

EXHIBIT NO. 1

7
10-15-05

Docket Item #5
SPECIAL USE PERMIT #2005-0087

Planning Commission Meeting
October 4, 2005

ISSUE: Consideration of a request for a special use permit amendment to extend the hours of operation and to allow alcohol sales at an existing restaurant.

APPLICANT: Lek's Family, Inc.
by Mary Catherine Gibbs, attorney

LOCATION: 907 King Street

ZONE: KR/King Street Urban Retail

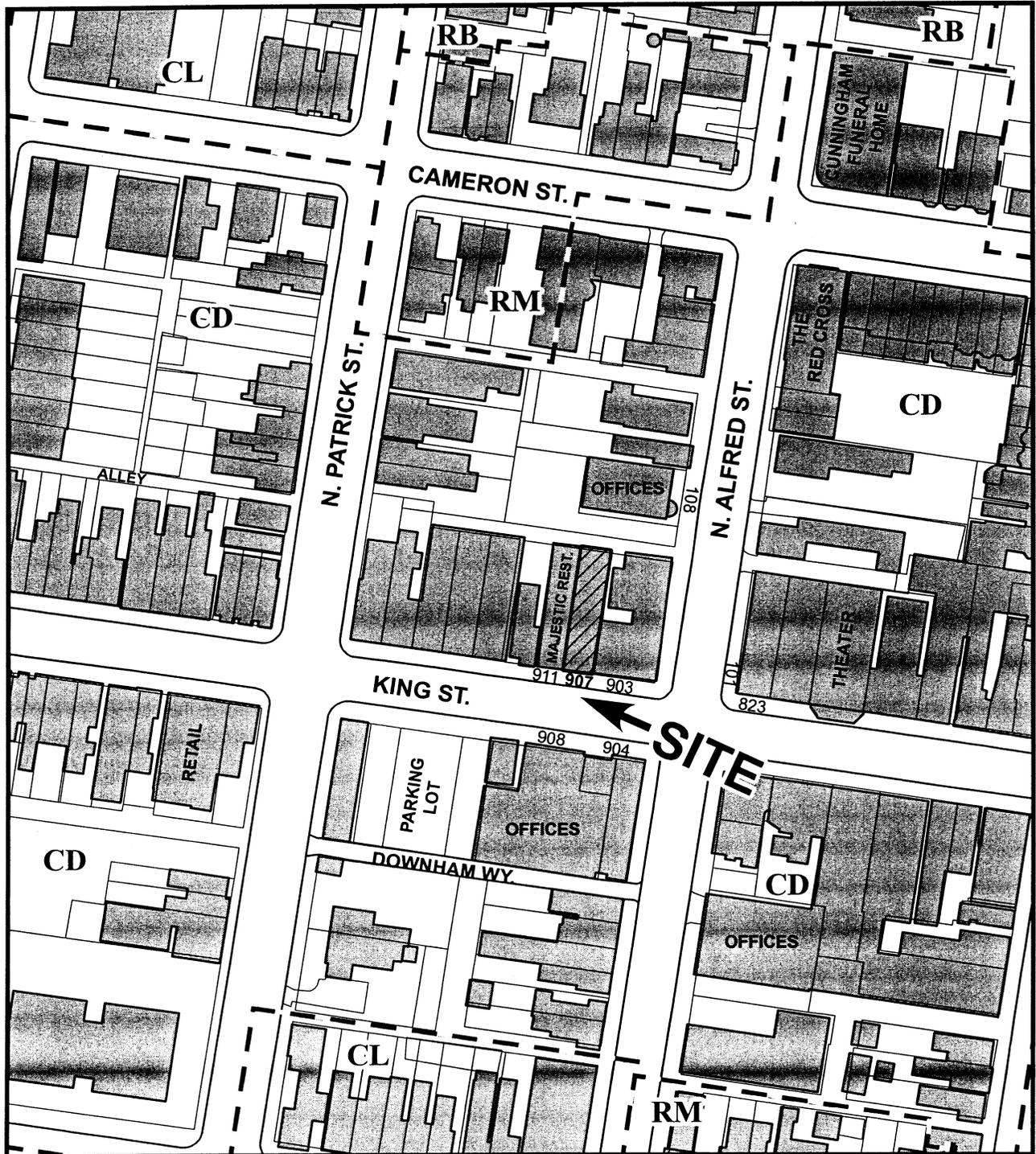
PLANNING COMMISSION, OCTOBER 4, 2005: On a motion by Mr. Robinson, seconded by Mr. Dunn, the Planning Commission voted to recommend approval of the request, subject to compliance with all applicable codes, ordinances and staff recommendations. The motion carried on a vote of 6 to 0. Ms. Fossum was absent.

Reason: The Planning Commission agreed with the staff analysis.

Speakers:

Mary Catherine Gibbs, applicant's attorney, spoke in support of the application, and stated that the applicant withdrew its request for live entertainment.

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



SUP #2005-0087

10/04/05



I. DISCUSSION

REQUEST

The applicant, Lek's Family, Inc., requests special use permit approval to extend the hours of operation and add alcohol sales at an existing restaurant.

SITE DESCRIPTION

The subject building has 24 feet of frontage on King Street, a depth of 100 feet and a lot area of 2,400 square feet. The property is developed with a three (3) story building.

The surrounding area is occupied by a mix of commercial uses, including retail and restaurant.

BACKGROUND

On May 18, 1987, City Council granted Special Use Permit #2000 to Seema Enterprises Inc. to operate a 70-seat full-service restaurant at 907 King Street. The restaurant was subsequently purchased by a new owner three years later. On December 15, 1990, City Council granted Special Use Permit #2000-A to Herbas Inc., t/a Papa John's, for a change in ownership of the 70-seat restaurant. On October 12, 1991, City Council granted Special Use Permit #2000-B to change the ownership of the restaurant to Lek's Family, Inc., and to change the hours of operation.

On September 2, 2005, staff inspected the subject restaurant for compliance with SUP#2000-B, and found no violations.

PROPOSAL

The current request is to allow the service of on-premise alcohol along with the beer and wine currently offered, and to extend the hours of operation. The current and proposed hours are as follows:

<u>Existing Hours</u>	<u>Proposed Hours</u>
7:00 am-10:00 pm, Sunday through Thursday	10:00 am-11:00 pm
7:00 am-11:00 pm, Friday and Saturday	10:00 am-1:00 am

No other changes are proposed. Staff is not aware of any issues at the restaurant regarding the existing beer and wine sales.

PARKING

The restaurant's location within the Central Business District of Historic Alexandria exempts the applicant from the requirement to provide off-street parking.

ZONING/MASTER PLAN DESIGNATION

The subject property is located within the newly enacted King Street Urban Retail (KR) zone. As per Section 6-702(A)(2)(k) of the Zoning Ordinance, restaurants are permitted within the KR zone only with a special use permit. The proposed use is consistent with the *King Street Retail Strategy*, which advocates active retail and restaurant uses on the ground floor of buildings along King Street.

II. STAFF ANALYSIS

Staff does not object to the proposed extension of operating hours and the addition of on-premise alcohol service. The hours are consistent with other restaurants on King Street, including Las Tapas in the 700 block, who has the same hours, and the Majestic Restaurant next door, who has a 1:00 am daily closing hour. Staff is not aware of issues at the restaurant with the existing beer and wine sales.

Staff recommends including standard restaurant conditions, including employee training on preventing underage sales of alcohol, and a one year review.

With these 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 ~~That the permit be~~ granted to the applicant only or to any corporation in which the applicant has a controlling interest. (P&Z)
2. That seating be provided inside for no more than 70 patrons. (P&Z)
3. **CONDITION DELETED BY STAFF:** ~~That no outside dining facilities be located on the premises.~~ (P&Z) (SUP #2000)
4. That no food, beverages, or other material be stored outside. (P&Z) (SUP #2000)
5. That trash and garbage be stored inside or in a dumpster. (P&Z) (SUP #2000)
6. That trash and garbage be collected daily when the business is open. (P&Z) (SUP #2000)

7. That one (1) standard City trash container be furnished to the City of Alexandria for installation by the City on the adjacent public right-of-way. (SUP #2000) (*Installed per inspection 10/31/1994*)
8. That litter on the site and on public rights-of-way and spaces adjacent to or within 75.00 feet of the premises be picked up at least twice a day, and more often if necessary, to prevent an unsightly and unsanitary accumulation, on each day that the business is open to the public. (P&Z) (SUP #2000)
9. **CONDITION AMENDED BY STAFF:** That the hours during which the business is open to the public be restricted to the following:

7:00 A.M. to ~~10:00 P.M.~~ 11:00 P.M.- Sunday through Thursday
7:00 A.M. to ~~11:00 P.M.~~ 1:00 A.M.- Friday and Saturday (P&Z)
10. **CONDITION ADDED BY STAFF:** The applicant shall post the hours of operation at the entrance of the business. (P&Z)
11. **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)
12. **CONDITION ADDED BY STAFF:** The applicant shall control cooking odors, smoke and any other air pollution from operations at the site and prevent them from leaving the property or becoming a nuisance to neighboring properties, as determined by the Department of Transportation & Environmental Services. (T&ES)
13. **CONDITION ADDED BY STAFF:** Loudspeakers shall be prohibited from the exterior of the building, and no amplified sounds shall be audible at the property line. (T&ES)
14. **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)
15. **CONDITION ADDED BY STAFF:** The applicant shall conduct employee training sessions on an ongoing basis, including as part of any employee orientation, to discuss all SUP provisions and requirements, and on how to prevent underage sales of alcohol. (P&Z)

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

STAFF: Eileen Fogarty, Director, Department of Planning and Zoning;
Richard Josephson, Deputy Director;
Valerie Peterson, 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.

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. (T&ES)
- R-2 The applicant shall control cooking odors, smoke and any other air pollution from operations at the site and prevent them from leaving the property or becoming a nuisance to neighboring properties, as determined by the Department of Transportation & Environmental Services. (T&ES)
- R-3 Loudspeakers shall be prohibited from the exterior of the building, and no amplified sounds shall be audible at the property line. (T&ES)
- 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:

- C-1 A new Fire Prevention Permit is required to reflect the addition of live entertainment.
- C-2 A construction permit is required for the proposed awning.
- C-3 Awnings must comply with all applicable requirements of USBC 3105 and 3202. Fixed awnings must have a minimum 7 foot clearance from a sidewalk to the lowest part of the framework or any fixed portion of any retractable awning is required.
- C-4 Fixed awnings must be designed and constructed to withstand wind or other lateral loads and live loads required by the USBC. Structural members must be protected to prevent deterioration (USBC 3105.2).

Health Department:

- F-1 No comments

Police Department:

R-1 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.

F-1 The Police Department has no objections to the extended hours.

APPLICATION for SPECIAL USE PERMIT #2005-0087

PROPERTY LOCATION: 907 King St.

TAX MAP REFERENCE: 64.04, Block 5, Lot 41 (064.04-05-41) ZONE: CD

APPLICANT Name: Lek's Family, Inc.

Address: 907 King St.

PROPERTY OWNER Name: A&H, LLC.

Address: 903 King St.

PROPOSED USE: Amendment to existing Restaurant SUP

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 notices 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.

MARY CATHERINE GIBBS
Print Name of Applicant or Agent

Mary Catherine Gibbs
Signature

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

(703) 836-5757
Telephone #

(703) 548-5443
Fax#

307 N. Washington St., Alex. VA 22314
City and State Zip Code

Date

DO NOT WRITE BELOW THIS LINE - OFFICE USE ONLY

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

ACTION - PLANNING COMMISSION: _____

ACTION - CITY COUNCIL: _____

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.

David Chu, 100%

907 King St.

Alexandria, VA 22314

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 8 1/2" x 14" or smaller. Twenty-four plans 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.

NARRATIVE DESCRIPTION

4. 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.)

This property has housed a restaurant for nearly two decades. The current Applicant has purchased the business and has both changed the cuisine and redecorated the interior in order to revitalize the location. He will continue to run a full-service restaurant and plans to highlight a sophisticated wine selection.

Among the improvements he has made is an attractive new awning with the restaurant's name, which recently received Board of Architectural Review approval.

He now asks for an amended SUP to allow the service of spirits along with the beer and wine he currently offers. The Virginia Department of Alcoholic Beverage Control has concluded its investigation favorably and now simply awaits the City of Alexandria's issuance of this SUP.

This SUP application further requests that the Viet Grill's hours of operation be extended to reflect the current dining environment of King Street, allowing a closing time of 11 p.m. on weekdays and 1 a.m. on weeknights. The patrons of the Viet Grill have proven thusfar that they are not disruptive of nearby residential areas. In addition, the Viet Grill would offer periodic live music as background entertainment for its patrons.

USE CHARACTERISTICS

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

- a new use requiring a special use permit,
- a development special use permit,
- an expansion or change to an existing use without a special use permit,
- an expansion or change to an existing use with a special use permit,
- other. Please describe: _____

5. Please describe the capacity of the proposed use:

A. How many patrons, clients, pupils and other such users do you expect? Specify time period (i.e., day, hour, or shift).

~250 customers over the course of a day and evening

B. How many employees, staff and other personnel do you expect? Specify time period (i.e. day, hour, or shift).

Maximum of 7 at peak hours.

6. Please describe the proposed hours and days of operation of the proposed use:

Day:

Hours:

Sunday - Thursday

10:00a.m. - 11:00p.m.

Friday - Saturday

10:00a.m. - 1:00 a.m.

7. Please describe any potential noise emanating from the proposed use:

A. Describe the noise levels anticipated from all mechanical equipment and patrons.

No change from present

B. How will noise from patrons be controlled?

12

No change from present

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

No change from present

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 present

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

No change from present

C. How often will trash be collected?

No change from present

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

No change from present

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:

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:

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

No change from present

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 off-premises sales. On-premises sales currently include beer and wine, and Applicant now proposes to offer spirits as well. Virginia Dept. of ABC has given its approval, subject to Alexandria City's issuance of appropriate SUP.

No change from present

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

No change from present

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 present

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? _____ square feet.

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

1,800 sq. ft. (existing) + 0 sq. ft. (addition if any) = 1,800 sq. ft. (total)

21. 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: Existing retail attached building in CD zone.

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: 63 At a bar: 7 Total number proposed 70

2. Will the restaurant offer any of the following?

XX alcoholic beverages XX beer and wine (on-premises)
 beer and wine (off-premises)

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

Full-service Vietnamese lunch and dinner menu.

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

XX table service XX bar carry-out delivery

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

Will delivery drivers use their own vehicles? Yes No.

6. Will the restaurant offer any entertainment (i.e. live entertainment, large screen television, video games)?

XX Yes No.

If yes, please describe: Applicant proposes to continue having a solo guitarist who plays in the background during the dinner hours occasionally on weekends.

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 **(existing restaurant)**
- 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.

Alcohol Consumption and Late Night Hours.

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

<u>63</u>	Maximum number of patron dining seats
<u>7</u>	Maximum number of patron bar seats
+	Maximum number of standing patrons
<hr/>	
<u>70</u>	Maximum number of patrons

2. 7 Maximum number of employees by hour at any one time.

3. Hours of operation: (check one)

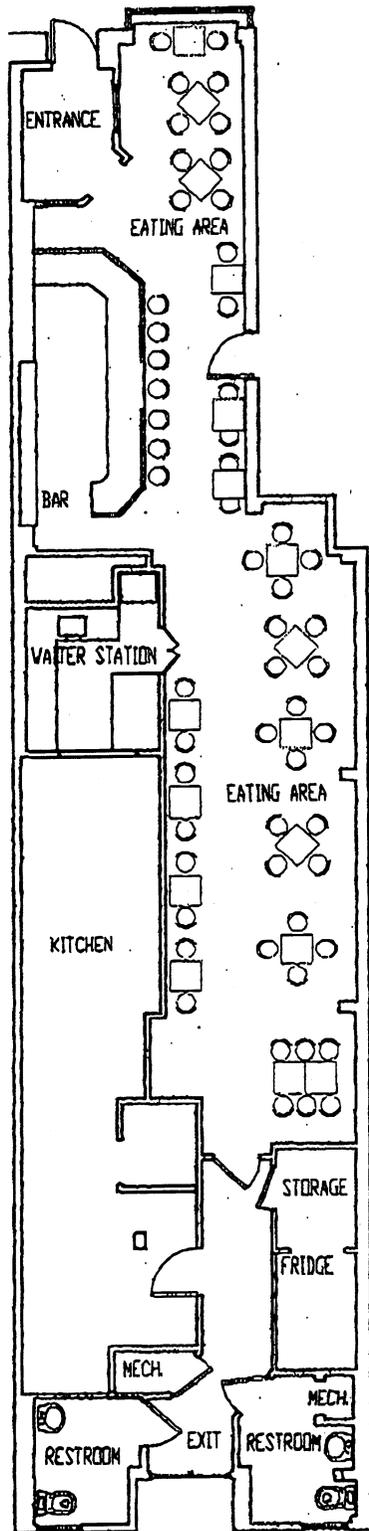
- Closes by 8:00 P.M.
- Closes after 8:00 P.M. but by 10:00 P.M.
- Closes after 10:00 P.M. but by Midnight. **(Sun-Thurs)**
- Closes after Midnight. **(Fri & Sat)**

[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
- Low ratio of alcohol to food

SUP2005-008



EXISTING FLOOR PLAN
NOT TO SCALE

ACTUAL SEAT COUNT: 57
ALLOWED: 70

VIET GRILL
907 KING ST.
ALEXANDRIA, VA

20

UMAR-PAREJA
ARCHITECTURE

600 N. HENRY ST.
ALEXANDRIA, VA 22314
T-703 293-0558
F-703 293-1558

EXISTING RESTAURANT SEATING

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

hcgk.law@verizon.net

October 4, 2005

HARRY P. HART
MARY CATHERINE H. GIBBS
HERBERT L. KARP

OF COUNSEL
CYRIL D. CALLEY
RETIRED
ROBERT L. MURPHY, 2001

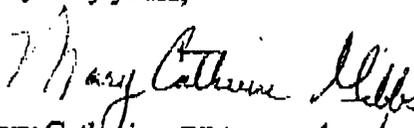
Ms. Eileen Fogarty
c/o Valerie Peterson
Planning & Zoning
City Hall
301 King Street
Alexandria, VA 22314

Re: Docket Item #5 - 907 King Street
October 4, 2005 Planning Commission Meeting

Dear Ms. Fogarty:

This letter is to confirm that the applicant will withdraw their request for limited live entertainment from consideration at tonight's Planning Commission meeting and we will re-file for that request at a future time.

Very truly yours,


Mary Catherine Gibbs *by [initials]*

MCG/eah

cc: Mr. David Chu

APPLICATION for SPECIAL USE PERMIT #2005-0087

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MARY CATHERINE GIBBS
Print Name of Applicant or Agent

Mary Catherine Gibbs
Signature

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

(703) 836-5757
Telephone #

(703) 548-5443
Fax#

307 N. Washington St., Alex. VA 22314
City and State Zip Code

Date

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

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

ACTION - PLANNING COMMISSION: recommended approval 10/04/05 6-0

ACTION - CITY COUNCIL: 10/15/05 - CC approved the PC recommendation 7-0