EXHIBIT NO. 1

21
6-12-04

Docket Item #22
SPECIAL USE PERMIT #2004-0028
Carlyle Development Plan Amendments

Planning Commission Meeting
June 1, 2004

ISSUE: Consideration of a request to amend the definitions of retail within the Carlyle development.

APPLICANTS: Carlyle Development Corporation & LCOR Ballenger Ave., LLC
by Jonathan P. Rak, attorney

LOCATION: 1950 Duke Street

ZONE: CDD-1 / Coordinated Development District

PLANNING COMMISSION ACTION, JUNE 1, 2004: On a motion by Mr. Dunn, seconded by Mr. Komoroske, the Planning Commission voted to recommend approval of the request, subject to compliance with all applicable codes, ordinances and staff recommendations, as well as the following changes: 1) Amend Condition 102D to allow office uses in the ground floor of the townhouses at 400-412 John Carlyle Street if the owners of all 7 townhomes consent, and 2) Amend Condition 102A(2) to create a process for administratively approving restaurants, outdoor dining, and "other uses," including notice requirements. The motion carried on a vote of 7 to 0.

Reason: The Planning Commission generally agreed with the staff analysis.

Speakers

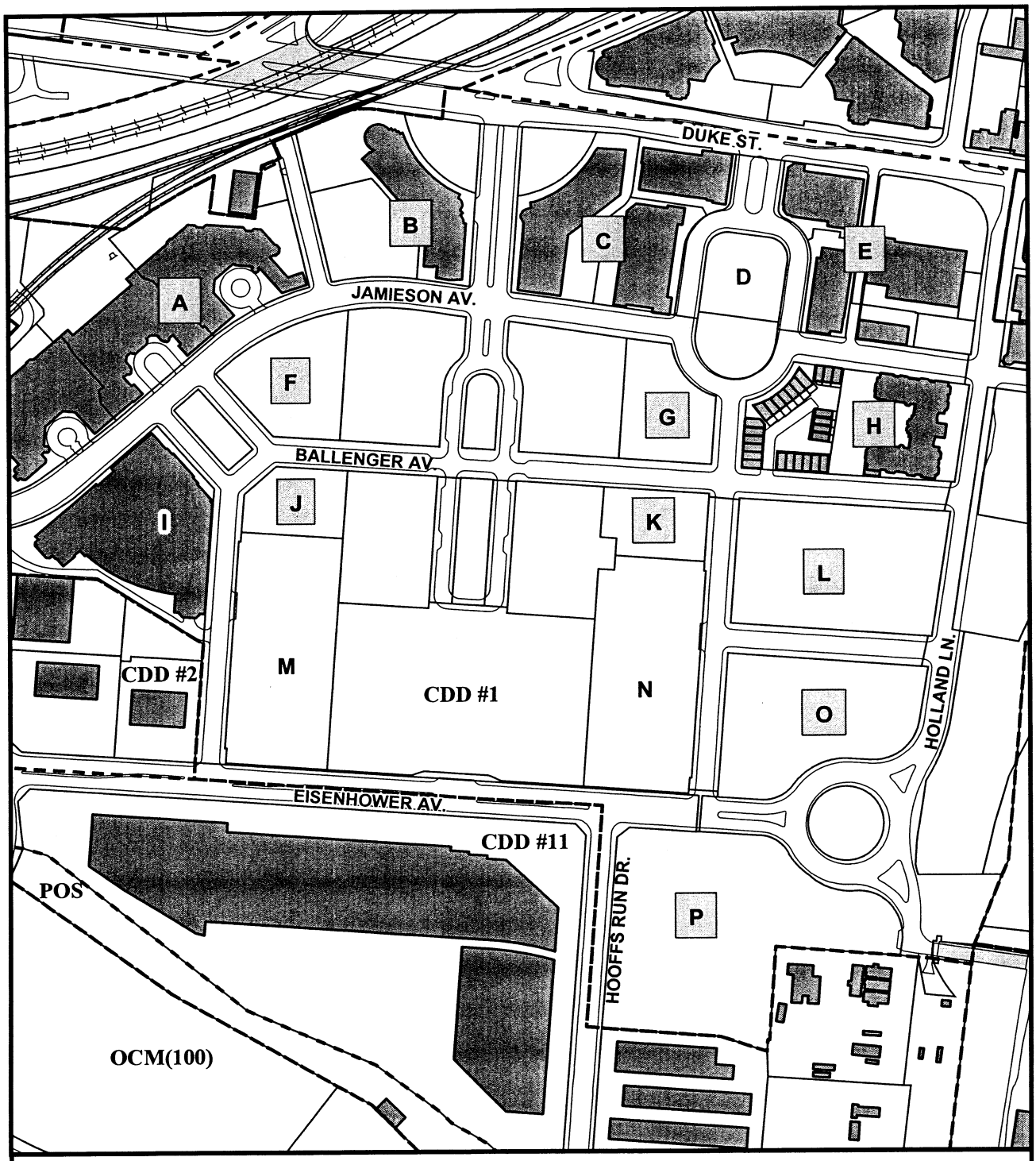
Harry P. Hart, attorney, requested that the issue of the applicability of the retail amendments to the townhomes at 400-412 John Carlyle Street be deferred.

Howard Middleton, attorney, spoke in support of the amendment.

Jonathan Rak, attorney, represented the applicant.

PLANNING COMMISSION ACTION, APRIL 6, 2004: By unanimous consent, the Planning Commission deferred the request.

PLANNING COMMISSION ACTION, MARCH 2, 2004 : By unanimous consent, the Planning Commission deferred the request.



SUP #2004-0028 06/01/04

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I. EXECUTIVE SUMMARY:

A. PROPOSAL

Staff recommends approval of the proposed amendment to the definition of retail in the Carlyle special use permit. The purpose of the amendment is to encourage the establishment of uses which will provide goods and services to the residents and office workers of Carlyle and the City. The proposed amendment would enable the following:

- Administratively approving full-service restaurants, provided that certain minimum standards (related to issues such as hours of operation and control of noise, odors, and trash) can be met. Restaurants which are limited service or which do not meet the minimum standards will require special use permits;
- Permitting outdoor dining, provided that the use meets certain minimum standards;
- Eliminating the "good faith effort" clause, which currently allows non-retail uses in retail tenant spaces if the space cannot be leased as retail;
- Eliminating retail and personal service uses that do not encourage pedestrian activity, such as contractor's offices and locksmiths;
- Prohibiting from the ground floor non-retail uses which generate little pedestrian traffic, such as realty offices and educational uses;
- Allowing existing financial institutions to remain;
- More clearly defining the commercial uses that are permitted above the ground level;
- More clearly defining the commercial uses that are permitted with a special use permit; and
- Converting the requirement to construct a 25,000 square foot grocery store within Carlyle to a requirement to construct 25,000 square feet of concentrated ground floor retail space in Block P, as the adjoining Whole Foods will serve Carlyle's grocery needs.

The revised definition would apply to all retail space within Carlyle, except for the "live-work" townhouse units on John Carlyle Street. Staff is not recommending the revised definition for these townhomes because the ground floor space within each unit is of a size and shape that is more conducive to professional offices such as attorneys, insurance agents and more limited retail opportunities.

B. COMMUNITY AND CARLYLE DESIGN REVIEW BOARD

Staff has met with the Carlyle Towers Condominium Owners Association, Carlyle City Residences Homeowners Association (townhomes), and Carlyle-Eisenhower Civic Association (CECA), all of which support taking steps to encourage more retail in Carlyle. Staff has worked with the owners of buildings which contain retail space, and all have agreed to the proposed amendments.

C. STAFF RECOMMENDATION

Staff recommends approval of the retail definition amendments

II. BACKGROUND / HISTORY:

The intent of Carlyle since the original approval in 1990 has been to "create an active, vibrant area of the City with an environment of unsurpassed quality." To achieve this goal, the plan proposed "the creation of a development with a mixture of uses and a design which is more urban than suburban in nature; a place where the pedestrian environment is paramount; and a place where a variety of landscapes, streets, open spaces, and buildings...contribute toward a unique sense of place, making the area both distinctive and compatible with the surrounding city."

The plan extended the existing street grid into the development, creating 15 blocks (Blocks A through O) on the north side of Eisenhower Avenue, and a 16th block (Block P) on the south side of Eisenhower Avenue. Design standards were established for the development as a whole, with more detailed design guidelines to be established for each block. The Carlyle Development Plan was not intended to be a static document – the intent from the beginning was to allow it to be amended, evolving over time to provide the best community possible while adapting to changing surroundings and the specific uses and building designs established within the development. The amendments to Carlyle to date are depicted below:

Case Number	Date of CC Approval	Description
SUP 2253	4/18/90	Application for multi-phase mixed-use development project.
SUP 2254	4/18/90	Transportation Management Plan
Administrative Approval	5/30/90	Revision to the block-by-block table of gross square footage to increase the proportion of residential uses from the level proposed by the applicant to the level approved by City Council.
SUP 2253E	5/13/93	Increase by 5,000 gsf the residential component at Carlyle for the purpose of the Lipnick elderly housing
Administrative Approval	12/30/93	Shift of additional residential space to Block A from other blocks and shift of retail space from Block A to other blocks.
SUP 2253H	6/18/94	Conversion of 7,500 gsf of retail space to residential space for the purpose of the Lipnick elderly housing and clarifying minor amendment procedures.
SUP95-0168	12/16/95	Changes to Block E design guidelines and a reallocation of uses among blocks at Carlyle
SUP96-0089	6/15/96	Conversion of 120,000 gsf of retail density to office and residential density and changes to require design review for Block C
SUP96-0092	6/15/96	Change to conditions to allow transfer of residential use to office use without further Council approval for PTO, if Carlyle selected by GSA

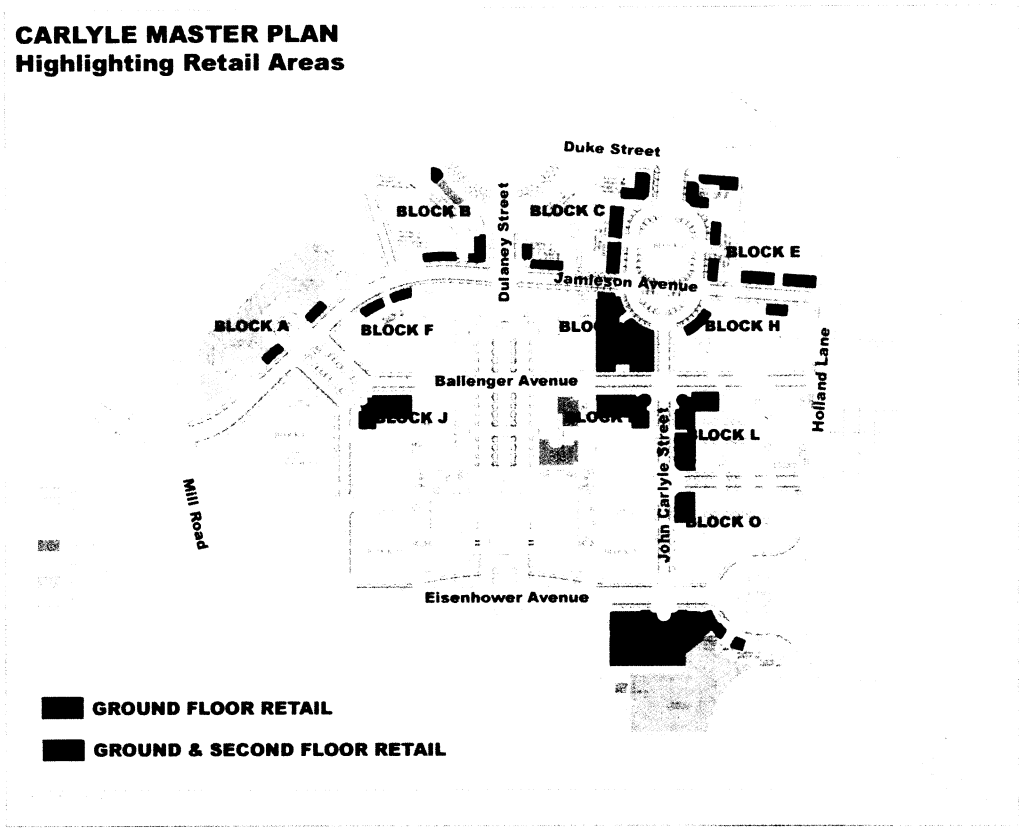
Administrative Approval	12/5/96	Revision to Block A to decrease the total residential density by 79,954 gsf and to increase the retail density by 242 gsf (density shifted to and from other blocks).
DSUP 98-0035	2/20/98	Amendment to transfer 15,000 residential square feet from the floating category to Block H.
DSUP 99-0055	3/21/00	Amendment to Conditions, including #60 and #62a, to delete Lipnick elderly housing as a separate line item and return the 112,000 gsf to the residential use category.
DSUP 99-0056	3/21/00	Amendment to allowed building heights, closure of Emerson Avenue and Dulany Street, and exclusion of pedestrian arcades and skywalks from floor area calculation.
Admin. App.	12/12/01	Revisions to PTO building.
SUP 2003-0016	6/14/03	Conversion of office and hotel floor area to residential use on Block F, transfer of office space from Blocks F and P to Block G, increase in building height on Block G, transfer of office space from Block F to Blocks J and K, and adoption of Supplemental Design Guidelines for Blocks F, G, J and K, dated May 23, 2003.
SUP 2004-0003	2/21/04	Increase in allowable building height for a portion of Block O
SUP 2003-0066	3/13/04	Transfer of floor area from Block P to Blocks J & K and increase in permitted building height for Blocks J & K.

III. SITE CHARACTERISTICS:

A. Site Description:

The proposed SUP amendments affect all retail areas within Carlyle, excluding the "live-work" townhouses on John Carlyle Street. The Carlyle development as a whole is bounded by Duke Street on the north, Holland Lane on the east, and Mill Road and the WMATA tracks on the west. Fifteen of Carlyle's blocks are to the north of Eisenhower Avenue; Block P is the only Carlyle block to the south of Eisenhower Avenue.

There is some retail space located within every Carlyle block except for Blocks D, I, M, and N. Carlyle's retail core is along John Carlyle Street, with retail anchors on Blocks G and P, which will have 70,000 and 50,000 square feet of retail, respectively.



B. Zoning:

Carlyle is within an area that is zoned Coordinated Development District (CDD) #1. In addition, Carlyle is governed by Special Use Permit (SUP) #2253, as amended. Development within Carlyle is further governed by design guidelines which are adopted for each individual block, with the final design of each building approved by the Carlyle Design Review Board.

CARLYLE ZONING	
Property Address:	1950 Duke Street
Total Carlyle Site Area:	76.5 acres
Zone:	CDD-1 Coordinated Development District
Current Use:	Mixed Use
Proposed Use:	Mixed Use
Total Floor Area:	6,907,000 s.f.
Retail Floor Area:	258,000 s.f.

IV. BACKGROUND:

Current Retail Definition:

The current definition of Carlyle is overly broad and allows certain uses, such as realty offices and educational uses, that are not consistent with the desired urban and pedestrian nature of Carlyle. Therefore, as part of the amendment staff is excluding these types of uses from the permitted retail and personal service uses as discussed below.

In addition, the current Carlyle SUP has a "good faith" clause that enables leasing approved retail spaces for uses such as offices after making a "good faith" effort to lease the space for retail uses. The fact that non-retail uses are permitted within the ground floor space is the primary impetus for the proposed amendments. This clause was added at a time when Carlyle did not have enough residents or office workers to support retail. With nearly a thousand dwelling units occupied in Carlyle and additional units under development, and with the opening of the PTO offices, there is a growing need for retail and service uses within Carlyle. The "good faith effort" clause is therefore no longer necessary and should be removed to ensure that needed retail space is not occupied by non-retail uses.

The current definition of retail in Carlyle is provided within condition 102 of the Carlyle SUP. That condition is as follows:

> 102. *If, after making a good faith effort as determined using guidelines issued by the director, the building owner is unable to lease or sell space required by the design guidelines and the special use permit to be in retail use, the director may authorize that space to be leased for non-retail use for a period not to exceed ten years, after which time subsequent leases may be authorized on the same conditions. For the purpose of this requirement, retail uses shall include retail shopping establishments, restaurants, banks, financial investment and consulting offices, travel agencies, realty offices, personal service uses, educational uses, and any other commercial activity that involves a high degree of pedestrian activity, as determined by the director. This waiver provision shall not apply to Blocks G, J, K or P; any retail space allocated to those blocks shall be utilized solely for retail purposes.*

V. STAFF ANALYSIS:

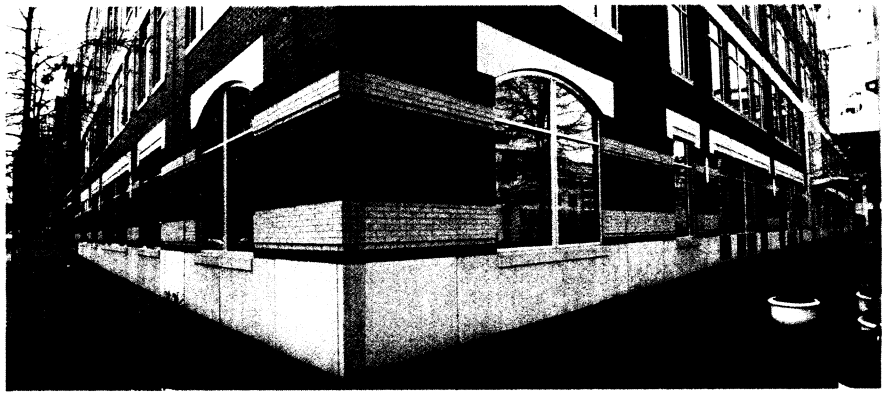
While the development of Carlyle is now well under way and Carlyle has a high and growing number of residents and office workers, the development has not yet achieved the vibrancy and pedestrian activity that has been contemplated. The key element for achieving the desired streetscape vitality is a good mix of retail uses.

At present, retail is very limited within Carlyle, with only a handful of shops and restaurants. Most of the space which is intended to be retail is presently occupied by office uses. The allowance for office uses within the retail spaces was made at a time when there was no market to support retail.

With a high residential and office population, the demand for retail now exists, and steps need to be taken to ensure that the needed retail can be established. To help establish that retail, the existing definition of retail in Carlyle must be amended to preclude office uses on the ground floor and also incentives for uses such as restaurants and ground floor retail.

Existing Carlyle "Retail"

The lack of retail within Carlyle needs to be addressed for a number of reasons. First, Carlyle's residents and office workers are clamoring for a greater provision of shopping, dining, and services within Carlyle. Second, if those needs are not met within Carlyle, then Carlyle's residents and workers will need to go outside of Carlyle for those goods and services, increasing their dependence on the automobile and worsening traffic in and around Carlyle. Third, retail attracts retail, and if a "critical mass" of retail can be established, all of the retail will be more successful. If many of the occupied retail tenant spaces are used for something other than retail, restaurant, or services, then fewer people will be drawn into the area and it will be more difficult to lease the remaining retail spaces.



Existing Carlyle "Retail"

Most critical of all are the ground floor retail spaces. In an urban area, ground floor retail creates activity and makes for a more vibrant streetscape. The retail uses attract pedestrians, which help make the sidewalks come alive, thereby attracting more people. With a high concentration of retail, people can move from store to store, meeting their shopping, dining, and service needs in a single trip. If the retail uses are scattered because of the presence of office uses within first floor spaces, then walking distances are increased, activity is more dispersed, and the area is less appealing and less successful.

King Street Retail

In order to address these issues, staff is recommending that the definition of retail within Carlyle differentiate between ground floor spaces and spaces above or below the ground floor. Ground floor spaces would be limited to uses that would generate a high volume of pedestrian traffic, while spaces above or below the ground floor would be allowed to include customer-oriented office uses such as financial offices. Uses such as financial investment offices, which can pay higher rents than retail uses but do not serve the day-to-day needs of Carlyle residents or workers, will not be allowed in ground floor retail space. Full-service restaurants, which presently require special use approval throughout Alexandria, will be encouraged by being allowed by administrative SUP.

To encourage vibrant, active ground floor uses, staff is recommending several incentives to encourage pedestrian-oriented commercial uses and disincentives to discourage uses that do not contribute to the pedestrian environment and activity and urban character of Carlyle. The proposed strategies include the following:

- Providing incentives for establishing full-service restaurants and outdoor dining;
- Eliminating uses which are presently permitted but which generate little pedestrian traffic;
- Differentiating between ground floor retail uses and retail uses above or below the ground floor;
- Allowing existing financial institutions to remain; and
- More clearly defining the commercial uses that are permitted above the ground level

A. Incentives For Full Service Restaurants and Outdoor Dining

Currently all restaurants within Carlyle require a special use permit. As an incentive to encourage full-service restaurants, staff is recommending that these restaurants be permitted administratively. Approval of the restaurants would be contingent upon meeting a list of criteria that addresses such issues as hours of operation and the control of odors and litter. Those restaurants which do not meet all of the requirements would require a special use permit. Additionally, outdoor dining would be permitted administratively. Outdoor dining would be subject to restrictions that would address issues such as noise, litter control, and maintaining an obstruction-free pedestrian pathway. (See Condition 102 at the end of the report for the full list of full-service restaurant and outdoor dining restrictions.)

B. Elimination of Certain Low-Pedestrian Traffic Uses from Ground Floor

One of the goals of amending the definition of retail within Carlyle is to limit uses which generate little pedestrian traffic and do little to draw people into Carlyle. At present, the list of permitted retail uses includes financial investment offices, realty offices, and educational uses. While these are all viable uses and do nothing to detract from the surrounding area, they are not uses that attract large numbers of people throughout the course of the day. It is preferable to have other uses that generate greater pedestrian traffic, such as restaurants and retail sales, occupy available tenant spaces. The amended language therefore removes these uses from the list of permitted ground-floor retail uses.

C. Differentiation Between Ground Floor and Other Floors

The uses which are permitted on the ground floor are particularly critical, as it is the ground floor uses that really draw people to an area and create a sense of vibrancy. Uses which are above or below the ground floor are not as visible from the street or sidewalk, and also are generally not accessed directly from the public sidewalk. Recognizing this fact, the proposed amendment allows a wider variety of uses above or below the ground floor than is allowed on the ground floor. Financial investment offices, tax return preparation, realty offices, health and athletic clubs, and public and private schools will all be allowed above or below the ground floor, but will not be allowed on the ground floor.

D. Existing Uses Which no Longer Comply

During the time that the resident and worker population in Carlyle was not sufficient to support retail, the list of acceptable retail uses was made more expansive than would have been allowed had a better retail market been present. A number of uses were established in Carlyle under those rules, and those uses have met with success and kept the vacancy rate at Carlyle low. While some of these uses are no longer considered to be ideal users of retail tenant space, businesses which were established under the old rules should not be penalized. The proposed definitions allow existing uses which do not meet the new rules to remain. Most uses will be allowed to remain as noncomplying uses. Financial institutions and banks, which help to provide a strong financial core to Carlyle, will be allowed to remain without the limitations that are applicable to noncomplying uses.

E. Identification of Special Uses

The current definition lists those uses which can be allowed to occupy retail space, but does not clearly identify which uses are permitted by right and which require a special use permit. The new definition clearly identifies those uses which are permitted by right, those which are permitted subject to certain restrictions, and those which require a special use permit.

F. Summary of Proposed Changes

The table below provides a summary of the uses which are presently allowed within retail tenant spaces within Carlyle, as well as those uses which are not presently allowed but which would be allowed under the proposed amendment. Those uses for which the retail definition is becoming more permissive are highlighted in green, while those uses for which the retail definition is becoming more restrictive are highlighted in [redacted]. Uses which are not highlighted are not changing.

TABLE OF PERMITTED AND SPECIAL USES

P: Permitted SUP: Special Use **X**: Prohibited

Uses	Current	Proposed	
	All Floors	Ground Floor	Other Floors
General Retail	P	P	P
Convenience Stores	SUP	SUP	SUP
Full-Service Restaurants	SUP	[redacted]	[redacted]
Limited-Service Restaurants	SUP	SUP	SUP
Financial Investment Offices	P	[redacted]	P
Banks	P	P	P
Tax Return Preparation	**X**	**X**	[redacted]
Travel Agency	P	P	P
Realty Office	P	[redacted]	P
Health and Athletic Clubs	**X**	**X**	[redacted]
Personal Service Uses	P	P	P
Public and Private Schools	P	[redacted]	P

G. Carlyle Townhomes:

The new retail definitions will apply to all retail areas within Carlyle, with the exception of the townhomes in Block H. There are seven townhomes in Block H, facing John Carlyle Square, which are allowed to have retail on their first floor. However, the limited size of the retail space (generally about 400 square feet) and the constraints associated with having a single unit that contains both retail space and a residence create challenges that are not seen in other retail spaces in Carlyle. To allow the owners of those townhomes to maintain the flexibility that was provided them from the time that they first purchased their units, the current definition will still be applicable to the townhomes.

H. Grocery Store:

Condition 102A presently requires a grocery store of at least 25,000 square feet to be located within the Carlyle development. The condition was established to ensure that a grocery store would be provided within walking distance of the residents of Carlyle. However, a Whole Foods grocery store is presently under construction at the southwest corner of Duke Street and Holland Lane. The Whole Foods site is outside of the boundaries of Carlyle, but it abuts Carlyle along its west and south property lines. The store, therefore, does not satisfy the exact provisions of the condition but does satisfy the condition's goal of providing a grocery store within walking distance of the Carlyle residences.

Since Whole Foods will serve the needs of the residents of Carlyle, and since it is unlikely that the market will support another grocery store within Carlyle, the applicant is requesting to amend that condition as follows to allow greater flexibility (underlined text has been added):

102A A grocery store of no less than 25,000 square feet shall be provided within the retail space at Carlyle, unless the grocery store approved in DSUP #2002-0009 for the corner of Duke Street and Holland Lane is constructed and operational. If the requirement for a grocery store is nullified, the 25,000 square feet shall be provided on Block P as concentrated retail use that is continuous along the street and located at ground level.

VI. COMMUNITY REVIEW:

Staff has met with residents of the neighborhood, including Carlyle Towers, the Carlyle City Residences, and the Carlyle-Eisenhower Civic Association (CECA). The residents were in support of amending the retail definition to provide a greater variety of retail, restaurant, and service uses within Carlyle.

Staff also met with the owners of buildings within Carlyle which contain retail space. The owners understood the desire to establish more retail uses within Carlyle, but expressed concerns that they be given enough flexibility to be able to successfully lease their retail spaces. Their concerns were as follows:

- Allow as much flexibility as possible;
- Allow restaurants and delis by right, and/or provide inducements to encourage them to come to Carlyle;
- Allow uses which require discretionary review to be approved administratively;
- Allow any uses which become nonconforming to remain as "grandfathered" or noncomplying uses.

The concerns of the property owners have been addressed and incorporated into the proposed amendments. The property owners have all expressed their support of the proposed amendments.

VII. STAFF RECOMMENDATION:

Staff recommends **approval** of the retail definition amendments as highlighted under Conditions 102 through 106 below.

STAFF: Eileen P. Fogarty, Director, Department of Planning and Zoning
Jeffrey Farner, Division Chief , Development;
David Sundland, Urban Planner III;
Thomas Luebke, City Architect.

VIII. STAFF RECOMMENDATIONS:

Staff recommends **approval** of the retail definition amendment.

Note: **The following conditions are brought forward from SUP #2253, as amended. Conditions 102D and 102E (previously Conditions 102 and 102A) are amended as noted and Conditions 102, 103 and 104 are added.**

A. T&ES Conditions:

1. The construction or initial improvement of all public rights-of-way shown on the applicant's Plat of Subdivision, dated February 20, 1990, including the Black Heritage Park, shall be the responsibility of the applicant. Plans, profiles, and cross-sections, showing typical pavement and sidewalk sections, as well as full construction plans, for any street shown on the subdivision plat which is within or adjacent to the project area and which is to be constructed by applicant, shall be submitted with the final site plan for such construction or improvement and shall be approved prior to the release of the site plan. With the exception of landscaping (see ¶ III-15), the maintenance and repair of streets and sidewalks within public rights-of-way in the project area and of the Black Heritage Park shall be the responsibility of the city. With the exception of landscaping (see ¶ III-15), the maintenance and repair of all other public rights-of-way within the project area (primarily, medians running between the travel portions of streets) shall be the responsibility of applicant.

2. Preliminary plans and profiles for all storm and sanitary facilities for the entire project, together with all appropriate calculations, shall be submitted in conjunction with the first final site plan for the project and approved prior to the release of that site plan. These plans shall show any effects on upstream facilities which are or may be caused by the storm or sanitary lines or facilities serving the site.

3. The existing stone railroad bridge at Hooff's Run shall be retained as an historic 100 year old structure. Without disturbing the bridge, the Applicant shall design and construct, at its sole expense, a bypass structure and storm sewer to accommodate the stormwater flow from a 100 year storm; such design to be in accordance with a plan developed by the City Engineer or as mutually agreed upon by the City and the Applicant.

   The Applicant shall stabilize and improve the bridge in accordance with its historic character. This stabilization and improvement shall include the replacement and securing of eroded and loose brickwork and stones, especially along the wing walls, and the clearance and removal of vegetation and trees growing within the walls in a manner which minimizes any disturbance to these walls; the repairing of the northern parapet of the bridge and the installation of handrails along the north and south parapets of the bridge.

   The Applicant shall undertake and complete the work required by this condition in a manner which preserves the historical integrity and character of the bridge and its immediate environs, and the work shall be performed to the satisfaction of the Director of Transportation and

Environmental Services. Applicant's final design and plans for the work required by this condition shall be submitted to the director for his review and approval.

The construction of the bypass structure/storm sewer and the stabilization and improvement of the bridge shall commence within 60 days after the City has completed the undergrounding of the 230 kv power lines identified in Condition #34 and after the City has made available to the applicant the requisite easement across the property of Virginia Power to the north of the bridge.

Applicant shall dedicate the bridge and adjacent right of way for the extension of Jamieson Street within six months following the completion of the bypass structure/storm sewer and the stabilization and improvement of the bridge as required in this condition.

4. Slope protection and channel improvements shall be provided along Hooff's Run, to the extent specified by the director of TES, to accommodate stormwater flow from the project site. Construction of this protection and these improvements shall occur at the same time the construction referenced in ¶ III-3 takes place.

5. Prior to the removal or abandonment of any existing storm or sanitary sewer on, serving or passing through the project site and except in situations covered by BOCA, a new replacement sewer shall be in place and in service, and all necessary dedications and easements shall have been recorded.

6. A plan and design providing channel protection along the portion of Hooff's Run which is adjacent to the Black Heritage Park and the adjacent cemeteries shall be submitted with the first final site plan for the project and shall be approved by the director of TES before the release of that site plan. Construction of this channel protection shall be the responsibility of the applicant and shall commence within six months of the release of the site plan and thereafter shall be diligently pursued.

7. Preliminary plans for undergrounding utilities throughout the project site, along with the engineering plans and profiles required under ¶ II-5, shall be submitted with the first final site plan for the project, and shall be approved prior to the release of that site plan. No utility facility or component (e.g., electric transformers, switches, inter-connections) shall be located on any sidewalk within the project area, including those (if any) not located within a public access easement, or below such an area in a manner which has any visible or physical effect on the sidewalk (e.g., grates, ventilation shafts), unless expressly approved by the director of TES and, where applicable, adequately screened to the satisfaction of the director. Nor shall any such facility or component be placed on any vehicular right-of-way within the project area. Unless otherwise expressly approved by the director of TES, all utility facilities and components within the project area shall be located within project buildings and, where applicable, screened, to the satisfaction of the director, from the view of persons using a public right-of-way or pedestrian area within the project area.

8. Any traffic signalization proposed by the applicant and any signalization required by the director of TES shall be shown on the final site plan for the portion of the project area in which

the signalization is to be installed. The acquisition and installation costs of any traffic signal or signalization approved or required by the director shall be the responsibility of the applicant, and payment of such costs shall be made to the city prior to the release of the site plan. Any signalization approved or required by the director as part of a final site plan shall be installed and properly operating prior to the issuance of a certificate of occupancy for any building which, in the director's view, is to be served by the signalization.

9. Specifications and associated calculations for the lighting of streets and other public rights-of-way and for the areas to be developed within the project area shall be submitted with final site plans. Prior to the release of any final site plan, the lighting for all streets and development areas covered by the plan shall be approved. In addition, light fixtures and poles proposed for streets and other public rights-of-way shall be identified in final site plans and shall be approved by the director of Planning and Community Development prior to the release of any plan. All fixtures located on or along streets and pedestrian access areas shall be uniform throughout the project area. The acquisition and installation costs of all lighting within the project area, including on public rights-of-way, and along the streets adjacent to the project area which the applicant is responsible for enlarging or otherwise improving (see ¶ II-5) shall be the responsibility of the applicant, and a bond in the amount of such costs shall be made to the city prior to the release of the site plan showing such lighting.

10. The names of all streets, within the project area shall be approved by the City's Planning Commission.

11. No demolition shall occur within the project area without a demolition permit issued by the city's Office of Code Enforcement.

12. All buildings constructed within the project area shall be protected against methane gas in a manner approved by the director of TES or his designee. Applicant shall study the economic alternatives for using methane gas from the project area and shall furnish a report to City Council within four months of the date of approval of this permit.

13. Prior to the release of any final site plan for any area within the project area, an analysis of the soil within the project area as well as of the groundwater below the project shall be submitted to the Virginia Department of Waste Management and the city, and a remediation plan meeting all requirements of that department and the Virginia Water Control Board, and agreed to by the directors of TES and the city's Department of Health ("DOH") and the applicant, shall be finalized. Unless otherwise required by a remediation plan, all remediation work in any portion of the project area required either by the Department of Waste Management, on the basis of the analysis submitted by applicant or otherwise, or by any other governmental entity having regulatory jurisdiction over such soil, groundwater, surface water or sediments, shall be completed in a manner found acceptable by the department or such other governmental entity prior to the release of any grading, building or similar permit for that portion of the project area.

13A. Also prior to the release of any final site plan for any area within the project area, the applicant shall have initiated contact with the United States Army Corps of Engineers and the Virginia

Marine Resource Commission regarding the potential jurisdiction of those agencies over any of the applicant's proposed activities with respect to the project area. All necessary authorizations of both agencies shall be obtained by the applicant before the release of any grading, building or similar permit that could allow activities subject to the jurisdiction of either agency.

14. No interim parking of vehicles shall be permitted on vacant land within the project area without a special use permit, except that construction and worker vehicles may be parked on such land with the approval of the director of TES.

15. All landscaping within all public parks, and within all public street easements and public street medians shall be provided and maintained, including its replacement, by CDC and its successors with the following exceptions:

- Landscaping within the Block A park shall be maintained and replaced by the City.

- Any additional landscaping added by the City within the African American Heritage Park or the Block A Park after their dedication to the City shall be maintained by the City.

- The replacement of any landscaping which is damaged or destroyed due to catastrophic weather events, or due to traffic or other such accidents shall be the responsibility of the City.

16. Maintenance of George's Lane shall be the responsibility of the City upon acceptance by the City of the street. (SUP97-0157)

17. A detailed soils report, together with recommendations for sheeting and shoring, excavation and foundation design, shall be submitted with each final site plan and shall address the construction proposed by the plan. No site plan shall be released until applicant's plans for sheeting and shoring, excavation and foundation work have been approved. See ¶ III-83.

18. All buildings within the project area and all individual residential units, retail establishments, offices and other uses within those buildings shall be designed to accommodate the separation of waste materials (e.g., office paper, glass, plastics, newspapers, metal) to facilitate their collection and recycling.

19. A permanent storage area, no smaller than 20 feet by 20 feet, shall be provided within the project area for the short-term placement by the city of sweeper debris. The area shall be made available to the city after certificates of occupancy have been issued, in the aggregate, for 1 million square feet of office space in the project area. The storage area shall be easily accessible by street sweeping and debris removal equipment, and may be incorporated in the waste disposal area of a building within the project area.

20. Trash receptacles, of a design approved by the director of TES, shall be provided along streets within the project area at locations approved by the director. Applicant shall be responsible

for the initial acquisition, the maintenance and, where required, the replacement of all such receptacles.

21. Each townhouse constructed within the project area shall be designed to accommodate the refuse can utilized at the time in the city's "Super Can" refuse collection program. Applicant shall be responsible for purchasing from the city at least one such can for each townhouse at the time a building permit for the townhouse is submitted.

22. Condition 22 is intentionally deleted.

23. Bus shelters, designed to the satisfaction of the director of TES and the Alexandria Transit Company ("ATC"), shall be constructed throughout the project area at locations determined by the city, ATC and applicant. The costs of constructing all such shelters shall be the responsibility of the applicant. In addition, the maintenance of all such shelters shall be the responsibility of applicant.

24. The intersection at Duke Street and Diagonal Road shall be modified, to the satisfaction of the director of TES, to restrict motor vehicle travel between the project area and the King Street Metro Station to busses only.

25. A pedestrian tunnel under Duke Street from the west side of Dulany Street to the west side of Diagonal Road and related items shall be designed and constructed, or in the case of some related items reconstructed, by the applicant at its sole expense to the satisfaction of the Directors of T&ES and P&Z. The related items shall consist of adjoining sidewalks, medians and the plaza at the Crescent Park, as well as lighting, gates, signage, security features and a kiosk or similar structure. No construction north of Duke Street shall be required except the minimum necessary to connect with the north side of the Duke Street right-of-way. Construction of the tunnel shall be completed by December 31, 2003 unless the U.S. Patent and Trademark Office relocation to Carlyle does not proceed, in which case the construction of the tunnel shall be completed by a date to be determined by City Council. Upon completion of construction of the tunnel and acceptance of the tunnel by the City, the City shall assume full responsibility for the tunnel, including all maintenance and liability, except that CDC and its successors or assigns acceptable to the City shall be responsible, at its or their sole expense, for providing cleaning/custodial services for the tunnel and for the costs to provide security for the tunnel. The City Manager shall determine the type and extent of security to be provided in the tunnel. The City Manager shall also determine the hours of operation for the tunnel. Funds for tunnel security may come from the TMP account for Carlyle, to the extent such funds are not otherwise obligated under paragraph 2 of the TMP.

26. Prior to the release of the first final site plan for the project area, applicant shall pay to the city $100,000 as a contribution towards construction of a pedestrian connection between the King Street Metro Station and the adjacent commuter rail train station.

27. Lot 514, as shown on applicant's Plat of Subdivision, dated February 20, 1990, shall be dedicated to the city within 6 months of the release of the first final site plan for the project. Within 6 months of the release of this site plan, all rails, ties and other track elements shall be

removed from this land and from the land owned by the city and by the Norfolk Southern Railroad which lies to the south of Duke Street and the east of Holland Lane. Following the removal of all track elements from the land described in this paragraph, but no more than 6 months after the release of the first final site plan for the project, all such land shall be graded, to the satisfaction of the director of TES, to provide adequate drainage.

28. All sidewalks within the project area, whether or not located within a public right-of-way, shall be constructed of brick and shall conform to all City of Alexandria construction standards.

29. All driveways entering a parking garage within the project area shall be aligned, to the satisfaction of the director of TES, to minimize conflicting vehicle movements. the location and width of each driveway entrance shall be shown on a final site plan. Each such driveway shall provide one entrance and one exit lane for every 500 parking spaces, or portion thereof, within the garage it serves. Thus, for instance, the driveway serving a parking garage of 1,300 spaces shall have a minimum of 6 lanes--3 for ingress and 3 for egress. However, with the approval of the director of TES, lanes may be made reversible, thereby reducing the number needed to be provided.

30. All on-street parking controls and restrictions within the project area shall be determined by the city. Any such controls and restrictions which applicant desires shall be shown on its final site plans. Any parking meters which are placed on public rights-of-way within the project area at applicant's request shall be acquired and installed, in accord with city specification, by applicant.

31. Any special paving materials which applicant decides to utilize within the project area for pedestrian crosswalks across public streets shall be approved by the director of TES and shall be purchased, installed, maintained and, if needed, replaced by applicant. Following the release of the first site plan for the project area which includes office or residential buildings, applicant shall, at all times, store at least 1,000 such pavers within the project area.

32. Holland Lane between Duke Street and Eisenhower Avenue shall be widened by applicant at its sole expense to four undivided lanes with curbs and gutters, sidewalks along both sides of the right-of-way, street lights and landscaping. Engineering plans and profiles for this widening shall be submitted with, and shall be approved prior to the release of, the first final site plan for the project area. See ¶ II-5. Construction of this widening shall commence within 6 months of the release of such site plan and shall thereafter be diligently and continuously pursued until completion.

33. Eisenhower Avenue shall be extended by applicant at its sole expense from Hooff's Run Drive to Holland as a four lane divided roadway with curb and gutters, sidewalks along both sides of the right-of-way, street lights and landscaping. Design and engineering plans and profiles for this widening shall be submitted with, and shall be approved prior to the release of, the first final site plan for the project area. See ¶ II-5. Construction of this widening shall commence within 6 months of the acquisition of all necessary land rights and shall thereafter be diligently and continuously pursued until completion.

34. The City of Alexandria shall underground the 230 kv power transmission lines along Holland Lane from the future location of Jamieson Street to a point approximately 150 feet south of the Alexandria Sanitation Authority bridge. The Applicant shall prepare a level pad site (approximately 70' x 150') at the southern point of this undergrounding and shall make available to Virginia Power any required easements relating to the undergrounding along Holland Lane. This undergrounding work shall be carefully coordinated with Applicant to ensure that it causes a minimum of disruption to other work which Applicant may be undertaking in the vicinity. Commencement of the undergrounding of the 230kv power lines shall begin as soon as practicable. Applicant shall reimburse the City for all costs associated with such undergrounding work in accordance with a schedule of payments to be determined by the Director of T&ES.

35. Condition 35 is intentionally deleted.

36. Modifications to the intersection of North Street and Mill Road shall be made by applicant at its sole expense, as defined by and to the satisfaction of the director of TES. Design and engineering plans and profiles for these modifications shall be submitted with, and shall be approved prior to the release of, the first final site plan for the project area. See ¶ II-5. Construction of the modifications shall commence within 6 months of the acquisition of all necessary land rights, and shall thereafter be diligently and continuously pursued until completion.

37. Modifications to the intersections of Eisenhower Avenue and streets providing access to the project area shall be designed and constructed by applicant at its sole expense, to the satisfaction of the director of TES.

38. No traffic circle at the intersection of Eisenhower Avenue and Holland Lane shall be constructed unless it is designed to the satisfaction of the Director of TES.

39. All intersections of Duke Street and street providing access to the project area shall be designed and constructed by applicant at its sole expense, to the satisfaction of the Director of TES. Engineering design plans and profiles shall be submitted with, and shall be approved prior to the release of, the first final site plan for the project area. Construction of these intersections shall commence either within 6 months of the release of the site plan or by another date determined by the director, and shall thereafter be diligently and continuously pursued until completion.

40. (a) A collector/distributor roadway, generally as shown in a January 29, 1990, document entitled "Draft Justification and Study of Modifications of the Existing Interstate 95 Interchanges, U.S. Route 1 and Telegraph Road Interchanges, Alexandria, Virginia," shall be designed, engineered and constructed along the north side of the Capital Beltway which connects the U.S. Route 1 and Telegraph Road interchanges to the Beltway and provides access to and from Mill Road. If the alignment of this roadway disturbs in any manner the current access which the Alexandria Police Department and Sheriff have from Mill Road to the Alexandria Public Safety Center, any modifications to the alignment of, or other alterations or improvements to, Mill Road necessary to preserve such access, as determined by the

Director of T&ES, shall be made. The costs of designing, engineering and constructing this connector/distributor roadway and any such modifications, alterations or improvements to Mill Road shall be the sole responsibility of applicant; provided, however, that applicant's responsibility shall be reduced by any federal or state funding received for the such design, engineering and construction work; and provided further, that any contributions toward this work received by the city from owners or developers of other property in the Eisenhower Valley shall be paid to applicant. The design and construction of the connector/distributor roadway shall comply with all applicable state and federal requirements and standards, and all design and engineering plans and profiles for the roadway shall be submitted to the Director of T&ES for his approval. In the event that the U.S. Patent and Trademark Office relocation to Carlyle does proceed in whole or in part, substantial construction of the collector/distributor roadway, pursuant to this condition, shall commence no later than July 1, 2003, and shall thereafter be diligently pursued to completion. As used herein, "construction" means the uniting together of construction materials on the site for the permanent, physical structure of the roadway. The applicant has agreed that, in the event it fails to comply with the requirements of the prior two sentences, it shall be subject to an action by the City, filed in the Circuit Court for the City of Alexandria, to enforce the requirements.

(b) No certificates of occupancy shall be issued for any office space located on Block P unless and until construction of the collector/distributor roadway described in paragraph (a) has been completed and the roadway is in operation.

(c) Notwithstanding any other provision in this condition, the requirement for the construction of the collector/distributor roadway described in paragraph (a), and the prohibition against the issuance of certificates of occupancy in paragraph (b), shall not apply in the event that, and for so long as, construction has commenced, and continues to be diligently pursued, of all or part of the Woodrow Wilson Bridge replacement project, said project being described in the Record of Decision issued by the United Stated Department of Transportation on November 25, 1997 (regardless whether that Record of Decision is supplemented or replaced by a subsequent similar decision document), and including access ramps providing direct access from the inner loop of the Beltway to Mill Road and from Mill Road to the outer loop of the Beltway. This condition shall be of no further force or effect once these access ramps linking the Beltway with Mill Road are in operation.

41. Each building to be constructed within the project area shall be included in a final site plan, meeting all applicable requirements of the city's then existing site plan ordinance and filed with the Department of TES, and no construction of any building may commence until a final site plan encompassing the building has been approved and released by the department.

42. All parking garages shall have clearances, at least on their first parking level, which are adequate to accommodate full-size vans.

43. No structure within the project area shall be constructed at a height, in a location or otherwise in a manner which will obstruct, in any way, the nature or quality of microwave transmissions between the tower of the Masonic Temple, located at the intersection of King Street, Russell Road and Callahan Drive, and the city's Public Safety Center located on Mill Road. Nor shall

any construction or other activity within or adjacent to the project area cause any obstruction to such microwave transmissions.

44. Pursuant to applicant's offer, in response to a request for proposals issued by the city in March 1989, to convey land within the project area to the city as the site for a new United States Courthouse and the city's March 18, 1989 acceptance of applicant's offer, applicant shall enter into a contract with the City within 30 days of the decision by City Council, under section 7-6-28(i) of the Alexandria City Code, to grant a special use permit approving a plan of development for the project area, for the conveyance of Block I to the city; provided, that applicant's obligation to convey Block I is contingent upon the city's subsequent conveyance of the block to the United States for construction of a new United States Courthouse.

45. Except as otherwise expressly stated in the code requirements and conditions set out above and in the conditions set out below, applicant shall develop the project area in full accord with, and shall be subject to all narrative statements and drawings made in, its Plan of Development, as defined in ¶ I-1.

B. Recreation Conditions:

46. Within six months of the issuance of this permit by city council, applicant shall contribute $200,000 to the city for upgrading, maintaining, lighting or otherwise improving one or more athletic fields within the city.

47. Two tennis courts shall be provided within the project on Block A. In addition, a dog run area shall be constructed on the adjoining 2.12 acres of land. The surface for the dog run area shall be the existing mix of gravel and landscaping, with no fewer than ten shade trees planted at locations around and/or within the area to the satisfaction of the Director of RP&CA. Further, the dog-run shall be fully fenced, water shall be provided to the site, and no fewer than four benches shall be provided. The courts and the dog run shall be dedicated to the City for recreation purposes. Once the City accepts the dedication of the courts and dog area, the City shall be responsible for their maintenance.

48. Within 12 months of the approval of a special use permit for the project area, one or more athletic fields shall be constructed on Block P in the project area, in accordance with specifications provided by and to the satisfaction of the director of Recreation and Cultural Affairs. Such construction shall include the clearing and grading of Block P in accordance with specifications provided by the director of Recreation and Cultural Affairs. This athletic field or fields so constructed shall remain the sole use of Block P until the approval and release of a final site plan providing for the development of the block. Applicant shall not be responsible for lighting or maintaining any athletic field on Block P.

49. In connection with all street trees within the project area, below-grade planting troughs, meeting the specifications of the director of Recreation and Cultural Affairs, shall be provided to increase available growing space, and adequate under drainage and soil mixtures shall be furnished. Trees located above parking garages shall be placed in above-grade planting troughs meeting the specifications of the director.

50. A playground shall be constructed in connection with the day care center to be built within the project area. The playground shall meet all specifications of the director of Recreation and Cultural Affairs.

51. (a) John Carlyle Square, Dulany Gardens, The Crescent, Courthouse Square, and the Eisenhower Avenue Rotary are major open spaces which shall be constructed and maintained by the Carlyle Community Association, but subject to a public access easement. The design of these spaces shall be to the satisfaction of the Directors of P&Z and RP&CA who may consult with the DRB. At a minimum, the spaces shall be developed with the level of landscaping shown on the approved development plan. In addition, the following requirements shall be met:

(i) John Carlyle Square shall be designed consistent with the proposed Block D guidelines, to include landscaping and hardscaping intended to accommodate informal and formal outdoor events, shows and other activities for workers, residents, retail patrons and visitors to Carlyle, as well as residents of the city at-large. At a minimum, the Square shall include a small stage, fountain or similar design element, tables and benches for eating and playing chess or other games, space for lawn games, irrigation for landscaping and lights. Vendors shall be permitted to operate on the Square generally if approved specifically by separate SUP or, for specific events or activities, if authorized by the Director of RP&CA. The City shall have the right to program use of the Square for up to 10 events per year. Jamieson Street shall not go through the park.

(ii) Dulany Gardens shall be developed with lawn and landscaping, pathways, seating, and a fountain, in keeping with the design which has already been approved by the Design Review Board for portions of the park as depicted on the plan entitled 'The Parks at Carlyle, Alexandria, Virginia, Dulany Gardens' and dated 3/03/95.

(b) The African American Heritage Park and the Block A Park shall be dedicated to the city.

52. Consideration shall be given to the development of an ice skating rink in the Gardens area which would convert to a fountain/pool in the summer.

53. Assistance in the planning of an extension of the bike trail from Eisenhower Avenue underneath the Beltway at Payne Street/Hooff's Run to link up with the Mt. Vernon Trail at Hunting Creek shall be provided.

53A. A good-faith effort shall be made by applicant to locate and develop active recreational space at the south end of the Black Heritage Park near the Alexandria Sanitation Authority or elsewhere within the project area.

C. Housing Conditions:

54. At least 40% of the floor area dedicated to residential use, excluding that provided for elderly housing, shall consist of dwelling units with not less than two bedrooms.

54A. Condition 54A is intentionally deleted.

55. Prior to the release of the first site plan for the project area, applicant shall contribute $2.3 million to the City's Housing Trust Fund. An additional $2.3 million shall be paid in five equal annual installments on the anniversary date of the first payment of $2.3 million, with each payment adjusted so that it is made in constant 1990 dollars. Constant 1990 dollars shall be defined according to the Index known as the "U.S. Bureau of Labor Statistics Consumer Price Index For All Urban Consumers: Selected Areas, By Expenditure Category And Commodity And Service Group," for the expenditure subcategory "shelter," for the Washington D.C.-Maryland-Virginia SMSA. In the event the subcategory "Shelter" shall cease to be maintained, the designated category shall be "All Items" of the aforesaid Index. The designated Index and category or subcategory published next before the initial payment of $2.3 million shall serve as the "base index," and like data published next before each subsequent installment shall serve as the "installment index." Each such annual installment shall be the sum of (i) $460,000 and (ii) an amount computed by multiplying the sum of $460,000 by the percent change in the designated CPI Index between the "base index" and the applicable "installment index."

All payments made pursuant to this paragraph shall be placed and retained in a special City fund until a report from staff is received and approved by City Council regarding the manner in which these monies are to be used to subsidize rents and/or home purchases at this project or elsewhere in the City.

56. Applicant shall diligently pursue tax exempt financing, tax credits and other forms of housing subsidies which could be used together with the contributions provided under ¶ III-55 to maximize the number of non-elderly subsidized housing units constructed and occupied within the project area. In pursuing these matters, applicant shall work closely with the City's Office of Housing.

57. A plan for employer-assisted housing options to be presented to businesses leasing or purchasing space in the project area shall be submitted to the city's Office of Housing within 6 months of the issuance of the project's first certificate of occupancy. This plan shall be designed to assist employees working within the project area to reside there or elsewhere within the city.

58. First priority for the non-elderly subsidized housing provided within the project area shall be given to households with at least one member who works within the city, including within the project area, and second priority shall be given to households living but not working in the city.

59. Applicant shall work with the City's Department of Human Services Private Industry Council and the Urban League of Northern Virginia to develop and implement a job training and job placement program designed to provide training and employment opportunities to city residents with construction, retail, office and other employers working within the project area.

59A. The Oliver Carr Company will post notices of job openings (not filled internally) with Alexandria Office of Employment and Training, the Alexandria Urban League, the Virginia Employment Commission, and the Alexandria newspapers and use these entities as a first source for the hiring of engineers, porters, day matrons, security guards, receptionists and secretaries for the buildings managed by Carr within the CNS project. In addition, Carr will provide training for those employees at Carr's expense. It is anticipated that up to 150 to 200 employees will be hired for these positions.

In addition, CNS will educate the office and retail tenants and the hotel operator within the project regarding the services provided by the Alexandria Office of Employment and Training and will provide matching funds up to $100,000 to any tenant(s) who hire the Alexandria OET to train employees within the project.

D. Vesting, Phasing and Related Conditions:

60. Upon issuance of this special use permit by city council under section 7-6-28(i) of the Alexandria City Code and so long as all conditions set out in this permit, including the conditions in ¶ ¶ III-62, -63, -64 and -65 below, and in the permit issued by council under section 7-6-325 of the city code are satisfied, applicant shall be entitled to develop the project area in accordance with the following schedule of uses and "gross square footage," as that term is defined below:

use	gsf
office	1,797,500
office with no more than one parking space per 1,000 gsf	1,000,000
courthouse	400,000
residential	3,147,500
hotel	300,000
retail and health club	258,000
day care center	4,500
total	6,907,000

"Gross square footage" shall mean the sum of all horizontal areas under a roof or roofs, measured from the exterior faces of walls or from the centerline of party walls, excluding (i) penthouses and other structures containing heating, cooling, ventilating and related equipment and not susceptible to storage or occupancy, (ii) areas uses exclusively for the parking of motor vehicles and ancillary areas (e.g., elevator lobbies and shafts, and stairwells, serving such parking areas), whether above or below grade, (iii) attic space less than 7 feet, 6 inches in height, and (iv) areas dedicated solely to pedestrian 'skywalks, arcades, tunnels and bridges' as identified on the preliminary plan for the PTO project, provided that all such connections across public streets shall be underground. In the event any of the conditions referenced above in this paragraph are not satisfied, this permit shall, unless otherwise

provided by city council, become null and void as to all development within the project area on which construction has not commenced; provided, that it is understood and agreed that the United States of America (USA) as the owner of Lot 506 within the project area is not subject by law to the conditions herein, and that the failure of the USA as the owner of Lot 506 to comply with this Special Use Permit shall not void, nullify or otherwise invalidate the rights of the Applicant, its successors or assigns to develop the project area, in accordance with this Special Use Permit as amended. At such time, if ever USA conveys Lot 506 to a non-governmental entity, that the owner of the lot and the lot itself shall be subject to the provisions of this Special Use Permit, and the lot shall become a part of the owner's association for the lands subject to this Special Use Permit.

The gross square footage numbers in this condition are all maximum development levels and may be reduced on a block-by-block basis by the applicant as development progresses, notwithstanding the provisions of R-65, and so long as development remains consistent with the overall concept plan for the development and the block-by-block design guidelines, as determined by the Director of Planning and Community Development.

61. Upon the occurrence of any event identified in subparagraphs (a) through (g) below, applicant may request permission from city council to "transfer" gross square feet of development, up to the number of feet specified below for each "event," from the category of "residential" or "office with one parking space per 1,000 gsf" use (the "transferor use") to "office" use (the "transferee use"), subject to the provisions in ¶ III-62; provided, however, that no transfer may occur unless and until the "event" identified in subparagraph (a) occurs and Norfolk Southern has engaged in serious and constructive dialogue regarding the extension of the commuter rail line beyond Manassas as determined by the City Manager. Without council approval of a transfer request made under this paragraph, the transfer from "transferor" to "transferee" use shall not be undertaken. council may deny a request made pursuant to this paragraph upon a finding that the increase in morning or afternoon peak hour traffic traveling to or from, respectively, the project area which will result from the requested transfer (i) exceeds the additional traffic-carrying capacity of the road system serving the project area which will result from the "event" and (ii) will have a significantly adverse effect upon the morning or afternoon peak hour traffic conditions on that road system. In addressing the standard in the preceding sentence, council shall consider, in addition to all other evidence, a study, prepared by a qualified consultant who has been selected jointly by applicant and the city and who is compensated by applicant and the city or, at the city's discretion, solely by applicant, which analyzes and compares the traffic impacts of existing development within the project area and the "transferor" use without the "event," and the traffic impacts of such existing development and the "transferee" use with the "event." Council shall decide a request made pursuant to this paragraph within 60 days of the filing with the city of the consultant study and, if a decision has not been made within that period, the request shall be deemed approved, unless applicant consents to an extension of the 60-day period. "Events" and the maximum number of gross square feet which they will support are as follows:

a. commencement of construction of the collector/distributor roadway described in III-40: 500,000 gsf
b. commencement of construction of the Clermont interchange: 500,000 gsf

c. commencement of construction of the widening of the Wilson Bridge: 500,000 gsf
d. commencement of construction of the extension of Metro to Springfield: 500,000 gsf
e. commencement of construction of a flyover from westbound I-95 to Eisenhower Avenue at Stovall Street: 250,000 gsf
f. initiation of commuter rail operations from Fredericksburg and Manassas to Alexandria: 250,000 gsf
g. commencement of construction of Eastern Bypass to the Capital Beltway: 250,000 gsf

This paragraph does not limit or affect in any other manner applicant's right to transfer "office" or "office with no more than one parking space per 1,000 gsf" use to "residential" use.

Notwithstanding the foregoing, the applicant may transfer gross square feet of development, up to the number of feet specified for each event, from the category of residential or office with one parking space per 1,000 gsf use to office use, subject to the provisions in condition 62, provided that the General Services Administration selects Carlyle as the new location of the U.S. Patent and Trademark Office. Such transfers may occur regardless of whether the event identified in subparagraph a. above has occurred and shall not require further Council approval. (Amended SUP96-0092)

62. Any transfer of square feet of development to "office" use pursuant to ¶ III-61 is subject to the following limitations and conditions:

a. At the conclusion of all transfers authorized pursuant to R-61, the project shall not exceed the following schedule of uses and gross square footage:

USE	GSF
office	3,989,796
courthouse	400,000
residential*	2,024,463
hotel	229,334
retail and health club	258,000
day care center	4,500
Total	6,906,093

* Residential includes elderly housing (Lipnick or other entity approved by the City)

b. no transfer after January 1, 1995, may result in development within the project area being inconsistent with the zoning regulations then applicable to the area; provided, that the regulations with which the development is inconsistent (i) become effective after January 1, 1995, (ii) are enacted pursuant to a rezoning of at least the area of the city addressed in the city's 1990 small area plan for the King Street Metro area and the Eisenhower Valley, which rezoning applicant, stipulates and agrees shall be a comprehensive rezoning for purposes of judicial review, and (iii) are, in the event of a judicial challenge, sustained by a court of law
c. no transfer may result in a combination of uses within the project area which is inconsistent with the percentages set out in ¶ III-63 below

d. no transfer may occur following the failure of applicant to satisfy the conditions set out in ¶ III-64 below
e. no transfer may result in conditions which are inconsistent with the Plan of Development unless expressly authorized by council. (Amended SUP96-0089)

63. Condition 63 is intentionally deleted.

64. Construction of development, which for purposes of this paragraph includes infrastructure improvements, shall commence within the project area prior to April 18, 1995, and thereafter Applicant shall diligently and continuously pursue completion of all development within the project area. In the event there is no substantial construction activity proceeding on a continuous basis within the project area for more than 24 months, applicant shall be deemed not to have satisfied the requirement that it "diligently and continuously pursue" completion of development within the project area.

65. Minor revisions to the project area's Plan of Development, as authorized by this special use permit, may be approved by the directors of TES and Planning and Community Development. Major revisions to the Plan of Development may only be approved by city council. The determination whether a proposed plan revision is a "major" or "minor" revision shall be made by the directors of TES and Planning and Community Development; provided, that neither a transfer, request made under ¶ III-61, nor the changes to applicant's original Plan of Development which are necessary to bring it into conformity with the schedule in ¶ III-60 shall be deemed a major revision under this paragraph. In making this "major or minor" determination, the directors shall be guided by the following criteria:
a. any significant change in the use of a building shall be a "major" revision
b. any significant change to a building footprint, including one which reduces the footprint, shall be a "major" revision
c. any significant increase to a building envelope shall be a "major" revision
d. any significant increase to the square footage of a building shall be a "major" revision

Notwithstanding any other provision in this permit to the contrary, in approving a "major" revision to the Plan of Development which is requested by applicant, city council may, in its sole discretion, adopt other revisions to the development plan, including to the terms and conditions in this permit; provided, that, prior to any council approval of a "major" revision, applicant shall have the opportunity to withdraw its request for the revision.

66. Applicant acknowledges and agrees that any "vested rights" it may have to the use or development of the land which makes up the project area shall arise solely, if at all, under paragraphs ¶ III-60 through ¶ III-65 of this permit, and that no provisions of the Code of Virginia, including provisions which are enacted after the issuance of this permit, shall have any effect upon or applicability to its right or ability to develop such land. Under paragraphs ¶ III-60 through ¶ III-65, upon the issuance of this permit, applicant is vested in the uses and square footages set out in ¶ III-60 so long as applicant complies with all conditions set out in this permit and in the permit issued by council under section 7-6-325; provided that applicant's rights under this sentence shall always be subject to council's authority to modify such uses and square footages pursuant to ¶ III-65.

E. Design Review Conditions

67. A Design Review Board shall be established to review the architectural proposals for buildings within the project area. The Board shall include five members selected as follows: (1) one member of city council selected by council for a three year term beginning the September following the Council election; (2) the city manager or her designee; (3) one citizen member selected annually by City Council; provided, that once certificates of occupancy have been issued for more than 1.5 million gross square feet of development within the project area, this member shall be selected by council from a list of three persons nominated by the association or organization representing residents of the project area; and (4) two members from one or more design professions who shall be selected annually by the above three members and who shall be compensated by the city (which, in turn, shall be reimbursed for such costs by applicant). The Department of Planning and Zoning shall serve as staff to the Board.

68. For all blocks within Carlyle, the Design Review Board:

a. shall approve the final design of each building to be constructed on the blocks or portions thereof, including but not limited to materials, color and architectural elements, and, in so doing, shall ensure that the design meets all applicable design guidelines in Plan of Development and the urban design policies stated below in this paragraph; and

b. may approve minor changes sought by applicant to the design guidelines applicable to the blocks or portions thereof, but may not approve any increase in the height or gross square footage of any building or buildings to be constructed on the blocks or portions thereof or any change in the use or the square footage of any use approved for the blocks or portion thereof.

The urban design policies applicable under this paragraph are as follows:

* buildings should be oriented toward the street and designed to have a human scale at street level;

* building design should encourage street vitality by maximizing activity along the street and by creating many openings onto the street;

* buildings should be articulated vertically, as well as horizontally, in order to break up their mass;

* building entrances and lobbies should be given architectural prominence; and

* each building shall be compatible with and enhance the design of adjacent buildings and all other development within the project area.

69. Condition 69 is intentionally deleted.

70. With respect to Block O, applicant's design guidelines are not approved, and the Board:

a. shall approve new design guidelines which shall provide for the residential development of the blocks and portions thereof at a gross square footage equal to or less than that provided in applicant's design guidelines in the Plan of Development and, in so doing, shall consider the urban design factors stated below in this paragraph;

b. shall review and comment on the final design of each building to be constructed on the blocks or portions thereof and, in so doing, shall ensure that the design meets all applicable new design guidelines;

c. shall approve the materials, color and minor architectural elements of each building to be constructed on the blocks or portions thereof; and

d. may approve minor changes sought by applicant to the new design guidelines applicable to the blocks or portions thereof, but may not approve any increase in the height or gross square footage of any building or buildings to be constructed on the blocks or portions thereof or any change in the use or the square footage of any use approved for the blocks or portion thereof.

The urban design factors applicable under this paragraph are as follows:

* the solar orientation of the units;

* the relationship of the units to open space; and

* the relationship between residential units and very tall buildings.

70A. No design guidelines are approved for Block P. No development on Block P shall be approved by the City until the City has completed an assessment of the most effective way to provide access to the area south of Block P and approved an amendment to this special use permit to authorize new design guidelines for Block P. In conjunction with this amendment, the City may require the construction of one or more streets through Block P and alterations to the adjacent traffic rotary, including possible elimination of the rotary, to address any traffic concerns identified by staff in their access assessment. If the vacation of a portion of Dulany Street requested in Vacation #99-0006 does not occur, the alterations to the traffic network may not be required.

71. The Board shall approve the new design guidelines, which applicant is required to submit under ¶ III-75, for the blocks within the project area which are affected by the changes applicant makes to its original Plan of Development in order to bring it into conformity with the schedule of uses and gross square footage in ¶ III-60.

72. The Board may recommend to city council changes to the design guidelines which it is without authority to approve under ¶ ¶ III-68, -69 and -70, but council may approve such changes only with the concurrence of applicant.

73. Decisions of the Board may be appealed to city council by the applicant. Such an appeal shall be filed in writing with the director of Planning and Community Development within 15 days of the Board decision, and shall be heard by council within 45 days of the filing.

73A. Buildings shall be predominantly masonry (brick, stone, cast stone, precast) and predominantly with punched windows.

F. Other Planning Conditions:

74. Within 6 weeks of the issuance of this permit by city council, applicant shall submit a revised plan for the project area showing, to the satisfaction of the director of Planning and Community Development, the location within the project area of the uses identified in ¶ III-60.

75. Within a time period to be determined by the director of Planning and Community Development, applicant shall submit revised design guidelines for the blocks identified in ¶ III-70, for review and consideration by the Design Review Board, and a composite plan for the project area which shows, to the satisfaction of the director, the uses identified in ¶ III-60 and the design guidelines applicable to such uses.

76. At the build-to line, all buildings facing Duke Street, Holland Lane, Eisenhower Avenue, Second Street, Fountain Court and Retail Square shall be at least three stories. At the build-to line, all other buildings in the project area shall be at least two stories. The requirements of this paragraph shall not apply where the design guidelines are revised by City Council to modify streetwall requirements. (Amended SUP94-374).

77. Within the project area, except along Eisenhower Avenue for the garages on the PTO property, the maximum uninterrupted streetwall length, without recesses or ground floor setbacks, shall be 150 feet, unless approved by the director of Planning and Zoning.

78. Applicant shall consider moving the hotel from Block K to Block J.

G. Miscellaneous Conditions:

79. Applicant expressly agrees that all findings, code requirements and conditions set out in this permit shall run with the land which makes up the project area and shall be binding upon each and every person and legal entity who or which succeeds to any interest of applicant in any of such land. The term "applicant," as used in this permit, shall include all such successor persons and entities.

80. No space designated as retail in the development plan for the project area shall be used for office use except that 3,850 sq.ft. of retail space may be used for office space for the Time Life building on Block B, as explicitly approved by City Council. (Amended SUP94-374)

81. A soils report meeting the requirements of 1987 Uniform Statewide Building Code ("USBC") § 1202.1 shall be filed with the building permit application for every building to be constructed within the project area.

82. Separate demolition permits and asbestos certification reports shall be filed with the city's Office of Code Enforcement prior to the demolition of existing buildings within the project area.

83. Sheeting and shoring plans for each building to be constructed within the project area shall be approved, prior to the commencement of any construction activity, by the Department of TES and the Office of Code Enforcement.

84. All underground electrical vaults to be constructed within the project area shall be shown on a final site plan.

85. Permits for all outside fountains and pools shall be obtained from the Office of Code Enforcement prior to the commencement of construction of such items.

86. All "mixed use groups," within the meaning of USBC §313.0, shall be separated as required by that section of the code.

87. Any building over 50 feet in height shall contain fire suppression systems to the satisfaction of city's Office of Code Enforcement Fire Department.

88. Permits for any retaining walls shall be obtained from the Office of Code Enforcement prior to the commencement of construction of such walls.

89. Prior to the release of a building permit for any building within the project area, a code analysis shall be conducted by applicant and one or more code conferences with staff of the Office of Code Enforcement shall be held.

90. All construction within the project area shall comply with the provisions of the Virginia Uniform Statewide Building Code.

91. Emergency vehicle easements shall be provided the city over all private roads within the project area, and all such roads shall be no less than 22 feet in width. Such easements shall be given the city prior to the release of any final site plan containing private roads, and plats showing the easements shall be filed with the Fire Department prior to the release of the site plan.

92. Prior to the release of any final site plan, applicant shall discuss with the city's Chief of Police, or his designee, any security concerns of the Police Department and shall implement all reasonable security measure recommended by the chief or his designee.

93. No final site plan for the project area shall be released until the Chief of Police has reviewed the adequacy of the security measures to be undertaken in conjunction with the development proposed in the site plan.

94. Prior to the issuance of certificates of occupancy for 1 million gross square feet of development within the project area, applicant shall provide at least 800 net square feet of

space within a building, which is located within the project area and is satisfactory to the Chief of Police, for use as a "store front facility" by the Police Department.

95. To the extent there are inconsistent provisions within the Plan of Development, the more restrictive provisions shall prevail and apply under this special use permit.

96. The areas above the parking decks on blocks H, L, and O will be landscaped to the satisfaction of the Director of Planning and Zoning.

97. Rooftop mechanical penthouses shall be permitted subject to the following limitations:

a. Only one penthouse is permitted for each building unless the number is increased by the Design Review Board, except that three separate penthouses shall be permitted for the main PTO building, one on the main tower and one on each wing of the tower.
b. The penthouse may exceed 15 feet in height with the approval of the Design Review Board but shall not exceed 22 feet in height without an amendment to this special use permit, except that penthouses on the PTO buildings may be up to 22' in height.
c. The penthouse must be limited in size to the minimum space required to house necessary mechanical equipment and to provide access for maintenance of such equipment; and
d. No equipment may be placed above the roof of the penthouse to increase its height if such equipment could be located elsewhere on the building.

98. The 10,955 sq.ft. of land vacated by the City generally located on the north side of block B (case #VAC94-004) is hereby incorporated into the Carlyle special use permit and all conditions of the Carlyle special use permit shall be applied to this added land area. (Added SUP94-374)

99. Incorporate the brewery site into the park to be developed at the corner of Duke and Dulaney Streets and mark the site with a proper marker or plaque indicating it is a valued 19th century beer lager. (Added SUP94-374)

100. Call Alexandria Archeology immediately (703-838-4399) if any buried structural remains (foundation walls, wells, privies, cisterns, etc.) or concentrations of artifacts are discovered during construction activities. A City archaeologist will visit the site without delay to evaluate its significance and record the presence of the archaeological remains. The archeologist may also collect a sample of the artifacts from the site for further study in the laboratory. This will not result in construction delay or the expenditure of any funds beyond those additional funds already committed in the October 1993 agreement. (See attached January 20, 1994 letter from Wiley Mitchell). (Added SUP94-374)

101. Parking built above grade shall be set back a minimum of 30 feet from the exterior building walls of the first and second floor of the street frontage where commercial or retail uses are required at grade, except along John Carlyle Street and Elizabeth Lane, where the setback shall be a minimum of 22'. Where residential uses are required, the setback shall be the reasonable depth of a residential unit, as determined by the Director of P&Z. Blocks M, and N shall be

exempt from this requirement along the Eisenhower Avenue street frontage in conjunction with the PTO project, if the garages facing Eisenhower Avenue are designed of high quality materials consistent with the other buildings in Carlyle, and with openings and other architectural treatments approved by the Carlyle Design Review Board.

102A. **CONDITION AMENDED BY PLANNING COMMISSION: Ground Floor Retail**: Ground floor uses of areas designated as "retail" shall be to limited to retail, personal service uses and restaurants as defined below..

1. **Permitted Uses**:
   a. **Retail Shopping Establishments.**
   b. **Personal Service Uses:** Barbershops and beauty salons, dressmakers and tailors, dry-cleaning (limited to pick-up only), optical centers, professional photographer's studios, and photocopying service. A bank is permitted if it does not adjoin another bank or a financial investment office.

2. **Uses Allowed by Administrative Approval**:

   a. **Full-Service Restaurants:** Full-service restaurants may be approved administratively by the Director of Planning and Zoning, provided that any restaurant approved under this provision complies with the conditions listed below and is compatible with the character of the Carlyle Development District. Restaurants that do not meet these criteria may be approved subject to a special use permit.
      i. Restaurants shall close no later than 12:00 a.m.
      ii. All patrons shall be seated by a host or hostess, printed menus shall be provided at the tables, service shall be provided at the tables by a waiter or waitress, and tables shall be preset with non-disposable tableware and glassware.
      iii. Deliveries to the business shall not take place between the hours of 7:00 a.m. and 9:30 a.m., or between 4:00 p.m. and 6:00 p.m., Monday through Friday. Deliveries to restaurants within residential buildings or whose service drive adjoins a residential building shall not take place before 7:00 a.m. or after 10:00 p.m.
      iv. If any food delivery services are provided, they shall clearly be accessory to dine-in food sales, and all deliveries shall be nonvehicular (made on foot, via bicycle, etc.). Alcoholic beverages shall not be delivered off-site, and delivery of nonalcoholic beverages shall only be in association with food deliveries.
      v. Alcoholic beverages may be sold for on-premises consumption only, and shall clearly be accessory to food sales.
      vi. Grease traps shall be located within the building. Kitchen equipment shall not be cleaned outside, nor shall any cooking residue be washed into the streets, alleys, or storm sewers.
      vii. No food, beverages, or other material shall be stored outside.

viii. 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 invasions by animals. No trash or debris shall be allowed to accumulate on-site outside of those containers.

ix. 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.

x. Cooking odors, smoke and any other air pollution from operations at the site shall be properly ventilated and shall not be permitted to become a nuisance to neighboring properties, as determined by the Department of T&ES.

xi. 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.

xii. The design of the restaurant shall reflect the character and quality of materials consistent with the high standards established in Carlyle.

b. **Restaurants - Outdoor Dining:** Outdoor dining is encouraged and may be permitted administratively by the Director of Planning and Zoning subject to the following minimum criteria and conditions:

i. All outdoor dining areas shall be accessory to an approved indoor restaurant.

ii. An unobstructed pathway with a minimum width of 8 feet shall be provided at all times.

iii. Any permanent structures which are required for the outdoor seating area shall be subject to review and approval by the Carlyle DRB.

iv. No live entertainment shall be permitted in the outdoor seating area.

v. No sound amplification shall be permitted in the outdoor seating area.

vi. Any outdoor seating areas shall not include advertising signage. The design of the outdoor seating shall be compatible with the design of the building.

vii. On site alcohol service shall be permitted; no off-premise alcohol sales are permitted.

viii. No food, beverages, or other material shall be stored outside.

ix. The applicant shall provide, at its expense, one city trash container Model SD-42- exclusively for each outdoor dining area. The trash container shall be emptied at the close of business each day.

x. 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 invasions by animals. No trash and debris shall be allowed to accumulate on-site outside of those containers.

xi. 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.

xii. The outside dining area shall be cleaned at the close of each day of operation.

xiii. The applicant shall control 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 T&ES.

xiv. 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.

c. **Other Uses:** The Director of Planning and Zoning may approve other commercial activities that involve a high degree of pedestrian activity subject to the following:

i. The use provides goods or services to the general public.

ii. The business is determined to be consistent with the high quality requirements, design and character of Carlyle.

iii. The primary entrance for the business shall open onto a public sidewalk or a retail lobby or court.

iv. Exterior signage, oriented to the public sidewalk, shall be provided.

v. Windows shall not be opaque or otherwise obstructed. Either well-maintained and regularly updated window displays shall be provided, or windows shall provide open views into the tenant space.

vi. In no cases shall these uses include pawn shops, laundromats, locksmiths, musical instrument repair, or furniture upholstering shops.

d. The Director of Planning and Zoning shall promulgate procedures for the processing of applications and notifying the public that an application has been filed under this condition, such procedures to include at a minimum the posting of the site with a placard, a brief period for public comment to the Director, and the listing of the pending application on the City's web site. (PC)

3. **Special Use Permit**. The following uses may be allowed subject to a special use permit:

a. Restaurants which do not meet all of the minimum criteria described in §102A.2.a above.

b. Banks which do not meet the separation limitations in §102A.1.b above.

c. Financial investment offices

d. Entertainment uses.

102B. **NEW CONDITION Retail, above or below ground level.** Use of areas that are designated as "retail" and are located above or below ground level shall be limited to those uses as listed below:

1. **Permitted Uses**
   a. Those uses which are listed in §102A.1 above.
   b. Banks,
   c. Financial investment offices,
   d. Private schools,
   e. Public schools,
   f. Health clubs,
   g. Realty offices, and
   h. Tax preparation services.

2. **Uses Allowed by Administrative Approval**
   a. Full-service restaurants, subject to the provisions of §102A.2.a above.
   b. Restaurants - outdoor dining, subject to the provisions of §102A.2.b above.
   c. Other commercial activities that involve a high degree of pedestrian activity, subject to the provisions of §102A.2.c above.

3. **Special Use Permit**. The following uses may be allowed subject to a special use permit:
   a. Restaurants which do not meet all of the minimum criteria described in §102A.2.a above.
   b. Entertainment uses.

102C. **NEW CONDITION** The ground floor office use in the southeast quarter of the building at 333 John Carlyle Street shall be discontinued by December 31, 2009. All other uses which have been established as of June 12, 2004, and which do not meet the requirements of §102A and §102B above shall be considered to be noncomplying uses and subject to §12-300 of the Zoning Ordinance.

102D. **CONDITION AMENDED BY PLANNING COMMISSION:** The ground floor of the townhouses at 400-412 John Carlyle Street shall be subject to the following: If, after making a good faith effort as determined using guidelines issued by the director, the building owner is unable to lease or sell space required by the design guidelines and the special use permit to be in retail use, the director may authorize that space to be leased for non-retail use for a period not to exceed ten years, after which time subsequent leases may be authorized on the same conditions. For the purpose of this requirement, retail uses shall include retail shopping establishments, restaurants, banks, financial investment and consulting offices, professional offices, travel agencies, realty offices, personal service uses, educational uses and any other commercial activity that involves a high degree of pedestrian activity, as determined by the Director of Planning & Zoning. The professional office use may be permitted with subsequent approval of the property owners, Homeowners Association and City Attorney.. ~~This waiver provision shall not apply to Blocks G, J, K or P; any retail space allocated to those blocks shall be utilized solely for retail purposes.~~ (PC)

102~~A.~~E. **REVISED CONDITION** A grocery store of no less than 25,000 square feet shall be provided within the retail space at Carlyle, unless the grocery store approved in DSUP #2002-0009 for the corner of Duke Street and Holland Lane is constructed and operational. If the requirement for a grocery store is nullified, the 25,000 square feet shall be provided on Block P as retail use that is concentrated along the street and located at ground level.

103. The height for Carlyle Towers Building III shall be permitted to be increased to a maximum height of 193'. Prior to the release of any final site plan for a building which incorporates the increased height, the design guidelines sheet for Block A shall be updated to incorporate the height change and shall be provided to the City. (Added SUP99-0021.)

104. Maximum heights within the project shall be as shown on the approved design guidelines for each block. Two blocks have no approved guidelines: Blocks O and P. On Block O, heights shall not exceed 60', except along Holland Lane, where heights may increase up to 155', and along Eisenhower Avenue at its intersection with John Carlyle Street, where heights may increase up to 110'. Heights on Block P shall be determined by City Council as part of its special use permit review of the applicant's revised design guidelines for Block P.

105. The 313 parking spaces not required by the PTO SFO but located within the PTO parking garages shall be made available to the public in the evening and on weekends until at least 10 p.m. In addition, at least 500 additional spaces within the garages shall be made available to the public on evenings and weekends if the Directors of P&Z and T&ES determine that all or a specific portion of such parking spaces are needed to serve uses in the surrounding area; in the event of such a determination, security for and related to these parking spaces, satisfactory to PTO, shall be provided. A fee may be charged for any parking provided pursuant to this condition.

105A. Sufficient spaces for PTO visitors shall be made available from the parking spaces allocated to PTO; provided that no more than 352 (10% of the total PTO spaces) shall be required to be made available for this purpose.

106. The following improvements are required as mitigation of the proposed relocation of the U.S. Patent and Trademark Office to Carlyle and shall be deleted as requirements if the relocation of the U.S. Patent & Trademark Office to Carlyle does not proceed. However, the City reserves the right to require some or all of the following improvements in the context of requests for other amendments to the Carlyle special use permit or in the context of a request for transfer of density pursuant to condition #61 of this special use permit.

(a) The applicant shall construct, at its own expense, or pay for the construction of the following road improvements as generally shown and described in the PBSJ Traffic Impact and Analysis Report on Carlyle dated 1/25/00:

1. Duke Street/Dulany Street/Diagonal Road: dual left turn lanes from westbound Duke Street into Dulany Street and from northbound Dulany Street to Duke Street, and enhancements to the pedestrian crossings at that intersection to include additional and widened sidewalks, and modified medians and crosswalks

2. Duke Street/John Carlyle Street/entrance to King Street Station: improved pedestrian crossings on Duke Street

3. Eisenhower Avenue: widen to provide one additional westbound lane between John Carlyle Street and Elizabeth Lane.

4. Eisenhower Avenue/John Carlyle Street: left turn bay from eastbound Eisenhower Avenue to John Carlyle Street.

5. Eisenhower Avenue/Elizabeth Lane: left turn bay from southbound Elizabeth Lane to Eisenhower Avenue.

6. Jamieson Avenue: extend to West Street.

All of the above improvements shall be accommodated within existing city right-of-way or on property under CDC's control and CDC shall not be required to acquire any additional property to meet these obligations.

(b) The applicant shall reimburse the city for the installation and initial timing of new signals and for retiming of existing signals at the following intersections:

1. Eisenhower Avenue/John Carlyle Street
2. Eisenhower Avenue/Elizabeth Lane
3. Eisenhower Avenue/Mill Road
4. Duke Street/Holland Lane
5. Duke Street/John Carlyle Street
6. Duke Street/Dulany Street/Daingerfield Road

Design and engineering profiles of all improvements required by this condition shall be submitted to and approved by the City as an infrastructure plan prior to release of any final site plan related to the PTO buildings. Construction shall commence within 12 months of the approval of the first final site plan for the PTO and shall thereafter be diligently pursued.

(c) The applicant shall pay the city $200,000 prior to July 1, 2001 to be utilized by the City for other traffic measures.

107. In the event the U.S. Patent and Trademark Office relocation to Carlyle does not proceed, approval of the design guidelines for the eastern portion of Block F, the western portion of Block G, and all of Blocks J, K, M and shall be suspended until such time as the applicant requests and City Council approves an amendment to the Carlyle special use permit to address the changes created by the loss of the PTO.

108. During the initial 20-year term of the lease of the five buildings within the Carlyle site to be leased to the United States of America for use by the United States Patent and Trademark Office, the real property subject to the lease is intended to remain in private ownership and to be subject to City of Alexandria real estate taxes. Prior to final site plan approval for any of

the five buildings to be leased to the United States, the applicant or any successor in interest to the applicant shall cause to be recorded among the land records of the City of Alexandria, a covenant, approved by the city attorney, that provides that, before any voluntary sale of any of the real property that is being leased to the United States (the Property") to a purchaser which is not obligated to pay City of Alexandria real estate taxes, the seller of the real property, shall, at the election of the seller either (i) provide to the City a payment equal to the present value of the estimated real estate tax payments (to be calculated pursuant to a mutually agreeable formula to be set forth in the recorded covenant) which would otherwise become due on the Property during the balance of the initial 20-year term of the lease to the United States, or (ii) enter into a binding and enforceable agreement with the City, approved by the city attorney and including such surety as deemed necessary by the city attorney, that requires the seller to make semi-annual payments to the City during the balance of the 20-year term which shall be equal to and made at the same time as the real estate tax payments that would otherwise have been due on the Property. Such covenant shall expressly provide that (i) its terms and obligations shall run with the land and be an encumbrance upon the Property, for the benefit of the City, and the applicant or the applicant's successors in interest shall ensure that the covenant and the obligation thereof shall have priority over every mortgage, deed of trust, or other lien or encumbrance on the Property, whether created prior to, or subsequent to, the grant of such covenant, and (ii) it shall be released of record in the event of a sale of the Property to a real estate tax exempt purchaser at such time as the foregoing conditions have been satisfied or the expiration of the 20 year term of the lease to the United States. In no event shall this condition or such agreement be deemed to impose the obligation to pay any City of Alexandria real estate taxes upon a real estate tax-exempt purchaser of any Property.

109. In addition to the requirements of the Transportation Management Plan for Carlyle, the applicant or its successor in interest to the PTO Property shall, within six months of approval of the SUP, initiate contact with, and shall thereafter use its best, good faith efforts to work with city staff, WMATA, the Virginia and Maryland Secretaries of Transportation, the developer of National Harbor, other local governments and interested parties, to develop and implement a transportation plan for public transit service across the Woodrow Wilson Bridge, from the Branch Avenue Metro Station (opening in 2001) to the Eisenhower Avenue Metro Station, with service stops at National Harbor, PTO, and other appropriate locations. Such service should be operational using buses, at the time of occupancy of the first PTO building, if feasible, and service should eventually be provided by light or heavy rail. This condition does not require the applicant to fund such transit service. (City Council)

110. The applicant shall update the Design Guidelines and provide digital originals to the City within 30 days from the approval date of the special use permit approval that reflect the current and all previous amendments to the Guidelines. The revised Guidelines shall be administratively approved by staff prior to an application for Blocks F, G, J and/or K. (P&Z)

111. The development of Blocks F, G, J and K shall be in accordance with the attached design guidelines dated May 23, 2003. (P&Z)

112. Condition deleted (PC)

113. The building setbacks for Block G shall be increased to a minimum of 10 feet along Ballenger and Jamieson Avenues at the 45-foot-height. A setback at the fifth level shall be provided if deemed necessary by the Director of P&Z.

114. The retail parking for Blocks F, G and P shall be limited to a maximum of 3.5 spaces/1,000 GSF. Blocks J and K shall provide a maximum of 277 parking spaces, 94 of the spaces shall be provided for retail uses. The parking shall be allocated proportionally between the two blocks. (PC)

#22

City of Alexandria, Virginia

MEMORANDUM

DATE: JUNE 1, 2004

TO: CHAIRMAN AND MEMBERS OF THE PLANNING COMMISSION

FROM: EILEEN P. FOGARTY, DIRECTOR, PLANNING AND ZONING

SUBJECT: CARLYLE RETAIL DEFINITION (DSUP # 2004-0028)

In the time that has passed since the Planning Commission packets were distributed, staff has continued to work with Carlyle property owners to finalize the proposed definition of retail. As a result of comments from those property owners, staff has made minor adjustments to the recommended new retail language. The proposed new language is provided below; language that has been added since the PC packets were distributed is underlined, and strike-out is used for language that has been deleted:

102A. Ground floor uses of areas designated as "retail" shall be to limited to retail, personal service uses and restaurants as defined below.

1. **Permitted Uses**:
   a. **Retail Shopping Establishments** as defined in the Zoning Ordinance. ~~Retail Uses: Antiques, art galleries, art supply, arts and crafts studios, bakeries, candy stores, bookstores, clothing, clothing accessories, department stores, drugstores, florists, furniture sales, groceries, jewelers, and pet supplies.~~
   b. **Personal Service Uses:** Barbershops and beauty salons, dressmakers and tailors, dry-cleaning (limited to pick-up only), optical centers, professional photographer's studios, and photocopying service. A bank is permitted if it ~~has no more than 30 feet of street frontage and~~ does not adjoin another bank or a financial investment office.

2. **Uses Allowed by Administrative Approval**

   a. **Full-Service Restaurants:** Full-service restaurants may be approved administratively by the Director of Planning and Zoning, provided that any restaurant approved under this provision complies with the conditions listed

below and is compatible with the character of the Carlyle Development District. Restaurants that do not meet these criteria may be approved subject to a special use permit.

i. Restaurants shall close no later than 12:00 a.m.

ii. All patrons shall be seated by a host or hostess, printed menus shall be provided at the tables, service shall be provided at the tables by a waiter or waitress, and tables shall be preset with non-disposable tableware and glassware.

iii. Deliveries to the business shall not take place between the hours of 7:00 a.m. and 9:30 a.m., or between 4:00 p.m. and 6:00 p.m., Monday through Friday. Deliveries to restaurants within residential buildings or whose service drive adjoins a residential building shall not take place before 7:00 a.m. or after 10:00 p.m.

iv. If the restaurant offers ~~any~~ food delivery ~~services are provided, they~~, the delivery service shall clearly be accessory to dine-in food sales, and all deliveries shall be nonvehicular (made on foot, via bicycle, etc.). Alcoholic beverages shall not be delivered off-site, and delivery of nonalcoholic beverages shall only be in association with food deliveries.

v. Alcoholic beverages may be sold for on-premises consumption only, and shall clearly be accessory to food sales.

vi. Grease traps shall be located within the building. Kitchen equipment shall not be cleaned outside, nor shall any cooking residue be washed into the streets, alleys, or storm sewers.

vii. No food, beverages, or other material shall be stored outside.

viii. 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 invasions by animals. No trash or debris shall be allowed to accumulate on-site outside of those containers.

ix. 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.

x. Cooking odors, smoke and any other air pollution from operations at the site shall be properly ventilated and shall not be permitted to become a nuisance to neighboring properties, as determined by the Department of T&ES.

xi. 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.

xii. The design of the restaurant shall reflect the character and quality of

materials consistent with the high standards established in Carlyle.

b. **Restaurants - Outdoor Dining:** Outdoor dining is encouraged and may be permitted administratively by the Director of Planning and Zoning subject to the following minimum criteria and conditions:

i. All outdoor dining areas shall be accessory to an approved indoor restaurant.

ii. An unobstructed pathway with a minimum width of 8 feet shall be provided ~~between the back-of-curb and the nearest obstruction~~ at all times.

iii. Any permanent structures which are required for the outdoor seating area shall be subject to review and approval by the Carlyle DRB.

iv. No live entertainment shall be permitted in the outdoor seating area.

v. No sound amplification shall be permitted in the outdoor seating area.

vi. Any outdoor seating areas~~, including umbrellas,~~ shall not include advertising signage. The design of the outdoor seating shall be compatible with the design of the building.

vii. On site alcohol service shall be permitted; no off-premise alcohol sales are permitted.

viii. No food, beverages, or other material shall be stored outside.

ix. The applicant shall provide, at its expense, one city trash container Model SD-42- exclusively for each outdoor dining area. The trash container shall be emptied at the close of business each day.

x. 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 invasions by animals. No trash and debris shall be allowed to accumulate on-site outside of those containers.

xi. 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.

xii. The outside dining area shall be cleaned at the close of each day of operation.

xiii. The applicant shall control 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 T&ES.

xiv. 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.

c. **Other Uses:** The Director of Planning and Zoning may approve other

commercial activities that involve a high degree of pedestrian activity subject to the following:

i. The use provides goods or services to the general public.
ii. The business is determined to be consistent with the high quality requirements, design and character of Carlyle.
iii. The primary entrance for the business shall open onto a public sidewalk or a retail lobby or court.
iv. Exterior signage, oriented to the public sidewalk, shall be provided.
v. The tenant frontage shall be designed to engage the pedestrian by providing window displays, oriented to the public sidewalk, and/or visibility into the store. Opaque or obstructed windows ~~or blinds~~ are not permitted.
vi. In no cases shall these uses include pawn shops, laundromats, locksmiths, musical instrument repair, or furniture upholstering shops.

3. **Special Use Permit**. The following uses may be allowed subject to a special use permit:
   a. Restaurants which do not meet all of the minimum criteria described in §102A.2.a above.
   b. Banks which do not meet the ~~street frontage or~~ separation limitations in §102A.1.b above.
   c. Financial investment offices
   d. Entertainment uses.

102B. Use of areas that are designated as "retail" and are located above or below ground level shall be limited to those uses as listed below:

1. **Permitted Uses**
   a. Those uses which are listed in §102A.1 above.
   b. Banks,
   c. Financial investment offices,
   d. Private schools,
   e. Public schools,
   f. Health clubs,
   g. Realty offices, and
   h. Tax preparation services.

2. **Uses Allowed by Administrative Approval**
   a. Full-service restaurants, subject to the provisions of §102A.2.a above.
   b. Restaurants - outdoor dining, subject to the provisions of §102A.2.b above.
   c. Other commercial activities that involve a high degree of pedestrian activity, subject to the provisions of §102A.2.c above.

3. **Special Use Permit**. The following uses may be allowed subject to a special use permit:
   a. Restaurants which do not meet all of the minimum criteria described in §102A.2.a above.
   b. Entertainment uses.

102C. The ground floor office use in the southeast quarter of the building at 333 John Carlyle Street shall be discontinued by December 31, ~~2007~~2009. All other uses which have been established as of June 12, 2004, and which do not meet the requirements of §102A and §102B above shall be considered to be noncomplying uses and subject to §12-300 of the Zoning Ordinance.

102D. The ground floor of the townhouses at 400-412 John Carlyle Street shall be subject to the following: If, after making a good faith effort as determined using guidelines issued by the director, the building owner is unable to lease or sell space required by the design guidelines and the special use permit to be in retail use, the director may authorize that space to be leased for non-retail use for a period not to exceed ten years, after which time subsequent leases may be authorized on the same conditions. For the purpose of this requirement, retail uses shall include retail shopping establishments, restaurants, banks, financial investment and consulting offices, travel agencies, realty offices, personal service uses, educational uses and any other commercial activity that involves a high degree of pedestrian activity, as determined by the Director of Planning & Zoning.

102E. A grocery store of no less than 25,000 square feet shall be provided within the retail space at Carlyle, unless the grocery store approved in DSUP #2002-0009 for the corner of Duke Street and Holland Lane is constructed and operational. If the requirement for a grocery store is nullified, the 25,000 square feet shall be provided on Block P as ~~concentrated~~ retail use that is ~~continuous~~ concentrated along the street and located at ground level.

June 1, 2004

Ms. Barbara Ross
Mr. David Sundland
Planning and Zoning Department
301 King Street
Suite 2100
Alexandria, VA 22314

ASADOORIAN

Re: ***Proposed Carlyle Retail Definitions***

Dear Ms. Ross and Mr. Sundland:

I am retail real estate broker that is active in marketing retail properties and representing retail tenants throughout the Washington DC Metropolitan Area. Our assignments range for marketing mixed-use projects such as Reston Town Center to street-front projects in Clarendon, Tysons Corner, Bethesda, Georgetown, Downtown Washington and the 14th Street corridor. As for retailers, we represent users as diverse as Lowe's Home Improvements to fashion designer Nicole Miller and restaurants that range the spectrum from Five Guys Burgers and Fries to Legal Sea Foods, Harry's Tap Room and Michel Richard's Citronelle. Please visit our website at www.asaretail.com for more background information on us.

A number of our clients are active in the Carlyle area I have been asked to review the Proposed Carlyle Retail definitions. I have also been asked for my comments by the Alexandria Economic Development Partnership.

In reviewing the proposed definitions, my concerns relate to our ability to be competitive with other markets vying for the attention of high-quality retail and restaurant uses. For many years, Alexandria has been seen as a challenging environment to do business in given the SUP process and limits on certain businesses. While overall, the conditions are not terribly burdensome, easing up a little on certain conditions will have a significant effect in securing the high-quality, unique users we seek. My comments relate to the following:

Section 102A.2.a.i.: Restaurant hours should be revised to allow closing later than midnight. 1 –1:30 AM would be better and more in line with most other neighboring markets. 12:00 AM may be too restrictive and limit the hours that many users require.

3205 N Street, NW Washington, DC P 202.333.9066 F 202.333.9067 WWW.ASARETAIL.COM

Section 102A.2.a.iv.: Deliveries by foot and bicycle may not be practical in inclement weather or for timely delivery service, which many consumers expect. Flexibility should be added to included vehicular deliveries.

Section 102A.2.b.iv.: Live acoustic entertainment that is not amplified should be allowed. This can be a pleasant element that enlivens the streetscape and compliments the effort to create a 'sense of place' at Carlyle.

I appreciate having the opportunity to present my thoughts and comments. Should you care to discuss them, please feel free to call me or email me at john@asaretail.com.

Sincerely,

ASADOORIAN RETAIL SOLUTIONS

John A. Asadoorian

PC Docket Item #22
SUP 2004-0028

WALSH COLUCCI
LUBELEY EMRICH
& TERPAK PC

M. Catharine Puskar
(703) 528-4700 Ext. 13
cpuskar@arl.thclandlawyers.com

June 1, 2004

Via Facsimile

Eileen Fogarty
Alexandria City Dept. of Planning & Zoning
301 King St, Rm 2100, City Hall
Alexandria, VA 22314

Re: Special Use Permit #2004-0028

Dear Ms. Fogarty,

On behalf of Post Carlyle I, LLC and Post Carlyle II LLC (collectively "Post"), the owners of Carlyle Blocks L and O, respectively, Post hereby consents to the filing of, and joins in the application for, an amendment to the Carlyle Development Plan Special Use Permit for the limited purpose of amending Conditions 102 and 102A relating to the definition of retail within the Carlyle Development. For the record, Post also supports the proposed modifications to the staff recommendation, as set forth in R. William Hard's June 1, 2004 letter to Eileen Fogarty. If there are any further amendments by the Planning Commission or City Council that are not acceptable to Post, Post reserves its right to withdraw its consent to and joinder in the application.

Very truly yours,

WALSH, COLUCCI, LUBELEY, EMRICH & TERPAK, P.C.

M Catharine Puskar

M. Catharine Puskar

MCP/kkf
cc: John Mears
Bill Cartwright
Walt Keller
Martin D. Walsh
J:\POST\2593.3 Carlyle\Fogarty ltr 2.doc

PHONE 703 528 4700 ▮ FAX 703 525 3197 ▮ WWW.THELANDLAWYERS.COM
COURTHOUSE PLAZA ▮ 2200 CLARENDON BLVD., THIRTEENTH FLOOR ▮ ARLINGTON, VA 22201-3359
LOUDOUN OFFICE 703 737 3633 ▮ MANASSAS OFFICE 703 330 7400 ▮ PRINCE WILLIAM OFFICE 703 680 4664
ATTORNEYS AT LAW

PC Docket Item #22
SUP 2004-0028

June 1, 2004

Ms. Eileen Fogarty, Director
Planning and Zoning Department
301 King Street, Room 2100
Alexandria, VA 22314

Ms. Fogarty:

I represent the owner of the properties at 1900 and 2050 Ballenger Avenue, have received the proposed amendment to SUP #2253, Conditions 102 and 102A regarding changes to the definition of retail within the Carlyle development, and hereby join in the application and consent to the applicability of the revised retail definition to this property, subject to the following modifications:

1. **102A.2.a.i.:** The closing hour shall be no later than 1:30 am, to take advantage of post-theater demands and to be competitive.

2. **102A.2.a.iv.:** Vehicular deliveries should be permitted, to increase the appeal both within and outside of Carlyle.

3. **102A.2.b.iv.:** Non-amplified live entertainment, similar to Bethesda Row, should be permitted to enliven the streetscape.

4. **102A.2.c.v.:** Blinds are necessary for controlling solar load. Most restaurants have some means of controlling this.

Sincerely,

R. William Hard
Executive Vice President

RWH/tt
cc: Tom Luebke

PC Docket Item #22
SUP 2004-0028

June 1, 2004

Ms. Eileen Fogarty, Director
Planning and Zoning Department
301 King Street, Room 2100
Alexandria, VA 22314

Ms. Fogarty:

I represent the ownership of the properties at 2051 and 1900 Jamieson Avenue, and have received the proposed amendment to SUP #2253, Conditions 102 and 102A regarding changes to the definition of retail within the Carlyle development, and hereby join in the application and consent to the applicability of the revised retail definition to this property, subject to the following modifications:

1. **102A.2.a.i.:** Revise closing hour to 1:30 am to provide competitive marketing with other Alexandria restaurants.

2. **102A.2.a.iv.:** Vehicular deliveries are necessary and should be permitted

3. **102A.2.a.iv.:** Delivery of 'alcoholic' beverages with food deliveries should be allowed to promote private parties, catered events, etc... as a service offered by Carlyle restaurants.

4. **102A.2.b.iv.:** Non-amplified live entertainment should be permitted to enliven the streetscape.

5. **102A.2.c.v.:** Opaque windows or blinds should be permitted as they are necessary for controlling solar loading and providing patron comfort.

Sincerely,

Michael W. Lane
Partner
Carlyle-Lane-CFRI Venture, LLC
Carlyle-Lane-CFRI Venture II, LLC

MWL/cs
cc: Tom Luebke

PC Docket Item #22
SUP 2004-0028

ReedSmith

J. Howard Middleton
Direct Phone: 703.641.4225
Email: jmiddleton@reedsmith.com

3110 Fairview Park Drive
Suite 1400
Falls Church, VA 22042-0681
703.641.4200
Fax 703.641.4340

June 1, 2004

VIA FACSIMILE

Eileen Fogarty
Director, Department
of Planning & Zoning
City of Alexandria
301 King Street
Alexandria, VA 22304

Dear Ms. Fogarty:

I represent the Society of Human Resource Management, the owner of two buildings in Block E of Carlyle. We have received the proposed amendment to SUP #2253, Conditions 102, 102A, 102B, 102C, 102D and 102E regarding changes to the definition of retail within the Carlyle development, and hereby join in the application and consent to the applicability of the revised retail definition (as presented by the Department of Planning and Zoning) to this property.

Yours truly,

REED SMITH LLP

J. Howard Middleton

JHM/vmi
cc: Ramon Venero

LONDON ♦ NEW YORK ♦ LOS ANGELES ♦ SAN FRANCISCO ♦ WASHINGTON, D.C. ♦ PHILADELPHIA ♦ PITTSBURGH ♦ OAKLAND ♦ PRINCETON
FALLS CHURCH ♦ WILMINGTON ♦ NEWARK ♦ MIDLANDS, U.K. ♦ CENTURY CITY ♦ RICHMOND ♦ HARRISBURG ♦ LEESBURG ♦ WESTLAKE VILLAGE

reedsmith.com

PC Docket Item #22
SUP 2004-0028

HART, CALLEY, GIBBS & KARP, P.C.

ATTORNEYS AND COUNSELLORS AT LAW

307 NORTH WASHINGTON STREET
ALEXANDRIA, VIRGINIA 22314-2557

TELEPHONE (703) 836-5757
FAX (703) 548-5443

RECEIVED
MAY 25 2004
PLANNING & ZONING

MEMORANDUM

TO: Ms. Eileen Fogarty, Director, Department of Planning & Zoning
c/o Mr. David Sundland

FROM: Harry P. Hart

RE: Docket Item No. 22, SUP #2004-0028
Carlyle Development Plan Amendments

DATE: May 26, 2004

The owners of four townhouses in the Carlyle City Residences, at 400, 402, 408 and 410 John Carlyle Street remain concerned with Staff's recommendation to amend the Carlyle Special Use Permit as it pertains to their block with respect to the definition of "retail" uses under the Carlyle SUP. The Staff has worked diligently with these owners to address the particular circumstances of the retail space within these units and we believe Staff recognizes the particular limitations of these spaces. In fact, within the Staff's report for the above-referenced docket item, Staff says that the "ground floor space within each unit is of a size and shape that is more conducive to professional offices such as attorneys, insurance agents and more limited retail opportunities." However, within the amended condition No. 102(D), these uses are not specifically listed as permitted retail uses.

The owners would suggest the following changes to comport with both their Homeowner Association documents[1] as well as the Staff's recognition of the limitations of their particular space. In addition, the changes would amend the SUP language to comport with the representations made to them by Eakin/Youngentob when they purchased their units and the HOA documents themselves.[2] Specifically, they request an amendment to the proposed Condition No. 102(D) to read:

> "The first floor of the townhouses at 400-412 John Carlyle Street shall be subject to the following: "Retail uses" shall mean and refer to the following uses: retail shopping establishments, banks, financial investment and consulting offices, travel agencies, realty offices, personal services uses, educational uses, professional offices such as attorney's offices or accountant's offices, and any other commercial activity that involves a high degree of pedestrian activity. Uses which involve the preparation, sale or service of food or beverages, and any uses which are sexually oriented, are strictly prohibited."

This position is also consistent with the letter endorsed by the Homeowner's Association itself in June of 2003.

[1] A copy of the Homeowner's Association documents is attached.
[2] A copy of the letter from Le Roy Eakin, III, submitted when this item was first introduced, is attached for your information.

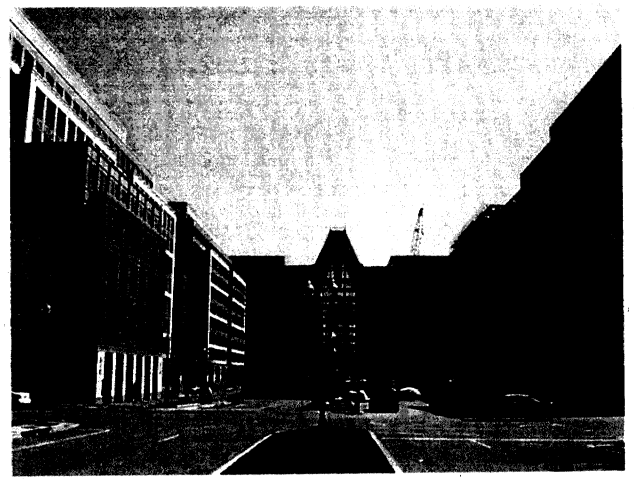
21
6-12-04

Background on Carlyle Retail:

- Current retail in Carlyle: **50,000 s.f. has been built; 260,000 s.f. will exist at full build-out**
- Current office use in retail space:

  - 2/3 of "retail" area is actually occupied by office use or financial institutions

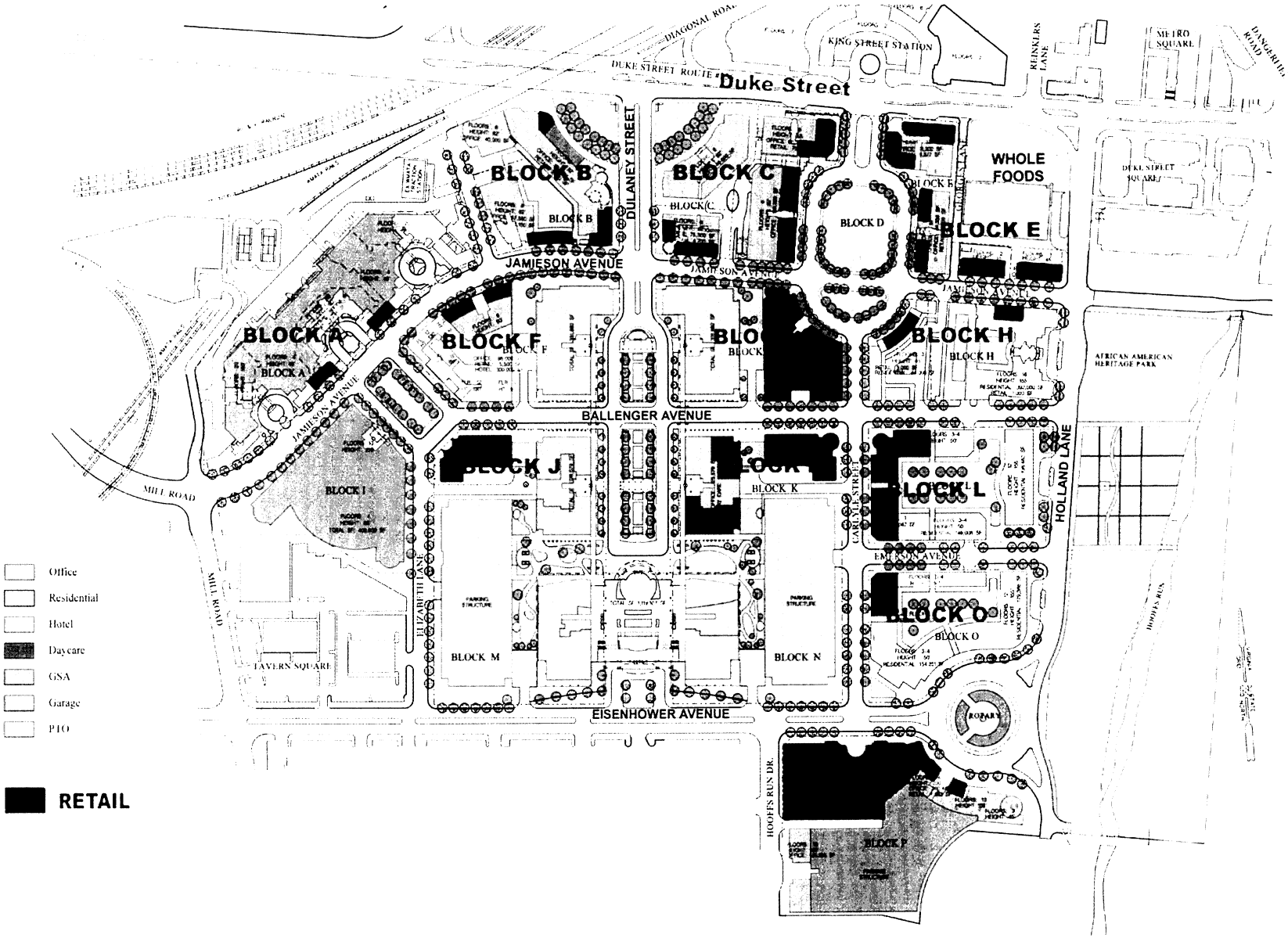
- Retail market has improved:
  - USPTO
  - Whole Foods



INTENT of amendment:

Encourage Active Pedestrian-Oriented Retail

Carlyle Master Plan, Highlighting Retail Areas



Principles Followed in Amending Definition:

This

Not This

- Encourage restaurants & outdoor dining
- Remove office and non-retail uses from ground floor
- Allow wider range of uses on second floor
- Maintain existing financial institutions
- Modify requirement for 25,000 s.f. grocery store

Conclusion

- Amendments encourage pedestrian-oriented uses in retail areas

- Planning Commission recommended approval 7-0

21
6-12-04

ReedSmith

J. Howard Middleton
Direct Phone: 703.641.4225
Email: jmiddleton@reedsmith.com

3110 Fairview Park Drive
Suite 1400
Falls Church, VA 22042-0681
703.641.4200
Fax 703.641.4340

June 11, 2004

VIA FACSIMILE

The Honorable Mayor and Members of City Council
City of Alexandria, Virginia
City Hall
301 King Street
Alexandria, VA 22314

Re: City Council Meeting, June 12, 2004; Docket Item No. 21, Special Use Permit No. 2004-0028, Carlyle Plan Amendments

Dear Mr. Mayor and Members of City Council:

I represent the Society for Human Resource Management, the owner of two buildings within the Carlyle community. My client and I have worked with the planning staff over the past several months on the proposed amendments regarding retail use. We wish commend Eileen Fogarty and the planning staff for their hard work and willingness to work with the parties affected by the proposed changes.

The purpose of this letter is to recommend that Council approve the amendments as recommended by the planning staff and Planning Commission.

Yours truly,

REED SMITH LLP

J. Howard Middleton

JHM/vmi
cc: Eileen Fogarty
Ramon Venero, SHRM

21

6-12-04

MEMORANDUM

TO: THE HONORABLE MAYOR AND MEMBERS OF CITY COUNCIL

FROM: IGNACIO B. PESSOA
CITY ATTORNEY IBP

DATE: JUNE 12, 2004

SUBJECT: CARLYLE RETAIL DEFINITION – REVISED CONDITION 102D – JOHN CARLYLE STREET TOWNHOUSES

ISSUE: Adoption of revised language to reflect the Planning Commission action with respect to retail and professional office uses in the townhouses at 400 - 412 John Carlyle Street.

RECOMMENDATION: That City Council adopt the following language for Condition 102D of the Carlyle Special use Permit:

102D. **CONDITION AMENDED BY PLANNING COMMISSION:** Conditions 102A, 102B and 102C of this special use permit shall not apply to the townhouses at 400-412 John Carlyle Street, and the application to amend the retail definition and ground floor retail use requirement for such units remains pending and is deferred. Until further action of the Commission and City Council to amend or repeal this Condition 102D, such units, and no other property subject to this special use permit, shall remain subject to the conditions of this special use permit in effect prior to the adoption of Conditions 102A, 102B and 102C, and to the following provisions. If, after making a good faith effort as determined using guidelines issued by the director, the building owner is unable to lease or sell space required by the design guidelines and the special use permit to be in retail use, the director may authorize that space to be leased for non-retail use for a period not to exceed ten years, after which time subsequent leases may be authorized on the same conditions. For the purpose of this requirement, retail uses shall include retail shopping establishments, restaurants, banks, financial investment and consulting offices, travel agencies, realty offices, personal service uses, educational uses and any other commercial activity that involves a high degree of pedestrian activity, as determined by the Director of Planning & Zoning. ~~This waiver provision shall not apply to Blocks G, J, K or P; any retail space allocated to those blocks shall be utilized solely for retail purposes.~~ (PC)

DISCUSSION: At the Planning Commission public hearing on June 1, 2004, Bud Hart, representing the owners of the townhouses at 400 – 412 John Carlyle Street, requested that the Commission defer action to amend the retail definition and ground floor retail use requirement applicable to these 12 townhouses, and that, in the interim, the old rules continue to apply to these properties alone. The purpose of this request was to allow Mr. Hart to work out acceptable language with the Planning Director for these specific and arguably unique properties, and then return to the Commission and Council for approval of the new language at a later time. The Commission granted this request, and asked that I draft language to implement their decision.

Unfortunately, the language of Condition 102D, as it appears on page 36 of the staff report, does not reflect the Commission's action, but incorporates a version of the new substantive rule proposed by Mr. Hart, and neither I nor the Planning Director have approved this language.

Accordingly, I recommend that City Council adopt the language for Condition 102D as set forth above, which implements the Planning Commission's action, and the Planning Director concurs with this recommendation.

C:\ORDINANCES 2004\06 June 04\Carlyle Retail Definition Memo.wpd

6/12/04 (9)

SPEAKER'S FORM

DOCKET ITEM NO. 21 Carlyle

PLEASE COMPLETE THIS FORM AND GIVE IT TO THE CITY CLERK BEFORE YOU SPEAK ON A DOCKET ITEM.

PLEASE ANNOUNCE THE INFORMATION SPECIFIED BELOW PRIOR TO SPEAKING.

1. **NAME:** Stuart Mendelsohn
   Holland & Knight LLP
2. **ADDRESS:** 1600 Tysons Blvd, S. 700, McLean, VA 22102

   TELEPHONE NO. (703) 720-8071 **E-MAIL ADDRESS:** Stuart.mendelsohn@hklaw.com
3. **WHOM DO YOU REPRESENT, IF OTHER THAN YOURSELF?** 1900 Duke Street LP
4. **WHAT IS YOUR POSITION ON THE ITEM?**
   FOR: _____ **AGAINST:** ~~✓~~ Not in support **OTHER:** ✓
5. **NATURE OF YOUR INTEREST IN ITEM (PROPERTY OWNER, ATTORNEY, LOBBYIST, CIVIC INTEREST, ETC.):**

   Attorney on behalf of Property Owner
6. **ARE YOU RECEIVING COMPENSATION FOR THIS APPEARANCE BEFORE COUNCIL?**
   YES ✓ **NO** _____

This form shall be kept as a part of the permanent record in those instances where financial interest or compensation is indicated by the speaker.

A maximum of three minutes will be allowed for your presentation. If you have a prepared statement, please leave a copy with the Clerk.

Additional time not to exceed 15 minutes may be obtained with the consent of the majority of the council present; provided notice requesting additional time with reasons stated is filed with the City Clerk in writing before 5:00 p.m. of the day preceding the meeting.

The public normally may speak on docket items only at public hearing meetings, and not at regular legislative meetings. Public hearing meetings are usually held on the Saturday following the second Tuesday in each month; regular legislative meetings on the second and fourth Tuesdays in each month. The rule with respect to when a person may speak to a docket item at a legislative meeting can be waived by a majority vote of council members present but such a waiver is not normal practice. When a speaker is recognized, the rules of procedures for speakers at public hearing meetings shall apply. If an item is docketed *for public hearing* at a regular legislative meeting, the public may speak to that item, and the rules of procedures for speakers at public hearing meetings shall apply.

In addition, the public may speak on matters which are not on the docket during the Public Discussion Period at public hearing meetings. The Mayor may grant permission to a person, who is unable to participate in public discussion at a public hearing meeting for medical, religious, family emergency or other similarly substantial reasons, to speak at a regular legislative meeting. When such permission is granted, the rules of procedures for public discussion at public hearing meetings shall apply.

Guidelines for the Public Discussion Period

(a) All speaker request forms for the public discussion period must be submitted by the time the item is called by the City Clerk.

(b) No speaker will be allowed more than three minutes.

(c) If more speakers are signed up than would be allotted for in 30 minutes, the Mayor will organize speaker requests by subject or position, and allocate appropriate times, trying to ensure that speakers on unrelated subjects will also be allowed to speak during the 30 minute public discussion period.

(d) If speakers seeking to address council on the same subject cannot agree on a particular order or method that they would like the speakers to be called on, the speakers shall be called in the chronological order of their request forms' submission.

(e) Any speakers not called during the public discussion period will have the option to speak at the conclusion of the meeting, after all docketed items have been heard.

6/12/04 (3)

SPEAKER'S FORM

DOCKET ITEM NO. 21

PLEASE COMPLETE THIS FORM AND GIVE IT TO THE CITY CLERK BEFORE YOU SPEAK ON A DOCKET ITEM.

PLEASE ANNOUNCE THE INFORMATION SPECIFIED BELOW PRIOR TO SPEAKING.

1. **NAME:** KARA WHISLER, WALSH COLUCCI
2. **ADDRESS:** 2200 CLARENDON BLVD. 13TH FLOOR, ARLINGTON

   TELEPHONE NO. 703.528.4700 **E-MAIL ADDRESS:** kwhisler@arl.thelandlawyers.com
3. **WHOM DO YOU REPRESENT, IF OTHER THAN YOURSELF?** POST CARLYLE I AND POST CARLYLE II
4. **WHAT IS YOUR POSITION ON THE ITEM?**
   FOR: ✓ **AGAINST:** _____ **OTHER:** _____
5. **NATURE OF YOUR INTEREST IN ITEM (PROPERTY OWNER, ATTORNEY, LOBBYIST, CIVIC INTEREST, ETC.):**
   AGENT / LAND USE PLANNER FOR POST
6. **ARE YOU RECEIVING COMPENSATION FOR THIS APPEARANCE BEFORE COUNCIL?**
   YES ✓ **NO** _____

This form shall be kept as a part of the permanent record in those instances where financial interest or compensation is indicated by the speaker.

A maximum of three minutes will be allowed for your presentation. If you have a prepared statement, please leave a copy with the Clerk.

Additional time not to exceed 15 minutes may be obtained with the consent of the majority of the council present; provided notice requesting additional time with reasons stated is filed with the City Clerk in writing before 5:00 p.m. of the day preceding the meeting.

The public normally may speak on docket items only at public hearing meetings, and not at regular legislative meetings. Public hearing meetings are usually held on the Saturday following the second Tuesday in each month; regular legislative meetings on the second and fourth Tuesdays in each month. The rule with respect to when a person may speak to a docket item at a legislative meeting can be waived by a majority vote of council members present but such a waiver is not normal practice. When a speaker is recognized, the rules of procedures for speakers at public hearing meetings shall apply. If an item is docketed *for public hearing* at a regular legislative meeting, the public may speak to that item, and the rules of procedures for speakers at public hearing meetings shall apply.

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(e) Any speakers not called during the public discussion period will have the option to speak at the conclusion of the meeting, after all docketed items have been heard.

6/12/04 (2)

SPEAKER'S FORM

DOCKET ITEM NO. 21

PLEASE COMPLETE THIS FORM AND GIVE IT TO THE CITY CLERK BEFORE YOU SPEAK ON A DOCKET ITEM.

PLEASE ANNOUNCE THE INFORMATION SPECIFIED BELOW PRIOR TO SPEAKING.

1. **NAME:** Jonathan Rak

2. **ADDRESS:** 1750 Tysons Blvd. McLean, VA 22102

   TELEPHONE NO. 703 712 5411 **E-MAIL ADDRESS:** jrak@mcguirewoods.com

3. **WHOM DO YOU REPRESENT, IF OTHER THAN YOURSELF?**

   Applicant

4. **WHAT IS YOUR POSITION ON THE ITEM?**
   FOR: ✓ **AGAINST:** _____ **OTHER:** _____

5. **NATURE OF YOUR INTEREST IN ITEM (PROPERTY OWNER, ATTORNEY, LOBBYIST, CIVIC INTEREST, ETC.):**

   Attorney

6. **ARE YOU RECEIVING COMPENSATION FOR THIS APPEARANCE BEFORE COUNCIL?**
   YES ✓ **NO** _____

This form shall be kept as a part of the permanent record in those instances where financial interest or compensation is indicated by the speaker.

A maximum of three minutes will be allowed for your presentation. If you have a prepared statement, please leave a copy with the Clerk.

Additional time not to exceed 15 minutes may be obtained with the consent of the majority of the council present; provided notice requesting additional time with reasons stated is filed with the City Clerk in writing before 5:00 p.m. of the day preceding the meeting.

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Guidelines for the Public Discussion Period

(a) All speaker request forms for the public discussion period must be submitted by the time the item is called by the City Clerk.

(b) No speaker will be allowed more than three minutes.

(c) If more speakers are signed up than would be allotted for in 30 minutes, the Mayor will organize speaker requests by subject or position, and allocate appropriate times, trying to ensure that speakers on unrelated subjects will also be allowed to speak during the 30 minute public discussion period.

(d) If speakers seeking to address council on the same subject cannot agree on a particular order or method that they would like the speakers to be called on, the speakers shall be called in the chronological order of their request forms' submission.

(e) Any speakers not called during the public discussion period will have the option to speak at the conclusion of the meeting, after all docketed items have been heard.

6/12/04 D

SPEAKER'S FORM

PLEASE COMPLETE THIS FORM AND GIVE IT TO THE CITY CLERK BEFORE YOU SPEAK ON A DOCKET ITEM.

DOCKET ITEM NO. 21

PLEASE ANNOUNCE THE INFORMATION SPECIFIED BELOW PRIOR TO SPEAKING.

1. **NAME:** Harry P. Hart

2. **ADDRESS:** 307 N. Washington Street

   TELEPHONE NO. 703-836-5757 **E-MAIL:** hcgk.law@verizon.net

3. **WHOM DO YOU REPRESENT, IF OTHER THAN YOURSELF?**
   Owners of 4 of the Carlyle City Residences

4. **WHAT IS YOUR POSITION ON THE ITEM?**
   Other

5. **NATURE OF YOUR INTEREST IN ITEM (PROPERTY OWNER, ATTORNEY, LOBBYIST, CIVIC INTEREST, ETC.):**
   Attorney

6. **ARE YOU RECEIVING COMPENSATION FOR THIS APPEARANCE BEFORE COUNCIL?**
   Yes

This form shall be kept as a part of the permanent record in those instances where financial interest or compensation is indicated by the speaker.

A maximum of three minutes will be allowed for your presentation. **If you have a prepared statement, please leave a copy with the City Clerk.**

Additional time not to exceed 15 minutes may be obtained with the consent of the majority of the Council present; provided notice requesting additional time with reasons stated is filed with the City Clerk in writing before 5:00 p.m. of the day preceding the meeting.

The public normally may speak on docket items only at public hearing meetings, and not at regular legislative meetings. Public hearing meetings are usually held on the Saturday following the second Tuesday in each month; regular legislative meetings are regularly held on the second and fourth Tuesdays in each month. The rule with respect to when a person may speak to a docket item at a legislative meeting can be waived by a majority vote of council members present but such a waiver is not normal practice. When a speaker is recognized, the rules of procedures for speakers at public hearing meetings shall apply. If an item is docketed *for public hearing*at a regular legislative meeting, the public may speak to that item, and the rules of procedures for public hearing meetings shall apply.

In addition, the public may speak on matters which are not on the docket during the Public Discussion Period at public hearing meetings. The Mayor may grant permission to a person, who is unable to participate in public discussion at a Public Hearing Meeting for medical, religious, family emergency or other similarly substantial reasons, to speak at a regular legislative meeting. When such permission is granted, the rules of procedures for public discussion at public hearing meetings shall apply.

Guidelines for the Public Discussion Period

(a) All speaker request forms for the public discussion period must be submitted by the time the item is called by the City Clerk.

(b) No speaker will be allowed more than three minutes.

(c) If more speakers are signed up than would be allotted for in 30 minutes, the Mayor will organize speaker requests by subject or position, and allocate appropriate times, trying to ensure that speakers on unrelated subjects will also be allowed to speak during the 30 minute public discussion period.

(d) If speakers seeking to address council on the same subject cannot agree on a particular order or method that they would like the speakers to be called on, the speakers shall be called in the chronological order of their request forms' submission.

(e) Any speakers not called during the public discussion period will have the option to speak at the conclusion of the meeting, after all docketed items have been heard.

#21

APPLICATION for SPECIAL USE PERMIT #2004-0038

[*must use black ink or type*]

PROPERTY LOCATION: 1950 Duke St

TAX MAP REFERENCE: _____ ZONE: _____

APPLICANT Name: Carlyle Dev. Corp

Address: _____

PROPERTY OWNER Name: _____

Address: _____

PROPOSED USE: see attached application for SUP 2003-0066.

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: _____ $_____

ACTION - PLANNING COMMISSION: 06/01/04 **RECOMMEND APPROAVL** 7-0

ACTION - CITY COUNCIL: 6/12/04 Approved 6-0 with Modifications (see attached)

APPLICATION FOR SPECIAL USE PERMIT # 2003-0066

[ ] Change of Ownership or [ ] Minor Amendment

PROPERTY LOCATION: 1950 Duke Street

TAX MAP REFERENCE: ---------- ZONE CDD #1

APPLICANT Name: Carlyle Development Corp. / LCOR Ballenger Ave. LLC
Address: 1755-C Duke Street, Alexandria, VA 22314 / 6701 Democracy Blvd., #711, Bethesda, MD 20817

PROPERTY OWNER Name: Carlyle Development Corp. / LCOR Ballenger Ave. LLC
Address: 1755-C Duke Street, Alexandria, VA 22314 / 6701 Democracy Blvd., #711, Bethesda, MD 20817

SITE USE: Amendment to SUP 2253

[ ] THE UNDERSIGNED hereby applies for a Special Use Permit for **Change in Ownership**, in accordance with the provisions of Article XI, Division A, Section 11-503 (5)(f) of the 1992 Zoning Ordinance of City of Alexandria, Virginia. THE UNDERSIGNED, having read and received a copy of the special use permit, hereby agrees to comply with all conditions of the current special use permit, including all other applicable City codes and ordinances.

[ ] THE UNDERSIGNED hereby applies for a Special Use Permit for **Minor Amendment,** in accordance with the provisions of Article XI, Division A, Section 11-509 and 11-511 of the 1992 Zoning Ordinance of City of Alexandria, Virginia.

THE UNDERSIGNED, having obtained permission from the property owner, hereby requests this special use permit. The undersigned also attests that all of the information herein required to be furnished by the applicant are true, correct and accurate to the best of their knowledge and belief.

Jonathan P. Rak, Agent
Print Name of Applicant or Agent

Jonathan P. Rak
Signature

McGuireWoods LLP
Suite 1800
Mailing/Street Address
1750 Tysons Boulevard
McLean, VA 22102
City and State

(703) 712-5411 *Telephone #*
(703) 712-5231 *Fax #*

6/16/03
Date

DO NOT WRITE BELOW THIS LINE – OFFICE USE ONLY

Application Received: _____ Date & Fee Paid: _____ $_____
Legal Advertisement: _____

ADMINISTRATIVE ACTION: _____

Date

Director, Planning & Zoning

RECEIVED
JUN 17 2003
P & Z ZONING COMPLIANCE

Council Action:_____

21. SPECIAL USE PERMIT #2004-0028
1950 DUKE STREET
CARLYLE DEVELOPMENT
Public Hearing and Consideration of a request for an amendment to the current special use permit conditions to revise the definition of retail; zoned CDD-1/Coordinated Development District. Applicant: Carlyle Development Corporation & LCOR Ballenger Ave., LLC by Jonathan P. Rak, attorney

COMMISSION ACTION: Recommend Approval 7-0

City Council approved the Planning Commission recommendation, with the changes as presented by staff for condition 102D, to add: "Conditions 102A, 102B and 102C of this special use permit shall not apply to the townhouses at 400-412 John Carlyle Street, and the application to amend the retail definition and ground floor retail use requirement for such units remains pending and is deferred. Until further action of the Commission and City Council to amend or repeal this condition 102D, such units, and no other property subject to this special use permit, shall remain subject to the conditions of this special use permit in effect prior to the adoption of conditions 102A, 102B and 102C, and to the following provisions." Also, to delete the following sentence: "This waiver provision shall not apply to blocks G, J, K or P, any retail space allocated to those blocks shall be utilized solely for retail purposes."
Council Action:_____

22. DEVELOPMENT SPECIAL USE PERMIT #2003-0030
3737 SEMINARY ROAD
VIRGINIA THEOLOGICAL SEMINARY
Public Hearing and Consideration of a request for a development special use permit, with site plan to construct faculty housing units; zoned R-20/Residential. Applicant: Virginia Theological Seminary, by Duncan Blair, attorney

COMMISSION ACTION: Recommend Approval 7-0

City Council approved the Planning Commission recommendation.
Council Action:_____

23. DEVELOPMENT SPECIAL USE PERMIT #2004-0020
1608-1706 WEST BRADDOCK ROAD AND RADFORD STREET
ALEXANDRIA REDEVELOPMENT AND HOUSING AUTHORITY
Public Hearing and Consideration of a request for an extension of a development special use permit to construct affordable townhouse units; zoned RB/Residential. Applicant: Alexandria Redevelopment and Housing Authority by Harry Hart, attorney

COMMISSION ACTION: Recommend Approval 7-0