

EXHIBIT NO. 1

11
6-14-03

Docket Item #13
SPECIAL USE PERMIT #2003-0041

Planning Commission Meeting
June 3, 2003

ISSUE: Consideration of a change of ownership and review for a special use permit to operate a restaurant.

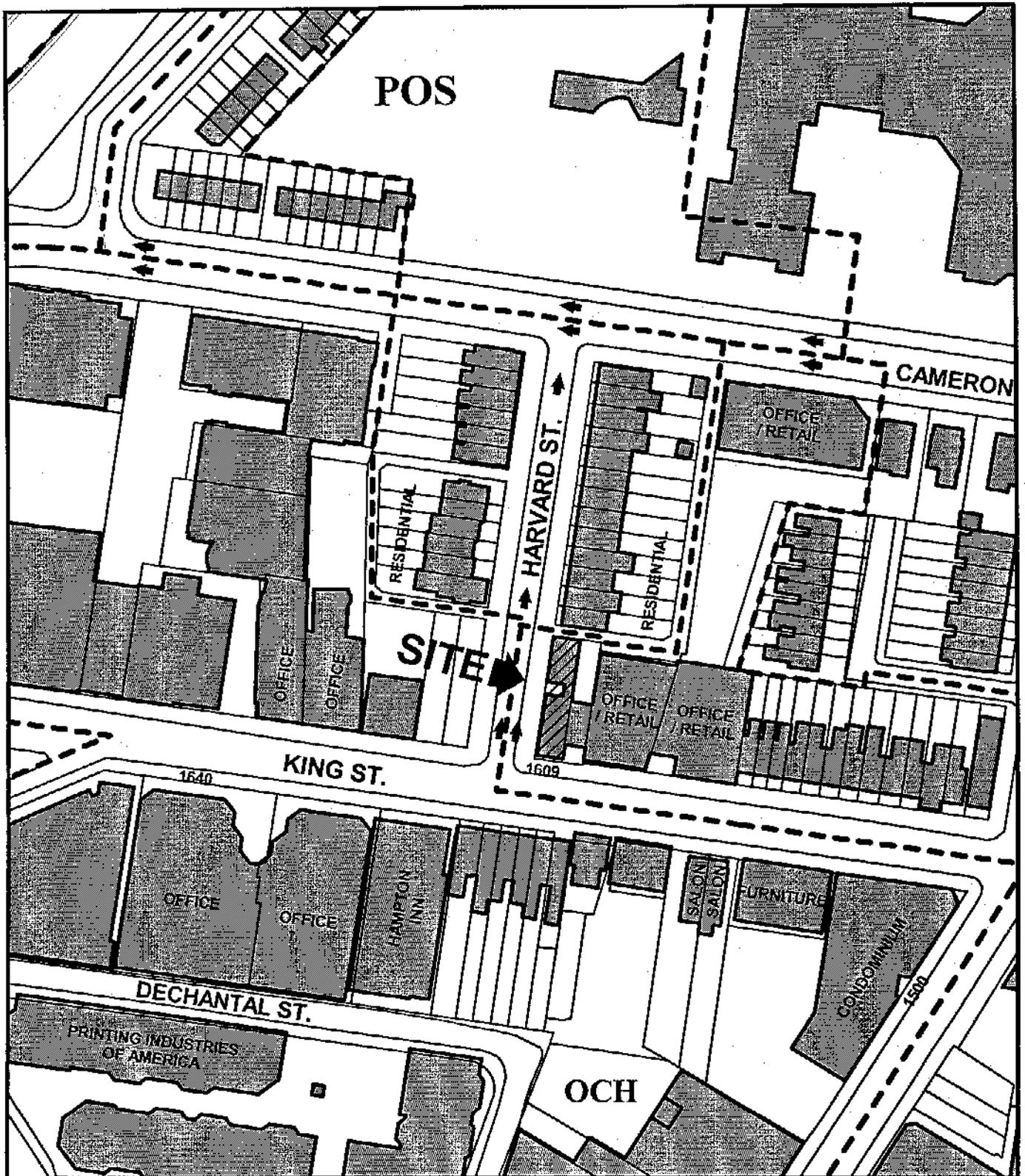
APPLICANT: Eun Joo Park
Uptowner Café

LOCATION: 1609 King Street

ZONE: CD/Commercial Downtown

PLANNING COMMISSION ACTION, JUNE 3, 2003: By unanimous consent, the Planning Commission recommended approval of the request, subject to compliance with all applicable codes, ordinances and staff recommendations.

Reason: The Planning Commission agreed with the staff analysis.



SUP #2003-0041

06/03/03



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 corporation in which the applicant has a controlling interest. (P&Z) (SUP #96-0159)
2. Indoor seating shall be provided for no more than a total of 30 patrons. Outdoor seating may be provided for no more than a total of 14 patrons as depicted on the applicant's plan. (P&Z) (SUP #2000-0116)
3. Live entertainment shall be limited to acoustic, non-amplified music. Microphones shall not be used. Advertising that features entertainment as a destination is prohibited. No admission or cover fee shall be charged. (P&Z) (SUP #96-0159)
4. The hours of operation shall be limited to: 6:00 A.M. to 10:00 P.M. on Sundays; 6:00 A.M. to 11:00 P.M. Monday through Friday; and 6:00 A.M. to 11:00 P.M. on Saturdays. The hours of operation for the outdoor dining area shall be limited to 8:00 A.M. to 9:00 P.M. daily. The outdoor dining area shall be cleared of all diners by 9:00 P.M. and shall be cleaned and washed by 10:00 P.M. (P&Z) (SUP #2000-0116)
5. The applicant shall post the hours of operation at the entrance to the restaurant. (P&Z) (SUP #96-0159)
6. No alcoholic beverages shall be sold. (P&Z) (SUP #96-0159)
7. No food, beverages, or other material shall be stored outside. (P&Z) (SUP #96-0159)
8. 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 #96-0159)
9. 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 #96-0159)

10. Kitchen equipment shall not be cleaned outside, nor shall any cooking residue be washed into the streets, alleys or storm sewers. (T&ES) (SUP #96-0159)
11. No amplified sound shall be audible at the property line. (P&Z) (SUP #96-0159)
12. The applicant shall require that his employees who drive to work use off-street parking. (P&Z) (SUP #99-0156)
13. Condition deleted. (P&Z) (SUP #99-0159)
14. The new applicant shall contact the Crime Prevention Unit of the Alexandria Police Department for a security survey and robbery awareness program. (Police) (SUP #99-0156)
15. **CONDITION MAINTAINED BY STAFF:** The Director of Planning and Zoning shall review the special use permit one year after approval 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, (b) the director has received a request from any person to docket the permit for review as a result of a complaint that rises to the level of a violation, 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)
16. **CONDITION AMENDED BY STAFF:** The applicant shall control cooking odors, and smoke and any other air pollution from operations at the site from the property to and prevent them from leaving the property or becoming a nuisance to neighboring properties, as determined by the Department of Health of Transportation & Environmental Services. (Health) (SUP #99-0156) (T&ES)
17. The applicant may prepare the following food items and other similar items the collection of which create an equivalent zoning intensity: sandwiches, salads, soups, bagels, breakfast items, including eggs, precooked bacon and sausage. (P&Z) (SUP #2000-0116)
18. A minimum six foot wide unobstructed pathway for pedestrian access shall be maintained on the public sidewalk along Harvard Street and a ten foot wide pathway shall be maintained on the public sidewalk along King Street. (T&ES) (P&Z) (SUP #2000-0116)
19. The applicant shall replace, at its expense, the existing King Street trash container with a model SD-42 receptacle. (T&ES) (SUP #2000-0116)

20. 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. (P&Z) (SUP #2001-0128)
21. The applicant shall contribute \$250 to the City for the City's installation of one street tree along the west side of the subject building on Harvard Street to the satisfaction of the Director of Planning and Zoning and the City Arborist. (P&Z) (SUP #2001-0128)
22. **CONDITION ADDED BY STAFF:** 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. (P&Z)

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.

DISCUSSION:

1. The applicant, Eun Joo Park, is before the Planning Commission for a review of the special use permit for a restaurant, and for a change of ownership.
2. The subject property is one lot of record with 23 feet of frontage along King Street, 109.5 feet of frontage along Harvard Street, and an estimated area of 2,518 square feet. The property is developed with a two-story building with a commercial storefront and apartments in the rear and on the upper level. The surrounding land use includes mixed commercial and residential along King Street, and residential uses to the north.
3. On November 16, 1996, City Council granted Special Use Permit #96-0159 to Scott Mitchell to operate a restaurant (coffee shop) known as St. Elmo's. On February 12, 2000, City Council granted Special Use Permit #99-0156 allowing a change of ownership of the restaurant from Mr. Mitchell to Ms. Cho. On November 18, 2001, City Council granted Special Use Permit #2000-0116 to allow limited on-site food preparation and to add outdoor seating. On January 26, 2002, City Council granted Special Use Permit #2001-0128 for a review of the restaurant.
4. The existing restaurant is permitted to have 30 seats indoors and 14 seats outdoors. The hours of operation for the indoor seating are 6:00 a.m. to 11:00 p.m. Monday through Saturday, and 6:00 a.m. to 10:00 p.m. on Sundays. The hours allowed for outdoor seating are limited to 8:00 a.m. to 9:00 p.m. daily. The restaurant is limited in the amount of food it may prepare on-site. Limited acoustical entertainment is permitted.
5. On April 18, 2003, as part of the restaurant's one year review, the zoning 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 found the applicant in violation of Condition #19 requiring a new City trash can, Condition #21 requiring a new street tree, and Condition #12 requiring employees to park off the street. Because of the violations, staff docketed the case for hearing. As part of the review, the applicant also requests a change of ownership as she had been only a partial owner, and now will be the sole owner of the restaurant.
6. In regard to compliance with the three violations, the applicant informed staff that it has already purchased the required trash can. The applicant has submitted the required \$250 to the City for the required tree, which will be planted by the City. The applicant has leased a parking space across the street behind the building at 1515 King Street, for the one employee who drives (see attached lease).

7. Zoning: The subject property is zoned CD/Commercial downtown. Section 4-503(W) of the zoning ordinance permits restaurants with a special use permit in the CD zone.
8. Master Plan: The proposed restaurant is consistent with the King Street/Eisenhower Avenue Small Area plan chapter of the Master Plan which designates the property for commercial use.

STAFF ANALYSIS:

Staff does not object to the continued operation and change of ownership of the restaurant located at 1609 King Street. The applicant has recently made a significant effort to correct the violations of the SUP. Staff is not aware of any complaints about this restaurant.

Because staff observed violations on the past two required one year reviews, staff recommends maintaining Condition #15 to require a review of the restaurant one year after approval. Staff has also added the condition requiring employec training on all SUP conditions in hopes that compliance with the SUP will be maintained.

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

STAFF: Eileen Fogarty, Director, Department of Planning and Zoning;
Barbara Ross, Deputy Director;
Valerie Peterson, Urban Planner.

CITY DEPARTMENT COMMENTS

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

Transportation & Environmental Services:

- F-1 The applicant has not complied with staff condition #19 of SUP #2001-0128 to obtain a new style replacement street can.
- C-1 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.
- R-1 Kitchen equipment shall not be cleaned outside, nor shall any cooking residue be washed into the streets, alleys or storm sewers.
- R-2 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.
- R-3 No amplified sounds shall be audible at the property line.
- R-4 A minimum six foot wide unobstructed pathway for pedestrian access shall be maintained on the public sidewalk along Harvard Street and a ten foot wide pathway shall be maintained on the public sidewalk along King Street.
- R-5 The applicant shall replace, at its expense, the existing King Street trash container with a model SD-42 receptacle.

Code Enforcement:

- F-1 No comments.

Health Department:

- F-1 No objections to continued use.

Police Department:

- F-1 No objections.

APPLICATION for SPECIAL USE PERMIT # 2003-0041

[must use black ink or type]

PROPERTY LOCATION: 1609 King St

TAX MAP REFERENCE: 063.04-07-14 ZONE: CD

APPLICANT Name: ~~Heon Cho~~ Eun Joo Park

Address: _____

PROPERTY OWNER Name: _____

Address: _____

PROPOSED USE: Review of restaurant special use permit & change of ownership

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.

~~Heon Cho~~ Eun Joo Park
Print Name of Applicant or Agent


Signature

1609 King st
Mailing/Street Address

703-831-3163 (H) 703-847-5952
Telephone # Fax #

Alexandria VA 22314
City and State Zip Code

5/9/03
Date

DO NOT WRITE BELOW THIS LINE - OFFICE USE ONLY

Application Received: _____ Date & Fee Paid: _____ \$

ACTION - PLANNING COMMISSION: _____

ACTION - CITY COUNCIL: _____

The following information must be furnished to the Department of Planning and Zoning to determine if the current use conducted on the premises complies with the special use permit provisions and all other applicable codes and ordinances.

1. Please describe prior special use permit approval for the subject use.

Most recent Special Use Permit # 2001-0128

Date approved: 1 / 26 / 2003
month day year

Name of applicant on most recent special use permit Moon Ock Cho

Use Cafe

2. Describe below the nature of the existing operation in detail so that the Department of Planning and Zoning can understand the nature of the change in operation; include information regarding type of operation, number of patrons served, number of employees, parking availability, etc. (Attach additional sheets if necessary)

We serve Coffee, Pastry, Bagels, cold
Sandwich, Beverage (juice, water) during store
operating hours as 6:00 AM through 6:pm weekdays
11:00 AM to 6:pm at weekend (SAT, SUN)

There is 5 employees working at the stores
and most employees use the public transportation
but we rent a parking space at 1522 King St.
so, any employee can park their car when it is
necessary.

We have 30 seats for customers inside,
and 6 seats in outside.

4. Is the use currently open for business? Yes No

If the use is closed, provide the date closed. _____ / _____ / _____
month day year

5. Describe any proposed changes to the conditions of the special use permit:

6. Are the hours of operation proposed to change? Yes No
If yes, list the current hours and proposed hours:

Current Hours:

Proposed Hours:

7. Will the number of employees remain the same? Yes No
If no, list the current number of employees and the proposed number.

Current Number of Employees:

Proposed Number of Employees:

8. Will there be any renovations or new equipment for the business? Yes No
If yes, describe the type of renovations and/or list any new equipment proposed.

9. Are you proposing any change in the sales or service of alcoholic beverages? Yes No
If yes, describe proposed changes:

10. Is off-street parking provided for your employees? Yes No
If yes, how many spaces, and where are they located?

1522 King st 1 spaces
(mostly not bring their motor vehicle)

11. Is off-street parking provided for your customers? Yes No
If yes, how many spaces, and where are they located?

12. Is there a proposed increase in the number of seats or patrons served? Yes No
If yes, describe the current number of seats or patrons served and the proposed number of seats and patrons served. For restaurants, list the number of seats by type (i.e. bar stools, seats at tables, etc.)

Current:

Proposed:

13. Are physical changes to the structure or interior space requested? Yes No
If yes, attach drawings showing existing and proposed layouts. In both cases, include the floor area devoted to uses, i.e. storage area, customer service area, and/or office spaces.

14. Is there a proposed increase in the building area devoted to the business? Yes No
If yes, describe the existing amount of building area and the proposed amount of building area.

Current:

Proposed:

15. The applicant is the (check one) Property owner Lessee

other, please describe: _____

16. The applicant is the (check one) Current business owner Prospective business owner

other, please describe: _____

17. Each application shall contain a clear and concise statement identifying the applicant, including the name and address of each person owning an interest in the applicant and the extent of such ownership interest. If the applicant, or one of such persons holding an ownership interest in the applicant is a corporation, each person owning an interest in excess of ten percent (10%) in the corporation and the extent of interest shall be identified by name and address. For the purpose of this section, the term "ownership interest" shall include any legal or equitable interest held in the subject real estate at the time of the application. If a nonprofit corporation, the name of the registered agent must be provided.

Please provide ownership information here:

ELUNJOO PARK.

SUP 2003-0041

IP 2001-0128

TICKET 2862 ✓



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

Date ticket served: 4-8-03 Day of Week: Tues Time AM/PM: 3:40

Location of Violation: 1109 King St.

Ord. Section: 11-507

Description of Violation: SUP #2001-0128

Violations of conditions #19 and #21 and #12.

#19 requires a new city trash can, #21 requires new street tree, #12 - emp.

Penalty \$: Warning - No Fee plung on street.

1st 2nd 3rd/MORE

IF THE VIOLATION IS NOT CORRECTED BY 10 Days AN ADDITIONAL MONETARY PENALTY WILL BE ASSESSED. April 18, 03

Mary V. Hakeem
Inspector's Signature ID Number

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

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

NOTICE SERVED ON: (COM 2003-0122)

NAME: LAST FIRST MIDDLE

PROPERTY OWNER
 COMPANY Azzaya, employee
NAME

POSITION

OTHER

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 4-8-03
wanted me to talk to owner, MVA

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

~~Moonock Cho and Yong Hae Park~~ dba Uptowner Cafe
1609 King Street
Alexandria, VA 22314
703-836-3162

Monthly payment for Parking Space #28

To: Business Leasing Associates, Inc.
1522 King Street
Alexandria, Virginia 22314

Depository: Virginia Commerce Bank
1414 Prince Street
Alexandria, Virginia 22314
ABA #056005253 Acct #20070551

Lessee Bank: _____

ABA # _____ Acct. # _____

As a convenience to me, please accept this letter as authorization to draft, pay and charge to my above listed account, checks or electronic transfers drawn on that account by and payable to the order of Business Leasing Associates, Inc., its agents and assignees, 1522 King Street, Alexandria, Virginia 22314. This authorization includes direct transfer to the Virginia Commerce Bank. The payments will be for the duration and amount as stated below and under the terms and conditions of the current lease.

I agree that your right to cash checks or procure drafts (paper electronic) shall be the same as if it were a check drawn on my bank and signed personally by me to constitute receipts for lease payment. If any such check transfer should be dishonored by me, a five percent or \$30.00 (whichever is greater) service charge will be added for payment of the draft when it is redeposited. This authority is to remain in effect until revoked by me in writing to the financial institution above and to Business Leasing Associates, Inc. and until you actually receive such notice, I agree that you shall be fully protected in honoring any such check.

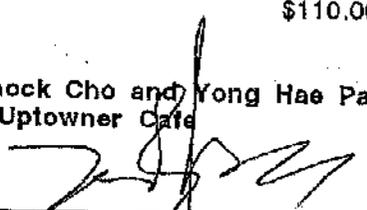
Amount Per Month: \$110.00
Tax: Exempt
Total: \$110.00

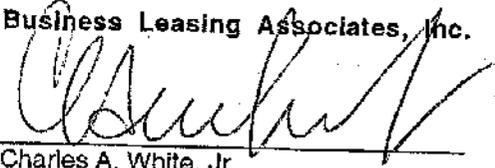
Term: 12 Months

Beginning: May 10, 2003

Moonock Cho and Yong Hae Park
dba Uptowner Cafe

Business Leasing Associates, Inc.


Moonock Cho, Owner *EUNJOOPARK*


Charles A. White, Jr.
Vice President, Administration

AMENDED: DATE	DATE CHANGE	AMOUNT CHANGE	OTHER	Virginia Commerce Bank ACKNOWLEDGEMENT

APPLICATION for SPECIAL USE PERMIT # 2003-0041

[must use black ink or type]

PROPERTY LOCATION: 1609 King St

TAX MAP REFERENCE: 003.04-07-14 ZONE: CD

APPLICANT Name: ~~HOON CHO~~ Eun Joo Park

Address: _____

PROPERTY OWNER Name: _____

Address: _____

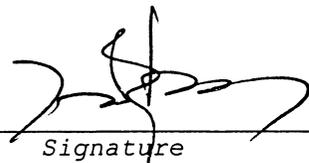
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~~HOON CHO~~ Eun Joo Park
Print Name of Applicant or Agent


Signature

1609 King st
Mailing/Street Address

703-831-3163 (H) 703-847-5952
Telephone # Fax #

Alexandria VA 22314
City and State Zip Code

5/9/03
Date

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

Application Received: _____ Date & Fee Paid: _____ \$ _____

ACTION - PLANNING COMMISSION: RECOMMEND APPROVAL, UC

ACTION - CITY COUNCIL: 6/14/03PH--CC approved the Planning Commission recommendation.