGNATURE DATE

I hereby acknowledge receipt of this Notice of  
Violation. Signature is not an admission of guilt.

PERSON REFUSED TO SIGN DATE

**CERTIFICATE OF SERVICE**

Mailed/posted a true copy of this notice to the last  
known home or business address of the respondent  
or the respondent's agent

Name of Person or Business Served  
Address of Service  
City/State

Posted true copy of this notice at the site of the  
infraction

The undersigned states that he/she is an employee  
of the City of Alexandria Department of Planning  
and Zoning and knows this Certificate of Service to  
be true to the best of his/her knowledge.

Signature  
Print Name  
Date Phone #

**WARNING**

YOU ARE REQUIRED TO RESPOND TO THIS NOTICE  
OF VIOLATION WITHIN 15 DAYS OF THE DATE OF  
SERVICE IN ONE OF THE FOLLOWING WAYS

1. TO PAY PENALTY AND WAIVE YOUR RIGHT TO A  
HEARING:

- Check the "Admit Violation" or "No Contest" box below;
- Make personal check, cashier's check, certified check or money order payable to City of Alexandria. Do not send cash through the mail;
- Print violation notice number on the check or money order;
- Payment may be made by mail, or in person, at the Treasury Office, City Hall, 301 King Street, Room 1510, Alexandria, Virginia, between the hours of 8:00 a.m. - 5:00 p.m., Monday-Friday, phone 703-838-4949.

2. TO REQUEST A COURT HEARING:

- Check the "Contest in Court" box below and:  
(a) Mail this completed notice to the Office of the City Attorney, City Hall, Suite 1300, 301 King Street, Alexandria, Virginia, 22314; or  
(b) Appear in person or by an authorized representative, at the above address between the hours of 8:00 a.m. - 5:00 p.m., Monday-Friday, phone 703-838-4433.

- If you wish to contest this violation a date will be set for trial in the General District Court of Alexandria, Virginia. Failure to appear in court on the date set for trial, unless prior approval has been granted by a judge of that court, will result in the entry of a default judgement against you.

3. TO CONTEST THE INTERPRETATION OF THE  
ORDINANCE:

- You have the right to appeal the interpretation of the zoning ordinance upon which this violation is based to the Board of Zoning Appeals within 30 days in accordance with 15.2-2311 of the Code of Virginia. The interpretation shall be final and unappealable if not appealed within 30 days.

FOR INFORMATION CONCERNING THIS TICKET CALL  
PLANNING AND ZONING AT 703-838-4688

FAILURE TO RESPOND AS PROVIDED ABOVE WILL RESULT  
IN THE ISSUANCE OF A SUMMONS TO APPEAR IN COURT  
AND ANSWER TO THE VIOLATION FOR WHICH THIS NOTICE  
WAS ISSUED

YOU MUST COMPLETE AND SIGN THIS  
CERTIFICATION:

ADMIT VIOLATION  NO CONTEST  CONTEST IN COURT

Name (print)  
Street Address  
City State Zip

I hereby certify under penalty of law, that I have  
answered as indicated above, and corrected or made  
substantial efforts to correct the violation that I have  
admitted or for which I have pleaded no contest.

Signature Date

SUP 2001-0014

APPLICATION for SPECIAL USE PERMIT # 2001-0014

15

[must use black ink or type]

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*Date*

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Date & Fee Paid: \_\_\_\_\_ \$ \_\_\_\_\_  
Property Placard: \_\_\_\_\_

ACTION - PLANNING COMMISSION: 5-1-01 Recommend Approval 7-0

ACTION - CITY COUNCIL: 5/12/01PH -- See attached.

**REPORTS AND RECOMMENDATIONS OF THE CITY MANAGER (continued)**

City Council held and concluded the public hearing on the Draft One-Year Action Plan for Housing and Community Development for FY 2002, which includes the City's application for Federal Fiscal Year 2001 funding for \$1,243,000 in Community Development Block Grant (CDBG) monies and \$672,000 in Home Investment Partnerships Program (HOME) monies; and docketed the Action Plan and Community Development block Grant and Home Investment Partnerships Program applications for final Council approval on May 22, 2001.  
Council Action: \_\_\_\_\_

**REPORTS OF BOARDS, COMMISSIONS AND COMMITTEES (continued)****Planning Commission (continued)**

14. DEVELOPMENT SPECIAL USE PERMIT #2000-0051  
124 S WEST ST  
Public Hearing and Consideration of a request for a development special use permit, with site plan, to construct an office building, with waiver of zone transition setback requirement, increase in permitted floor area ratio and modification to crown coverage requirements; zoned CD/Commercial Downtown. Applicant: Riverport Land Company, by Duncan W. Blair, attorney. (#9 4/21/01)

COMMISSION ACTION: Recommend Denial 3-3-1

City Council overturned the Planning Commission recommendation and approved the application with all original staff recommendations, intact, subject to the alley agreements as outlined in the exchange of letters dated May 8 and May 9, 2001, between Duncan Blair and Skip Maginniss, and with a requirement that the developer at least explore with the Upper King Street Civic Association, the potential of siting a bench in the pedestrian plaza.  
Council Action: \_\_\_\_\_

15. SPECIAL USE PERMIT #2001-0014  
1104 QUEEN ST  
LEVI'S RESTAURANT  
Public Hearing and Consideration of a special use permit review for a restaurant; zoned CD/Commercial Downtown. Applicant: Levi T. Durham, Jr.

COMMISSION ACTION: Recommend Approval 7-0

City Council approved the Planning Commission recommendation **with the following amendments: amended condition #25 by changing one year to ninety days, which condition now reads as follows: "25. The applicant shall screen the dumpster within ninety days of approval to the satisfaction of the Director of Planning and Zoning.";** and added the staff note as condition #26 which reads: **"26. Meals ordered before the closing hour may be served, but no new patrons may be admitted after the closing hour, and all patrons must leave by one hour after the closing hour."**  
Council Action: \_\_\_\_\_