

Docket Item #8
SPECIAL USE PERMIT #2004-0072

Planning Commission Meeting
October 5, 2004

ISSUE: Consideration of a request for a special use permit amendment to expand a restaurant.

APPLICANT: Old Town Food Service Corporation
by Duncan Blair, attorney

LOCATION: Fish Market Restaurant
105, 107 and 109 King Street

ZONE: CD/Commercial Downtown

PLANNING COMMISSION ACTION, OCTOBER 5, 2004: On a motion by Mr. Robinson, seconded by Mr. Komoroske, the Planning Commission voted to recommend approval of the request, subject to compliance with all applicable codes, ordinances and staff recommendation and to amend Condition # 2 and Condition # 9 (thus deleting Condition #10), and to add Condition #30. The motion carried on a vote of 7 to 0.

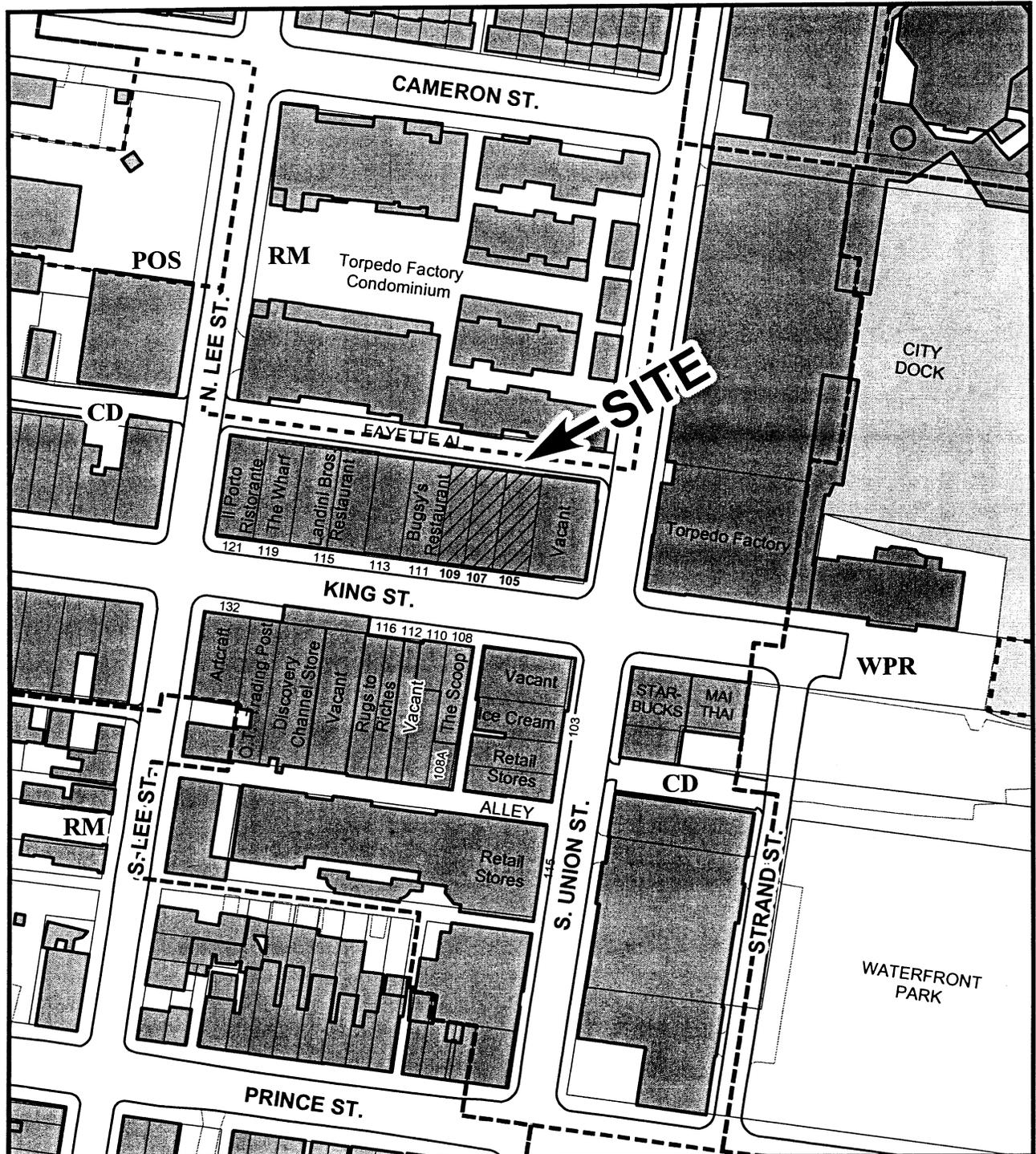
Reason: The Planning Commission was supportive of the proposed restaurant expansion and found that with the added conditions in respect to parking subsidies and limiting the operation of the banquet room, the proposal does not have significant impacts on the nearby residential neighborhood. Although the Fish Market contributes to an active street live and therefore meets the anticipated goals of the King Street Retail Study, the Commission and staff clarified that the Study is in its planning phase with community meetings coming up and draft plans to be released prior to approval.

Speakers:

Duncan Blair, the applicant's attorney, spoke in support of the application stating that the applicant is willing to bring the entire restaurant under SUP regulation, thus agreeing to earlier closing hours, parking subsidy programs and limitations on the operation of the banquet room.

Michael Hobbs, president of the Old Town Civic Association, spoke against the application, stating that this expansion has many of negative impacts that the recently approved O'Connell's Irish restaurant has (i.e. parking, high number of seats) but few of the countervailing benefits and therefor urged the Planning Commission to impose the same stringent conditions, regulating parking subsidies and seat count.

STAFF RECOMMENDATION: Staff recommends **approval** subject to compliance with all applicable codes and ordinances and the permit conditions found in Section III of this report.



SUP #2004-0072

10/05/04



I. DISCUSSION

REQUEST

The applicant, Old Town Food Service Corporation by Duncan Blair, attorney, requests special use permit amendment for the restaurant known as The Fish Market located at 105-107 King Street.

SITE DESCRIPTION

The subject property is three lots of record with approximately 74.3 feet of frontage on King Street, a depth of 81 feet and a total lot area of approximately 6,018 square feet. The site is developed with historic warehouse buildings. 105 and 107 King Street are occupied with the Fish Market on both the first and second floors. 109 King Street is occupied with Pop's Ice Cream on the ground floor. The second floor of 109 is the location for the proposed expansion of the Fish Market.

Surrounding the property is a mix of commercial uses. Immediately to the west is Buggy's restaurant, to the south across King Street is "What's the Scoop" ice cream shop and the site of the Bullfeathers Restaurant, which will be reoccupied by Daniel O'Connell's Irish Restaurant. The subject site is bordered by Ramsey Alley to the north. The space to the east is vacant but was previously occupied by the Fish Market.

BACKGROUND

The portion of the Fish Market restaurant located in the building at 105 King Street is grandfathered; it has operated since it opened in 1976 without a special use permit. The addition of the part of the restaurant in the 107 King Street building was approved as a special use permit in 1985 (SUP # 1820). Today, the historic restaurant operation for both 105 and 107 King Street buildings has the following characteristics:

- (A) The restaurant contains 284 seats, including 38 bar seats, and operates with a maximum of 45 employees at any one time.
- (B) The restaurant provides a full-service menu, specializing in seafood.
- (C) The restaurant operates from 11:15 A.M. to 12:00 midnight on Sunday, and from 11:15 A.M. to 2:00 A.M., Monday through Saturday.
- (D) The restaurant provides entertainment in the form of piano players on the second floor.
- (E) The restaurant has an ABC license for the on-premise sale of mixed drinks, wine and beer.

Staff visited the subject property to determine if the business was in compliance with the conditions of its special use permit. Staff found no violations of the special use permit.

The Fish Market now wishes to expand into the second floor of the 109 building and, under current practice, that intensification requires special use permit approval for the entire restaurant operation.

PROPOSAL

The applicant proposes to expand the restaurant into the second floor of the adjacent space at 109 King Street to add a banquet room and kitchen. The applicant states that the restaurant experienced a substantial loss of revenue as a result of Hurricane Isabel and the flooding in 2003. According to the applicant, the establishment of a kitchen on the second floor would in the event of a natural disaster, serve as the main kitchen for the Fish Market. In addition to the new auxiliary kitchen, the applicant is proposing a one hundred seat dining area to be used primarily as a banquet facility for private parties. Other than in periods of a natural disaster or on exceptionally busy evenings such as holidays, major City festivals and events, the applicant does not anticipate that this room will be used in the evenings.

Specific aspects of the entire restaurant, including the grandfathered portion at 105 King Street, the SUP#1820 approved portion at 107 King Street, and the proposed expansion into the second floor of 109 King street are as follows:

Number of
Seats:

The applicant proposes to add a dining room with 100 seats on the second floor of 109 King Street that will be used for banquets, receptions, and special events. When all functions are operational, including both floors of 105 King Street with 184 seats, and 107 King Street with 100 seats, there will be a total of 384 seats, 38 of which are bar seats, and ten of which are seasonal outdoor seats.

Hours:

The applicant initially proposed to maintain the historic hours from 11:15 A.M. to 2:00 A.M. Monday through Saturday and from 11:15 A.M. to 12:00 midnight on Sundays, consistent with SUP#1820, but agreed to staff's recommendation to limit the closing hour to 1:00 A.M., Monday through Saturday, which is consistent with the closing hours of restaurants in the surrounding area.

Entertainment:

The applicant proposes to maintain the historically provided entertainment in the form of piano players but wishes to expand it by including small musical ensembles to perform on an occasional basis.

Alcohol: The applicant currently provides on-premise beer, wine and alcohol service but states that although the restaurant is large and has several bar areas, its alcohol to food ratio is low. No changes are proposed in regards to alcohol service. According to the applicant, the primary use is a restaurant, with drinks served to compliment the food service.

Number of Employees: Currently, up to 40 employees are present at any one time. This number might increase to up to 50 if the proposed banquet room is operational in addition to all other functions.

Trash: The types of trash and garbage generated by the restaurant consist of food wastes, discarded packaging and bottles. The applicant states that the amount of trash and garbage generated during an average day is approximately two standard size dumpsters, which will increase slightly at times when the banquet room is utilized. The restaurant uses the City's commercial dumpster on Union Street, with City pick-up.

Litter: The restaurant will not be of a type that is likely to produce litter; patrons will not leave the restaurant with carry-out items for consumption on the streets. Although the applicant does not expect litter to be generated from its restaurant, the applicant will clean its property and adjacent rights-of-way and property daily before opening, at closing, and at any time during the day that circumstances warrant.

Loading: Loading and unloading is performed in Ramsey Alley, typically twice each day in the morning hours.

PARKING

The subject property is located in the Central Business District where parking is not required for restaurants. However, because of the relatively high increase in seats, staff is concerned about a potential increase in the parking demand. The following paragraphs describe the estimated parking demand and how the applicant intends to alleviate a potential negative impact on the surrounding neighborhood:

Parking demand: Under the zoning ordinance requirement for restaurants outside the CBD, which is one parking space for every four seats, the current 284-seat restaurant would have a requirement of 71 spaces. The applicant points out that although it is requesting 100 additional seats, they are set aside for banquets, receptions, and meetings, and 10 are seasonal for outdoor patio seating. If the banquet and outdoor seats are included, the zoning requirement for a total of 384 seats would be for 96 spaces.

In response to this estimated parking demand for the existing restaurant, the applicant states that the restaurant has historically provided service for patronage of local business, professional, and government people during lunch hours and, for nearby residents during dinner times, many of whom walk to the restaurant. According to the applicant, this portion of the restaurant's clientele reduces the parking demand significantly.

In regards to the proposed addition, the applicant does not anticipate a significant increase in the parking demand as the banquet room will accommodate groups of people for special occasions, many of whom will be brought to Old Town Alexandria via tour busses or taxis.

Provided Parking:

SUP# 1820, which allowed the 100 seat addition of the Fish Market at 107 King Street, required the applicant to provide 12 off-site parking spaces for customers (Condition # 8). According to the applicant, the restaurant leased 14 parking spaces at the adjacent Torpedo Factory garage, and had employees park there. Over the years, restaurant personnel changed and although current staff recall the prior owner stating that the leased spaces were a requirement created by the City, no one can explain why the spaces were allowed to be used for employees and not customers as required. Planning determined that allowing employees to park there was not a violation of Condition #8 because the effect is the same: cars otherwise competing for on-street spaces are parked off-street and using the spaces for employees provides more insurance that the spaces will actually be used.

Today, the applicant provides a different parking arrangement for its employees: The policy manual given to all employees prohibits those who drive to work from parking on the street during their working hours. No employees are allowed to leave the restaurant for the purpose of moving their cars. To facilitate off-street parking in the evening, the restaurant encourages all employees to use the City sponsored parking program for restaurant employees in the parking garage of the Alexandria Court House a few blocks away from the site, where restaurant employees pay \$2.00. The applicant stamps the tickets with a Fish Market stamp to demonstrate to the parking attendant that the parker is a restaurant employee.

The applicant proposes to delete Condition # 8 in lieu of a condition that will require the restaurant to participate in a broader parking program, such as the Park Alexandria Program, while maintaining the employee parking at the Court House's parking garage.

Availability of

Off-Street Parking: At the 100 block of North Union Street, Colonial Parking operates an off-street parking garage with a capacity of 405 vehicles. The garage also has an exit in the 100 block of North Lee Street. The hours of operation of the garage are as follows:

- Sunday 8:00 a.m. to 12:00 midnight
- Monday-Thursday 7:00 a.m. to 3:00 a.m.
- Friday and Saturday 8:00 a.m. to 3:00 a.m.

At the 100 block of South Union Street, Central Parking operates another off-street parking garage with two sites—one on the west side of the street and a smaller section on the east side of the street. The Central Parking Garage has a capacity of approximately 100 vehicles, with 75 being on the west side and 25 on the east side. The hours of operation of the Central Parking facility are as follows:

	<u>West Facility</u>	<u>East Facility</u>
Sunday	11:00 a.m. to 8:00 p.m.	5:00 p.m. to 3:00 a.m.
Monday-Thursday	7:00 a.m. to 12:00 midnight	5:00 p.m. to 3:00 a.m.
Friday	7:00 a.m. to 3:00 a.m.	5:00 p.m. to 3:00 a.m.
Saturday	11:00 a.m. to 3:00 a.m.	5:00 p.m. to 3:00 a.m.

In addition to the foregoing, four off-street parking facilities are located within a three-block radius of the entrance to the Fish Market. Those facilities are located in the 200 block of South Union Street, the 200 block of The Strand, the 200 block of North Union Street, and the 100 block of North Fairfax Street.

Because of the existing and proposed strategies, the applicant anticipates that the restaurant expansion will not have a heavy impact on parking supply in the evening, weekend, or daytime peak hours.

ZONING/MASTER PLAN DESIGNATION

The subject property is located in the CD/Commercial Downtown zone. Section 4-503 (W) of the Zoning Ordinance allows a restaurant in the CD zone only with a special use permit. In this case, a special use permit is required because of the expansion and intensification of the grandfathered rights on the property. The proposed use is consistent with the Old Town Small Area Plan chapter of the Master Plan which designates the property for commercial use.

II. STAFF ANALYSIS

Staff supports the special use permit amendment for the Fish Market restaurant at 105-109 King Street. The restaurant is consistent with the guiding principles set forth in the *King Street Retail Study*, currently underway within the Department of Planning and Zoning, as well as with the *Old Town Restaurant Policy*. The Fish Market contributes to an active street life along King Street, generating desirable customer activity for surrounding businesses. This kind of activity is desired by the Retail Study because it supports a healthy and economically viable commercial district. The proposed addition of a banquet and special event space will further this activity by potentially bringing new people to the area, while minimizing the negative impacts, such as parking, because of its occasional nature and different modes of transportation for its patrons.

The intensification of the restaurant use requires special use permit approval for the entire operation and therefore provides the opportunity to place conditions on the operation that will regulate impacts such as noise, litter and hours of operation. As an essential part of the recommended conditions, the applicant agreed to participate in any organized parking subsidy program for customers and employees that is formed as a result of suggested parking strategies in the King Street Retail Study.

Old Town Restaurant Policy

The City's *Old Town Restaurant Policy*, adopted by City Council as part of the City's Master Plan, stipulates criteria to be used in order to determine if a restaurant has a significant impact on a nearby residential neighborhood. Its goals are (1) to lessen the on-street parking impact of restaurants in Old Town and adjacent area, (2) to prevent rowdiness and vandalism from patrons leaving restaurants, particularly in the late evenings, and (3) to control the spread of litter in Old Town. It also directs City Council to consider the cumulative impact of the restaurant, including the number of already established restaurants, the number of food service and bar seats, and the availability of off-street parking. Finally, it states that in the case of an expansion, the entire operation of the establishment may be taken into account in determining its impact upon the nearby residential neighborhood. Staff looked at the Fish Market application with the residential neighborhood in mind, and has some concerns about the scope of the proposal, particularly about parking impacts from the proposed number of seats and about the hours of operation. In considering the impacts from this restaurant, staff is also taking into account the fact that an application for the 350-seat Daniel O'Connell's Irish restaurant across the street was approved by City Council on September 21, 2004. As noted above, the approval of the restaurant will bring all portions of the restaurant within the control of SUP regulation and enforcement; 105 King Street will no longer have its grandfathered status.

Number of Seats

Staff has in the past reviewed historic records from the Health Department and Code Enforcement to determine the number of seats in the restaurant in 1983, after which no additional seats could be permitted without special use permit approval. Based on that analysis, and after allocating the correct number of seats to the former restaurant space at 101-103 King Street, staff concluded that

184 seats were legally approved for 105 King Street as of 1983. In 1985, Council approved 100 seats in 107 King Street by special use permit, for a total of 284 legally approved seats, including 38 bar seats. Therefore, should this proposal for 100 additional seats be approved, the restaurant will have a total of 384 seats at 105 through 109 King Street.

The number of seats requested is high, and staff was concerned that by adding 100 seats, the restaurant was adding to the impacts in Old Town, especially with regard to parking (discussed below). In order to assess the impact of increased restaurant seats, staff considered the fact that there have been several reductions in restaurant seats in the lower King Street area over the last ten years. For example, 285 seats from that portion of the Fish Market that occupied 101 and 103 King Street have been removed. In addition, the Seaport Inn, which had included 290 seats, now only includes 184. On the other hand, Council approved an increase of 117 seats at Landini's for a total of 267 seats two years ago and has just approved an increase of 180 seats for the Irish restaurant across the street. The overall result is that there are approximately 100 seats fewer than there were ten years ago. If the proposed addition to the Fish Market (100) is approved, the number of seats on lower King Street will be similar to what has been there historically. Given that the Fish Market's proposal is for 100 banquet seats, and the O'Connell's restaurant includes 65 seats that are banquet and seasonal outdoor seats, the actual number of full time dining seats is significantly lower than what it was ten years ago. Given this historical analysis, staff is recommending that the Fish Market's request for an additional 100 seats be approved.

Hours

The grandfathered portion of the restaurant now remains open on weekend nights until 2:00 A.M. as do other grandfathered restaurants in the immediate area, including the old Alamo restaurant space, the Wharf and the Union Street Public House. When the 100 seats for the space in 107 King Street were added in 1985, Council permitted the closing hours there to be the same as for the main restaurant: 12:00 midnight on Sunday; and 2:00 A.M., Monday through Saturday.

Although in recent years many problems have subsided, there have historically been problems with late night drinking and noise spilling over into the adjacent residential areas that were attributed to the restaurants in the lower King Street area, and the City has spent considerable resources, in the form of police and inspectors, to control the problem. Although several of the remaining grandfathered restaurants are allowed to remain open until 2:00 A.M., in recent years, restaurants have been approved with 12:00 midnight or 1:00 A.M. closing hours to address this concern. The only recent exception was the Old Town Theater, which is allowed to be open to 2:00 A.M. daily, mainly to accommodate late night movies and shows.

In this case, in order to control noise impacts associated with late night drinking in lower King Street and to be consistent with other SUP restaurant closing hours on King Street that are intentionally earlier than 2:00 A.M., staff recommends to retain the Sunday closing hour of 12:00 midnight and to reduce the closing hour to 1:00 A.M., Monday through Saturday. Staff recommended a daily

closing hour of 1:00 A.M. at the recently approved Daniel O'Connell's Irish restaurant. Thus, although a few remaining grandfathered restaurants, such as the Wharf, the Alamo, and Union Street Public House have 2:00 A.M. closing times, with the recent SUP approval for the Irish restaurant, the earlier hours at Landini's (12:30 A.M.) and with Il Porto (12:00 midnight), there will be several restaurants with earlier hours. The proposed 1:00 A.M. closing for both the Fish Market and O'Connell's will create a better balance, limit the potential problem experienced in the past, and set a precedent for the future.

Parking

The issue of parking is essentially one of the availability of parking to meet demand. In this case the question relates to the total number of seats proposed and the steps a business can take to minimize the absolute impact and the impact on street parking in residential areas.

Under the zoning ordinance, parking is not required for restaurants in the Central Business District. Nevertheless, it is an issue in the lower King Street where there is a concentration of restaurants competing for limited parking at similar peak hours. The zoning ordinance requirement for restaurants (one space for every four seats) outside the CBD is one way to gauge parking impacts, and in this case would be 96 spaces, based on a restaurant with 384 seats.

In response to staff's concerns about parking, the applicant stated that it has always drawn a significant number of customers from the immediate area who walk to the restaurant, which would reduce the anticipated demand. The applicant does not now provide or subsidize any parking for customers. It does, however, encourage all employees to use the City sponsored parking program for restaurant employees in the parking garage of the Alexandria Court House a few blocks away from the site, where restaurant employees pay \$2.00. The applicant validates the tickets with a Fish Market stamp to demonstrate to the parking attendant that the parker is a restaurant employee. Furthermore, a policy manual given to all employees prohibits employees who choose to drive to work from parking on the street during their working hours. No employees are allowed to leave the restaurant for the purpose of moving their cars. The applicant has also agreed to encourage employees to use public transportation. Staff has included conditions to that effect in addition to requiring that for banquets and prearranged functions in the banquet room, the applicant must provide information to the guests about the parking garages, including location and rates.

Staff notes that in order to reduce parking impacts in the lower King Street area, the recently approved Daniel O'Connell's Irish restaurant across the street volunteered to reimburse customer parking at a rate of \$1.00 for a meal of at least \$15.00. According to the Fish Market applicant, this form of subsidy is not affordable under the restaurant's business plan. In lieu of such subsidy, the applicant proposes to participate in a different kind of subsidy parking program, such as the Park Alexandria Program and staff has included condition language requiring involvement in that program or providing a similar subsidy. In addition, as part of the King Street Retail Study, staff and the community have been looking at a number of parking strategies and hope to formulate certain

organized programs to assist with both employee and customer parking for businesses, such as a rejuvenated Park Alexandria program. In anticipation of that type of organized business approach, which would be far superior to each restaurant having separate and different conditions, staff has included language in the conditions which would require the applicant to participate when and if such a program is established.

Staff also recommends a one year review to ensure that the proposed parking strategies are implemented and function well.

With the special use permit protections, potential negative elements can be controlled with conditions and, if necessary, enforcement strategies and a one year review. With the recommended conditions, staff recommends approval of the special use permit.

III. RECOMMENDED CONDITIONS

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

1. **CONDITION AMENDED BY STAFF:** The special use permit shall be granted to the applicant only or to any corporation business or entity in which the applicant has a controlling interest. ~~(P&CD) (SUP#1820) (P&Z)~~
2. **CONDITION AMENDED BY PLANNING COMMISSION:** Seating shall be provided for no more than ~~100-384~~ 274 patrons. An additional 100 seats are allowed only for banquets, special events (major city festivals and parades) and tour groups, and an additional 10 seats are allowed only for seasonal outdoor dining. ~~(P&CD) (SUP#1820) (P&Z) (PC)~~
3. **CONDITION DELETED BY STAFF:** ~~No outside dining facilities shall be located on the premises.~~ ~~(P&CD) (SUP#1820)~~
4. **CONDITION AMENDED BY STAFF:** ~~The hours during which the business is open to the public shall be restricted to between 11:15 A.M. and 2:00 A.M., Monday through Saturday and 11:15 A.M. and 12:00 midnight Sunday.~~ The closing hour shall be no later than 12:00 midnight on Sunday, and 1:00 A.M. Monday through Saturday. ~~(P&CD) (SUP#1820) (P&Z)~~

5. That no food, beverages, or other material be stored outside. (P&CD) (SUP#1820)
6. **CONDITION AMENDED BY STAFF:** Trash and garbage shall be placed in sealed containers which do not allow odors to escape and shall be stored inside or in a dumpster closed container which does not allow invasion by animals. No trash and debris shall be allowed to accumulate on site outside of those containers. (P&CD) (SUP#1820) (P&Z)
7. Trash and garbage shall be collected daily when the business is open. (P&CD) (SUP#1820)
8. **CONDITION DELETED BY STAFF:** ~~The applicant shall provide a minimum of twelve (12) off-street parking spaces in the nearby area to accommodate restaurant patrons after the normal working hours in the evenings. The Director of Planning not to issue the special use permit until satisfactory evidence has been demonstrated that twelve (12) off-street parking spaces in the nearby area will in fact be provided. Alternatively, the applicant shall pay \$5,000 for each required space, with money to be put into a fund to provide additional parking spaces within the Central Business District.~~ (P&CD) (T&ES) (SUP#1820)
9. **CONDITION AMENDED BY PLANNING COMMISSION:** ~~The applicant shall participate in the Park Alexandria Program or an equivalent subsidy program for customers.~~ The applicant shall maintain a parking arrangement with area garages, by which the regular parking price at those garages is discounted by at least \$1 for customers. The applicant shall post information regarding the availability of parking at those garages for patrons at the restaurant. (P&Z) (PC)
10. **CONDITION DELETED BY PLANNING COMMISSION:** ~~The applicant shall post signs directing patrons to the availability of parking at a nearby public garage.~~ (P&Z) (PC)
11. **CONDITION ADDED BY STAFF:** Prior to a banquet or special event, the applicant shall provide to the guests information regarding the location, hours and fees at area parking garages. (P&Z)

12. **CONDITION ADDED BY STAFF: The applicant shall require that its employees who drive to work use off-street parking. (P&Z)**
13. **CONDITION ADDED BY STAFF: The applicant shall encourage its employees to use mass transit or to carpool when traveling to and from work, by posting information regarding DASH and METRO routes, the location where fare passes for transit are sold, and advertising of carpooling opportunities. (P&Z)**
14. **CONDITION ADDED BY STAFF: The applicant shall participate in any organized program to assist with both employee and customer parking for businesses, such as the Park Alexandria program, that is formed as a result of suggested parking strategies in the King Street Retail Study. (P&Z)**
15. **CONDITION ADDED BY STAFF: The applicant shall encourage its employees to use mass transit or to carpool when traveling to and from work, by posting information regarding DASH and METRO routes, the location where fare passes for transit are sold, and advertising of carpooling opportunities. (P&Z)**
16. **CONDITION ADDED BY STAFF: The applicant shall post the hours of operation at the entrance to the restaurant. (P&Z)**
17. **CONDITION ADDED BY STAFF: Meals ordered before the closing hour may be served, but no new patrons may be admitted, and no alcoholic beverages may be served after the closing hour, and all patrons must leave by one hour after the closing hour. (P&Z)**
18. **CONDITION ADDED BY STAFF: Indoor live entertainment shall be permitted to the extent that no amplified sound is audible outside the restaurant. No admission or cover fee shall be charged. All entertainment shall be subordinate to the principal function of the restaurant as an eating establishment. Any advertising of the entertainment shall reflect the subordinate nature of the entertainment by featuring food service as well as the entertainment. (P&Z)**
19. **CONDITION ADDED BY STAFF: On-site alcohol service is permitted; no off-premise alcohol sales are permitted. (P&Z)**

20. **CONDITION ADDED BY STAFF:** In order to breach the existing fire wall between 107 and 109 King Street, each parcel must be combined and recorded as one single parcel or the parcels shall comply with the fire separation requirements of the USBC and shall be maintained subject to the approval of the Director of Code Enforcement. (Code Enforcement) (P&Z)
21. **CONDITION ADDED BY STAFF:** Litter on the site and on public rights-of-way and spaces adjacent to or within 75 feet of the premises shall be picked up at least twice a day and at the close of business, and more often if necessary, to prevent an unsightly or unsanitary accumulation, on each day that the business is open to the public. (P&Z)
22. **CONDITION ADDED BY STAFF:** Kitchen equipment shall not be cleaned outside, nor shall any cooking residue be washed into the streets, alleys, or storm sewers. (T&ES)
23. **CONDITION ADDED BY STAFF:** All loudspeakers shall be prohibited from the exterior of the building and no amplified noise shall be audible at the property line. (T&ES)
24. **CONDITION ADDED BY STAFF:** 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 Transportation and Environmental Services. (T&ES)
25. **CONDITION ADDED BY STAFF:** No delivery service shall be permitted. (P&Z)
26. **CONDITION ADDED BY STAFF:** The applicant shall contact the Crime Prevention Unit of the Alexandria Police Department at 703-838-4520 regarding a security survey for the business and a robbery awareness program for all employees. (Police)
27. **CONDITION ADDED BY STAFF:** The applicant shall provide a menu or list of foods to be handled at this facility to the Health Department. (Health)

28. **CONDITION ADDED BY STAFF:** The applicant shall conduct employee training session on an ongoing basis, including as part of any employee orientation, to discuss all SUP provisions and requirements, as well as ongoing training for sales of alcohol to minors. (P&Z)

29. **CONDITION ADDED BY STAFF:** The Director of Planning and Zoning shall review the special use permit one year after approval and shall docket the matter for consideration by the Planning Commission and City Council if (a) there have been documented violations of the permit conditions which were not corrected immediately, constitute repeat violations or which create a direct and immediate adverse zoning impact on the surrounding community; (b) the director has received a request from any person to docket the permit for review as a result of a complaint that rises to the level of a violation, or (c) the director has determined that there are problems with the operation of the use and that new or revised conditions are needed. (P&Z)

30. **CONDITION ADDED BY PLANNING COMMISSION:** The applicant shall ensure that buses park in designated spaces. (PC)

STAFF: Eileen Fogarty, Director, Department of Planning and Zoning;
Bettina Irsps, Urban Planner.

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

Any exterior changes to the property visible from a public way including, for example, signs, alterations to entryway, HVAC equipment, ventilating stacks and lights, require review and approval by the Board of Architectural Review.

IV. CITY DEPARTMENT COMMENTS

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

Transportation & Environmental Services:

- R-1 Kitchen equipment shall not be cleaned outside, nor shall any cooking residue be washed into the streets, alleys, or storm sewers.
- R-2 The applicant shall control odors, smoke and any other air pollution from operations at the site and prevent them from leaving the property or becoming a nuisance to neighboring properties, as determined by the Department of Transportation and Environmental Services.
- R-3 All loudspeakers shall be prohibited from the exterior of the building and no amplified noise shall be audible at the property line.
- C-1 The applicant shall comply with the City of Alexandria's Noise Control Code, Title 11, Chapter 5, which sets the maximum permissible noise level as measured at the property line.

Code Enforcement:

- F-1 The properties located at 107 and 109 King Street are separate parcels owned by the same owner. In order to breach the existing fire wall, each parcel must be combined and recorded as one single parcel or the parcels shall comply with the fire separation requirements of the USBC and shall be maintained subject to the approval of the Director of Code Enforcement.
- C- 1 The current use is classified as B, Business; the proposed use is A-2, Assembly. Change of use, in whole or in part, will require a certificate of use and occupancy (USBC 119.4) and compliance with USBC 119.2. including but not limited to: limitations of exit travel distance, emergency and exit lighting, a manual fire alarm system, and accessibility for persons with disabilities.
- C-2 A Certificate of occupancy shall be obtained prior to any occupancy of the building or portion thereof, in accordance with USBC 119.0.

- C-3 Should the increased occupant load combined with the existing occupant load within the fire area exceed either 300 persons or 5000 square feet, a full automatic sprinkler system is required within the fire area in accordance with the USBC.(903.2.1.2)
- C-4 An amended fire prevention code permit is required for the proposed operation. An egress plan showing fixture location, aisles and exit doors shall be submitted for review with the permit application.
- C-5 Required exits, parking, and accessibility for persons with disabilities must be provided to the building.
- C-6 New construction must comply with the current edition of the Uniform Statewide Building Code (USBC).
- C-7 Alterations to the existing structure must comply with the current edition of the Uniform Statewide Building Code (USBC).
- C-8 Construction permits are required for this project. Plans shall accompany the permit application that fully detail the construction as well as layouts and schematics of the mechanical, electrical, and plumbing systems.
- C-9 The following code requirements apply where food preparation results in the development of grease laden vapors:
 - (a) All cooking surfaces, kitchen exhaust systems, grease removal devices and hoods are required to be protected with an approved automatic fire suppression system.
 - (b) A grease interceptor is required where there is drainage from fixtures and equipment with grease-laden waste located in food preparation areas of restaurants. Food waste grinders can not discharge to the building drainage system through a grease interceptor.
- C-10 A rodent control plan shall be submitted to this office for review and approval prior to occupancy. This plan shall consist of the following:
 - (a) Measures to be taken to control the placement of litter on site and the trash storage and pickup schedule.
 - (b) How food stuffs will be stored on site.
 - (c) Rodent baiting plan.

Health Department:

- C-1 An Alexandria Health Department Permit is required for all regulated facilities.
- C-2 Five sets of plans are to be submitted to and approved by this department prior to construction. Plans must comply with the Alexandria City Code, Title 11, Chapter 2, Food and Food Establishments. There is a \$135.00 fee for review of plans for food facilities.
- C-3 Approval must be obtained prior to use of the modified areas.
- C-4 The facility must comply with the Alexandria City Code, Title 11, Chapter 10, Smoking Prohibitions.
- C-5 A Certified Food Manager must be on duty during all hours of operation.
- R-1 Provide a menu or list of foods to be handled at this facility to the Health Department prior to opening.
- F-1 This facility is currently operating as Fish Market under Alexandria Health permit issued to Old Town Food Service Corp.

Police Department:

- R-1 The applicant is to contact the Crime Prevention Unit of the Alexandria Police Department at 703-838-4520 regarding a security survey for the business.
- R-2 The applicant is to contact the Crime Prevention Unit of the Alexandria Police Department at 703-838-4520 regarding a robbery awareness program for all employees.
- R-3 Recommend "ABC On" license only. If "ABC off" is approved we recommend the following conditions:
 - 1. Beer or wine coolers may be sold only in 4-packs, 6-packs or bottles of more than 40 fluid ounces. Wine may be sold only in bottles of at least 750 ml or 25.4 ounces. Fortified wine (wine with an alcohol content of 14% or more by volume) may not be sold.
 - 2. That the SUP is reviewed after one year.

All applicants must complete this form. Supplemental forms are required for child care facilities, restaurants, automobile oriented uses and freestanding signs requiring special use permit approval.

1. The applicant is (*check one*) the Owner Contract Purchaser
 Lessee or Other: _____ of the subject property.

State the name, address and percent of ownership of any person or entity owning an interest in the applicant, unless the entity is a corporation or partnership in which case identify each owner of more than ten percent.

Old Town Food Service Corporation is a Virginia corporation ("OTFC"). Glenda Giovannoni, Niam Mousa and Michael Harmon are people who are the owners of shares of OTFC in excess of ten percent (10%).

If property owner or applicant is being represented by an authorized agent such as an attorney, realtor, or other person for which there is some form of compensation, does this agent or the business in which the agent is employed have a business license to operate in the City of Alexandria, Virginia?

Yes. Provide proof of current City business license

No. The agent shall obtain a business license prior to filing application, if required by the City Code.

2. Submit a floor plan and a plot plan with parking layout of the proposed use. One copy of the plan is required for plans that are 8½" x 14" or smaller. Twenty-four copies are required for larger plans or if the plans cannot be easily reproduced. The planning director may waive requirements for plan submission upon receipt of a written request which adequately justifies a waiver. This requirement does not apply if a Site Plan Package is required.

Floor plans are attached.

NARRATIVE DESCRIPTION

3. The applicant shall describe below the nature of the request in detail so that the Planning Commission and City Council can understand the nature of the operation and the use, including such items as the nature of the activity, the number and type of patrons, the number of employees, the hours, how parking is to be provided for employees and patrons, and whether the use will generate any noise. (Attach additional sheets if necessary)

Old Town Food Service Corporation, a Virginia corporation (the "Applicant") is requesting a Special Use Permit to expand the Fish Market restaurant into the second floor of 109 King Street pursuant to the City of Alexandria Zoning Ordinance, 1992, as amended (the "Ordinance") and to amend condition #8 of Special Use Permit 1820 which governs that portion of the restaurant located in 107 King Street, Alexandria, Virginia.

The Applicant is requesting the expansion into the second floor of 109 King Street as a "post Hurricane Isabel necessity." As a result of the hurricane, the Fish Market restaurant was closed for seven (7) days despite around the clock efforts by its staff and contractors to undertake extensive clean-up and the replacement of all kitchen equipment located on the first floor of the restaurant. The establishment of a kitchen on the second floor of 109 King Street would, in the event of another natural disaster, serve as the main kitchen for the Fish Market mitigating the loss of substantial revenues and preventing the catastrophic loss to the business occasioned by Hurricane Isabel.

In addition to a new auxiliary, the Applicant is proposing a one hundred (100) seat dining area to be used primarily as a banquet facility for private parties. Other than in periods of natural disasters when this portion of the restaurant could be up and running, it is not anticipated that this room would be open on the evenings. The additional dining area would; however, be used on exceptionally busy evenings such as holidays and the evenings of major City festivals, parades and events.

In addition, the Applicant is requesting the amendment of Special Use Permit 1820, condition #8, governing the operation of 107 King Street to delete the requirement that the Applicant provide a minimum of twelve (12) off-street parking spaces. In lieu of this condition, the Applicant agrees to participate in Park Alexandria. It is believed by the Applicant that by enrolling and participating in the Park Alexandria Program, that greater parking opportunities will be provided for patrons of the restaurant.

USE CHARACTERISTICS

4. The proposed special use permit request is for: *(check one)*

a new use requiring a special use permit,

8. Describe any potential odors emanating from the proposed use and plans to control them:

No change from established grandfathered use and SUP 1820 as to 107 King Street.

9. Please provide information regarding trash and litter generated by the use:

- A. What type of trash and garbage will be generated by the use?

No change from established grandfathered use and SUP 1820 as to 107 King Street.

- B. How much trash and garbage will be generated by the use?

No change from established grandfathered use and SUP 1820 as to 107 King Street.

- C. How often will trash be collected?

No change from established grandfathered use and SUP 1820 as to 107 King Street.

- D. How will you prevent littering on the property, streets and nearby properties?

No change from established grandfathered use and SUP 1820 as to 107 King Street.

10. Will any hazardous materials, as defined by the state or federal government, be handled, stored, or generated on the property?

Yes. No.

If yes, provide the name, monthly quantity, and specific disposal method below:

No change from established grandfathered use and SUP 1820 as to 107 King Street.

11. Will any organic compounds, for example paint, ink, lacquer thinner, or cleaning or degreasing solvent, be handled, stored, or generated on the property?

Yes. No.

If yes, provide the name, monthly quantity, and specific disposal method below:

No change from established grandfathered use and SUP 1820 as to 107 King Street.

12. What methods are proposed to ensure the safety of residents, employees and patrons?

No change from established grandfathered use and SUP 1820 as to 107 King Street.

ALCOHOL SALES

13. Will the proposed use include the sale of beer, wine, or mixed drinks?

Yes. No.

If yes, describe alcohol sales below, including if the ABC license will include on-premises and/or off-premises sales. Existing uses must describe their existing alcohol sales and/or service and identify any proposed changes in that aspect of the operation.

No change from established grandfathered use and SUP 1820 as to 107 King Street.

PARKING AND ACCESS REQUIREMENTS

14. Please provide information regarding the availability of off-street parking:

A. How many parking spaces are required for the proposed use pursuant to section 8-200 (A) of the zoning ordinance?

None. The Fish Market is located within the Downtown Central Business District and is exempt from parking requirements.

B. How many parking spaces of each type are provided for the proposed use:

 N/A Standard spaces
 Compact spaces
 Handicapped accessible spaces.
 Other.

C. Where is required parking located? on-site off-site (check one)

If the required parking will be located off-site, where will it be located:

Not applicable.

Pursuant to Section 8-200 (C) of the Zoning Ordinance, commercial and industrial uses may provide off-site parking within 500 feet of the proposed use, provided that the off-site parking is located on land zoned for commercial or industrial uses. All other uses must provide parking on-site, except that off-street parking may be provided within 300 feet of the use with a special use permit.

- D. If a reduction in the required parking is requested, pursuant to section 8-100 (A) (4) or (5) of the zoning ordinance, complete the PARKING REDUCTION SUPPLEMENTAL APPLICATION.

15. Please provide information regarding loading and unloading facilities for the use:

- A. How many loading spaces are required for the use, per section 8-200 (B) of the zoning ordinance? **NONE**

- B. How many loading spaces are available for the use? **No change from established grandfathered use and SUP 1820 as to 107 King Street.**

- C. Where are off-street loading facilities located? **No change from established grandfathered use and SUP 1820 as to 107 King Street.**

- D. During what hours of the day do you expect loading/unloading operations to occur?

No change from established grandfathered use and SUP 1820 as to 107 King Street.

- E. How frequently are loading/unloading operations expected to occur, per day or per week, as appropriate?

No change from established grandfathered use and SUP 1820 as to 107 King Street.

16. Is street access to the subject property adequate or are any street improvements, such as a new turning lane, necessary to minimize impacts on traffic flow?

No change from established grandfathered use and SUP 1820 as to 107 King Street.

SITE CHARACTERISTICS

17. Will the proposed uses be located in an existing building? Yes No

Do you propose to construct an addition to the building? Yes No

How large will the addition be? N/A square feet.

18. What will the total area occupied by the proposed use be?

1760 sq. ft. (existing) + _____ sq. ft. (addition if any) = 1760 sq. ft. (total)

19. The proposed use is located in: (*check one*)

a stand alone building a house located in a residential zone a warehouse

a shopping center. Please provide name of the center: _____

an office building. Please provide name of the building: _____

other, please describe: **Mixed use, downtown commercial structure.**

RESTAURANT SUPPLEMENTAL APPLICATION

All applicants requesting special use permit approval for restaurants shall complete the following section. Applicants requesting approval of a special use permit for a restaurant in Old Town shall complete the SUPPLEMENTAL INFORMATION FOR RESTAURANTS IN OLD TOWN section and submit the required parking management plan and litter reduction plan.

Please provide the following information:

1. How many seats are proposed?

At tables: 96 At a bar: 4 Total number proposed: 100

2. Will the restaurant offer any of the following?

Yes alcoholic beverages Yes beer and wine (on-premises)

No beer and wine (off-premises)

3. Please describe the type of food that will be served:

No change from existing menu.

4. The restaurant will offer the following service (check items that apply):

Yes table service Yes bar Yes carry-out Yes delivery

5. If delivery service is proposed, how many vehicles do you anticipate?

No change from established grandfathered use and SUP 1820 as to 107 King Street.

Will delivery drivers use their own vehicles? Yes. X No.

6. Will the restaurant offer any entertainment (i.e. live entertainment, large screen television, video games)? X Yes. No.

If yes, please describe:

No change from established grandfathered use and SUP 1820 as to 107 King Street.

SUPPLEMENTAL INFORMATION FOR RESTAURANTS IN OLD TOWN

**CRITERIA TO BE USED TO EVALUATE NEW OR EXPANDED RESTAURANTS
ADOPTED BY CITY COUNCIL BY RESOLUTION, NOVEMBER 13, 1993**

Parking

1. The applicant must submit a parking management plan (PMP), which specifically addresses the following issues:
 - A. The parking demand generated by the proposed restaurant.
 - B. The availability of off-street parking for patrons. For the purpose of this policy, availability shall be measured in terms of the number of vacant off-street parking spaces within 500 feet from the entrance to the restaurant.
 - C. How employees who drive will be accommodated off the street at least in the evenings and on weekends.
 - D. The predicted impact of the restaurant on the parking supply at the evening peak, weekend peak, and daytime peak.
 - E. A proposal to reduce the impact of parking created by the restaurant on nearby areas. Acceptable alternatives for reducing parking impacts include, but are not limited to, the following: validated parking or valet parking for patrons, and off-street parking or transit subsidies for employees.

2. Additionally, please answer the following:
 - A. What percent of patron parking can be accommodated off-street?
(check one)
 100%
 75-99%
 50-74%
 1-49%
 No parking can be accommodated off-street

 - B. What percentage of employees who drive can be accommodated off the street at least in the evenings and on weekends?
(check one)
 All
 75-99%
 50-74%
 1-49%
 None

 - C. What is the estimated peak evening impact upon neighborhoods?
(check one)
 No parking impact predicted
 Less than 20 additional cars in neighborhood
 20-40 additional cars
 More than 40 additional cars

Litter

The applicant for a restaurant featuring carry-out service for immediate consumption must submit a plan which indicates those steps it will take to eliminate litter generated by sales in that restaurant.

No change from established grandfathered use and SUP 1820 s to 107 King Street.

1. Maximum number of patrons shall be determined by adding the following:

- 100 Maximum number of patron dining seats
- Maximum number of patron bar seats
- Maximum number of standing patrons
- 100 Maximum number of patrons

2. 90 Maximum number of employees by hour at any one time

3. Hours of operation:
(check one)

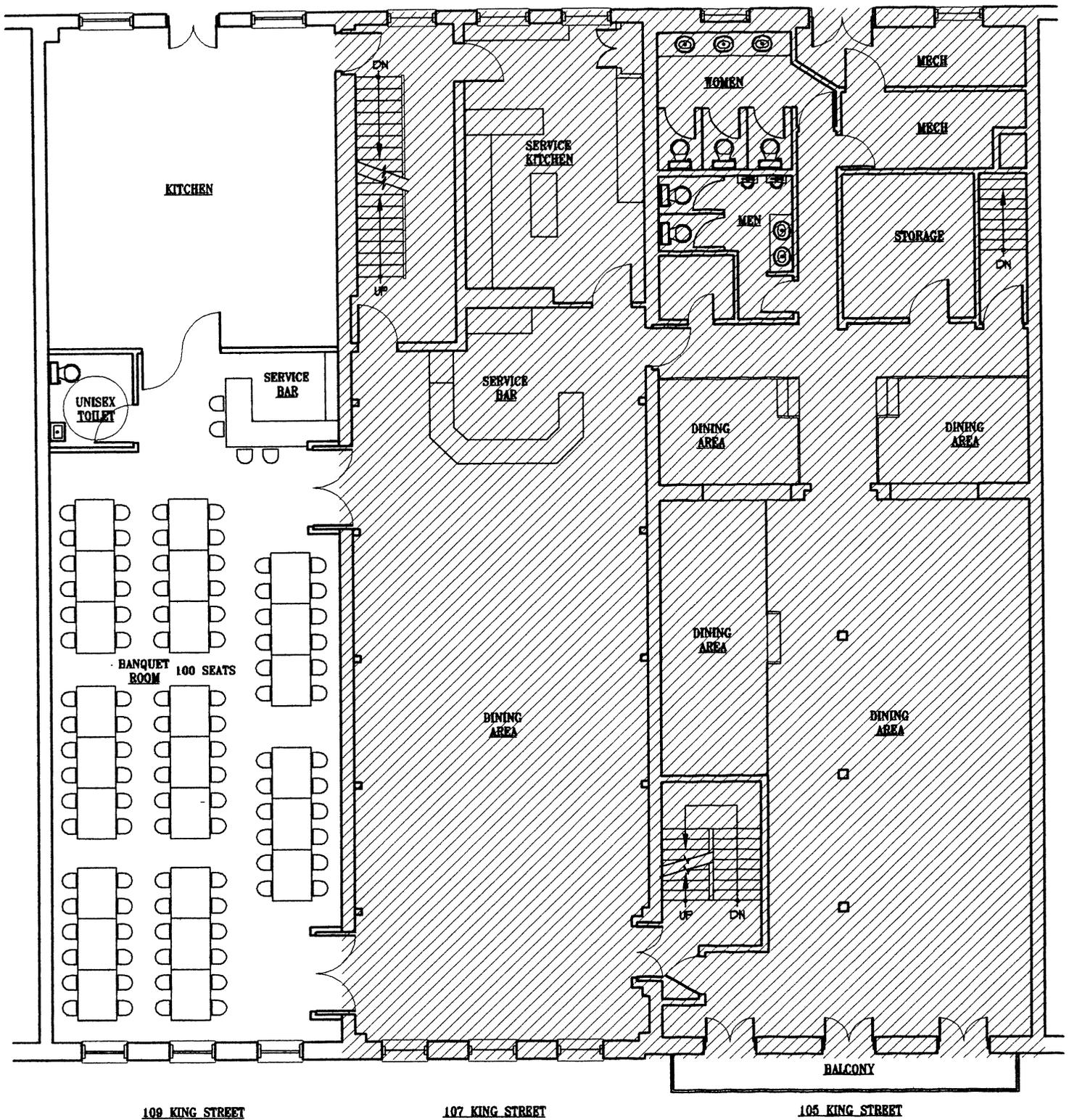
- Closes by 8:00 P.M.
- Closes after 8:00 P.M. but by 10:00 P.M.
- Closes after 10:00 P.M. but by Midnight
- X Closes after Midnight

[Closing time means when the restaurant is empty of patrons.]

4. Alcohol Consumption:
(Check one)

- High ratio of alcohol to food
- Balance between alcohol and food
- X Low ratio of alcohol to food - **17% alcohol, 77% food**

SUP2004-0072



PROPOSED BANQUET ROOM AT FISHMARKET RESTAURANT - 2ND FLOOR

JAMES L. BROWN & ASSOCIATES ARCHITECTS (103) 636-1243

Statement of Michael E. Hobbs
on behalf of the
Old Town Civic Association
Planning Commission
October 5, 2004

Fish Market Restaurant

Thank you, Chairman Wagner and members of the Commission. I am Michael Hobbs, President of the Old Town Civic Association, and I thank you for this opportunity to share our views as you consider the special use permit application of the Fish Market Restaurant.

Just last month, you considered and approved another application for a new or enlarged restaurant in this block, on behalf of Daniel O'Connell's Restaurant across the street. Several of you urged at that time that it might be useful for Old Town Civic Association to review the *Old Town Restaurant Policy*, which was first adopted a dozen years ago, in light of intervening experience and current circumstances—most particularly, in the evolution of the nature and quality of dining establishments that are locating in Old Town in the current day.

Your request that we participate in any such review is quite reasonable, and welcome. We will be happy to do so, with the advice and participation of our membership. But our understanding is that it is not within our authority to change the policy, whatever the merits. For what has come to be titled the "Old Town Restaurant Policy" is not a policy of the Old Town Civic Association—although we had much to do with urging its adoption in the first place—but rather, it is a City policy, adopted as part of the Old Town Small Area Plan, and thence of the city's Master Plan, by the Mayor and Council. The policy was adopted June 13, 1992 by Ordinance #3576, as amended December 11, 1993 by Ordinance #3686, and is still part of the ordinance.

As indicated, we would be happy to participate in any review of that policy that is undertaken. But I would urge that any such review should be undertaken with the same care and deliberation as was the original policy. As the Old Town Small Area Plan states, there is "a fragile balance which must be preserved if both [the residential and the commercial areas] are to remain strong and if the ambience of Old Town is to be preserved." Any alteration or amendment of policy which might significantly affect that balance should be adopted only after serious factual investigation, broad public discussion and participation, and due deliberation and the most careful consideration by the Planning Commission and then the Mayor and City Council. It should be the result, not of the *de facto* consequence of a series of decisions in individual cases, but rather of a deliberate policy choice and determination by our city's governing bodies.

In the meantime, we believe that the present policy, as reflected in the present ordinance, and the principles underlying that policy, do not support a grant of the special use permit requested by the Fish Market.

We noticed in one of the documents a statement that "the Old Town Restaurant Policy allows new restaurants on lower King Street, *provided that their impacts are minimized* (emphasis supplied)." We respectfully submit that is not an adequate statement of the policy. The

ordinance does, to be sure, recite the “goals of the Old Town Restaurant Policy” and the “factors to be considered” in determining the impact—two of which are “the availability of off-street parking” and “the predicted impact of the restaurant on parking supply in the adjacent neighborhood.” But the statement of the fundamental policy itself seems to us to be clear and unequivocal:

City Council shall not approve a request for special use permit for any new restaurant, carryout or fast food establishment or an expansion of an existing restaurant . . . unless it finds that the request *does not significantly impact nearby residential neighborhoods* (emphasis supplied).

--not that “their impacts are minimized,” but that there is no significant impact.

Regardless of your interpretation of the *Old Town Restaurant Policy*, however, we believe that there are several significant and important differences from the O’Connell’s case that you should consider in applying that policy to the Fish Market proposal.

- (1) O’Connell’s was a proposal to bring a new business tour neighborhood, described as a “high-end, white-linen” restaurant, with a distinct addition to the culinary landscape and the economy of Old Town. The Fish Market proposal is not for attracting a new enterprise to Alexandria, but simply for the expansion of an existing establishment with its existing cuisine.
- (2) The staff report anticipated that O’Connell’s would address the *King Street Retail Study* goal of generating desirable customer activity on the ground floor and optimizing the pedestrian experience for people on the street level, in part by the new façade on King Street. The Fish Market expansion would be on the second floor and there is no plan for a “new and improved” façade.
- (3) O’Connell’s stated unequivocally that the “banquet” portion of its additional seating “will NOT be used for everyday dining,” and a condition adopted by this Commission and Council provided that those “additional 50 seats are allowed only for banquets and special events (emphasis supplied).” The Fish Market gives no such assurance—indeed, it states that “the additional dining area would, however, be used on exceptionally busy evenings such as holidays and the evenings of major City festivals, parades and events”—and the staff report includes no condition limiting this “banquet” seating to banquet use.
- (4) O’Connell’s argued that, net of its banquet and outdoor seating, it would represent little additional demand for parking beyond that generated by the previous Bullfeathers and Hats in the Belfry, but agreed, nonetheless, to subsidize its patrons’ parking at the Union Street garages. The Fish Market, by contrast, represents that “this form of subsidy is not affordable under the restaurant’s business plan”—and, indeed, requests deletion of the existing SUP requirement according to which it has heretofore been obligated to provide some off-street parking spaces for restaurant patrons in the nearby area.

In sum, O'Connell's was a proposal for a new enterprise, adding significantly to the cuisine, the economy, and the retail and pedestrian streetscape of lower King Street. The Fish Market proposal, though described as a "banquet room," simply amounts to a 100-seat expansion of this existing restaurant, and a deletion of its existing off-street parking requirement.

We do note that the proposal also involves—indeed, begins with—the Fish Market's desire to install a new auxiliary kitchen on the second floor, the better to insulate its business against the ravages of Hurricane Isabel's progeny in the future. We have absolutely no objection to that plan, and to the extent a new special use permit is necessary to accomplish it, we urge that you approve it.

But to the extent this is a proposal to expand by 100 seats the facility available for regular patronage, we believe the proposal involves many of the same negative impacts, and few if any of the countervailing benefits, of the O'Connell's proposal. Consistent with our understanding of the Old Town Restaurant Policy, and with our position on O'Connell's, we urge you not to approve the special use permit. But should you do so, we would urge at the very least that you hold this applicant to no less stringent a standard—that you provide no less protection to the surrounding neighborhood—than you did in that case. Specifically, we would request that here, as in the case of O'Connell's, you include conditions that:

(1) "Seating shall be provided for no more than 274 patrons. An additional 100 seats are allowed only for banquets and special events, and an additional 10 seats are allowed only for seasonal outdoor dining." [Condition #2, patterned after condition #2 of the O'Connell's permit.]

(2) "The applicant shall maintain a parking arrangement with area garages, by which the regular parking price at those garages is discounted by at least \$1 for customers. The applicant shall post information regarding the availability of parking at those garages for patrons at the restaurant."

[Suggested Condition #8, substituting for the "parking" condition which applicant requests be deleted from its existing SUP; same language as condition #11 of O'Connell's SUP.]

* * *

The addition of another 100 restaurant seats in this immediate neighborhood, just a month after approval of the 350-seat O'Connell's, and with reliance for off-street parking essentially upon the same nearby garages as the other dozen or so restaurants in this immediate neighborhood, gives us substantial concern about the impact on the neighborhood and about application of the Old Town Restaurant Policy. We urge that you not approve this permit, or at the very least that you condition it with the same protections that you applied to the previous case.

Thank you for your consideration.

6
10-16-04

Statement of Michael E. Hobbs
before the
City Council
on behalf of the
Old Town Civic Association
October 16, 2004

FISH MARKET RESTAURANT

THANK YOU, MAYOR EUILLE AND MEMBERS OF COUNCIL. I AM MICHAEL HOBBS, PRESIDENT OF THE OLD TOWN CIVIC ASSOCIATION, AND I THANK YOU FOR THIS OPPORTUNITY TO SHARE OUR VIEWS AS YOU CONSIDER A SPECIAL USE PERMIT FOR THE FISH MARKET RESTAURANT.

WE OPPOSED THIS APPLICATION WHEN IT WAS BEFORE THE PLANNING COMMISSION, FOR THE REASONS OUTLINED IN MY WRITTEN STATEMENT WHICH YOU HAVE. WE BELIEVE THAT THIS APPLICATION DIFFERS IN SEVERAL MATERIAL RESPECTS FROM THE O'CONNELL'S RESTAURANT APPLICATION WHICH YOU APPROVED LAST MONTH. O'CONNELL'S BRINGS A NEW BUSINESS AND A NEW CUISINE TO OUR NEIGHBORHOOD. IT REMAKES THE STREETScape AND THE PEDESTRIAN EXPERIENCE IN THIS BLOCK. IT VOLUNTARILY AGREES THAT MUCH OF ITS NEW SEATING WILL NOT BE USED FOR EVERYDAY DINING; AND IT AGREED TO SUBSIDIZE ITS PATRONS' PARKING AT NEARBY GARAGES. THE FISH MARKET PROPOSAL, BY CONTRAST, AMOUNTED IN EFFECT TO NOTHING MORE THAN A 100-SEAT EXPANSION OF AN EXISTING RESTAURANT, WITH NO LIMITATION AS TO THE USE OF THOSE ADDITIONAL SEATS, NO ENHANCEMENT OF THE STREETScape, AND A NET REDUCTION IN THE PROVISION FOR OFF-STREET PARKING.

WE OPPOSE THE GRANT OF THIS SUP BECAUSE WE BELIEVE THAT IT DOES NOT COMPORT WITH THE REQUIREMENT OF THE ORDINANCE THAT

CITY COUNCIL SHALL NOT APPROVE A REQUEST FOR SPECIAL USE PERMIT FOR ANY . . . EXPANSION OF AN EXISTING RESTAURANT *UNLESS IT FINDS THAT THE REQUEST DOES NOT SIGNIFICANTLY IMPACT NEARBY RESIDENTIAL NEIGHBORHOODS* (EMPHASIS SUPPLIED).

THE PLANNING COMMISSION FOUND OTHERWISE, BUT WAS CONSIDERATE OF OUR CONCERNS IN ADOPTING OR AMENDING TWO ADDITIONAL CONDITIONS: #9, WHICH PROVIDES THAT THE FISH MARKET, LIKE O'CONNELL'S, WILL SUBSIDIZE PATRON PARKING AT AREA GARAGES; AND #2, WHICH NOW PROVIDES THAT THE 100 ADDITIONAL SEATS ARE NOT TO BE USED FOR REGULAR, EVERYDAY DINING, BUT ONLY FOR BANQUETS, SPECIAL EVENTS AND TOUR GROUPS. (WE WOULD STILL PREFER THE SAME CLEAR STATEMENT THAT WAS INCLUDED IN THE O'CONNELL'S SUP, BUT WE APPRECIATE THIS STEP IN THE RIGHT DIRECTION.

IT IS IMPORTANT TO RECOGNIZE THAT, IF YOU APPROVE THIS SUP, YOU WILL HAVE RESTORED THE TOTAL RESTAURANT SEATING ON LOWER KING STREET TO ALMOST EXACTLY THE LEVEL THAT EXISTED A DOZEN YEARS AGO, WHEN THE IMPACT OF LITERALLY DOZENS OF RESTAURANTS WITH THOUSANDS OF SEATS IN THIS SMALL AREA HAD THE SEVERE IMPACT ON THE NEARBY RESIDENTIAL NEIGHBORHOODS THAT COMPELLED ADOPTION OF THE OLD TOWN RESTAURANT POLICY IN THE FIRST PLACE. WE ARE ASSURED BY THE PLANNING DEPARTMENT, AND INDEED BY THE CITY MANAGER, THAT THE KING STREET RETAIL STUDY NOW UNDER WAY DOES NOT AMOUNT TO A REPEAL OF THE OLD TOWN RESTAURANT POLICY, AND THAT IT IS NOT THE INTENT TO UPSET WHAT THE OLD TOWN SMALL AREA PLAN CALLS "[THE] FRAGILE BALANCE WHICH MUST BE PRESERVED IF BOTH [THE RESIDENTIAL AND COMMERCIAL AREAS] ARE TO REMAIN STRONG AND IF THE AMBIENCE OF OLD TOWN IS TO BE PRESERVED." WHATEVER YOUR ACTION ON THE PRESENT APPLICATION, IT IS IMPERATIVE AS WE GO FORWARD THAT THE CITY'S PARKING STRATEGY ASSURE THAT THE PARKING DEMAND GENERATED BY OLD TOWN RESTAURANTS IN PARTICULAR, AND OLD TOWN COMMERCE IN GENERAL, BE MET TO THE MAXIMUM EXTENT POSSIBLE WITHOUT RELYING ON PARKING ON RESIDENTIAL STREETS TO MEET THAT DEMAND.

THANK YOU FOR YOUR CONSIDERATION.

Special Use Permit # _____

APPLICATION for SPECIAL USE PERMIT # 2004-0072

PROPERTY LOCATION: **2nd Floor, 109 King Street**

TAX MAP REFERENCE: **075.01 03 08 +** ZONE: **CD/Commercial Downtown**
75.01 03 09

APPLICANT Name: **Old Town Food Service Corporation, a Virginia corporation**

Address: **105 King Street, Alexandria, Virginia 22314**

PROPERTY OWNER Name: **Fish Market Real Estate, LLC, a Virginia limited liability company**

Address: **105 King Street, Alexandria, Virginia 22314**

PROPOSED USE: **Expansion of existing Fish Market restaurant into the second floor of 109 King Street and amendment to existing Special Use Permit conditions.**

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.

Land, Clark, Carroll, Mendelson & Blair, P.C.
Duncan W. Blair, Esquire

Print Name of Applicant or Agent



Signature

524 King Street
Mailing/Street Address

(703) 836-1000
Telephone #

(703) 549-3335
Fax #

dblair@landclark.com

Alexandria, Virginia 22314
City and State Zip Code

June 29, 2004
Date

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

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

ACTION - PLANNING COMMISSION: 10/5/2004 RECOMMEND APPROVAL 7-0

ACTION - CITY COUNCIL: 10/16/04 CC approved Planning Commission recommendation. 7-0

+ 19

SPEAKER'S FORM

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

DOCKET ITEM NO. 6

PLEASE ANNOUNCE THE INFORMATION SPECIFIED BELOW PRIOR TO SPEAKING.

1. **NAME:** Duncan W. Blair, Esquire
2. **ADDRESS:** 524 King Street, Alexandria, Virginia 22314
TELEPHONE NO. 703 836-1000 **E-MAIL:** dblair@landclark.com
3. **WHOM DO YOU REPRESENT, IF OTHER THAN YOURSELF?**
Old Town Food Service Corporation
4. **WHAT IS YOUR POSITION ON THE ITEM?**
For
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.