

EXHIBIT NO. 1

7  
5-12-01

Docket Item #6  
SPECIAL USE PERMIT #2001-0022

Planning Commission Meeting  
May 1, 2001

**ISSUE:** Consideration of a request for a special use permit to operate a restaurant.

**APPLICANT:** Subway Real Estate Corporation  
by M. Catharine Puskar, attorney

**LOCATION:** 4553 Duke Street  
Foxchase Shopping Center  
Subway

**ZONE:** CG/Commercial General

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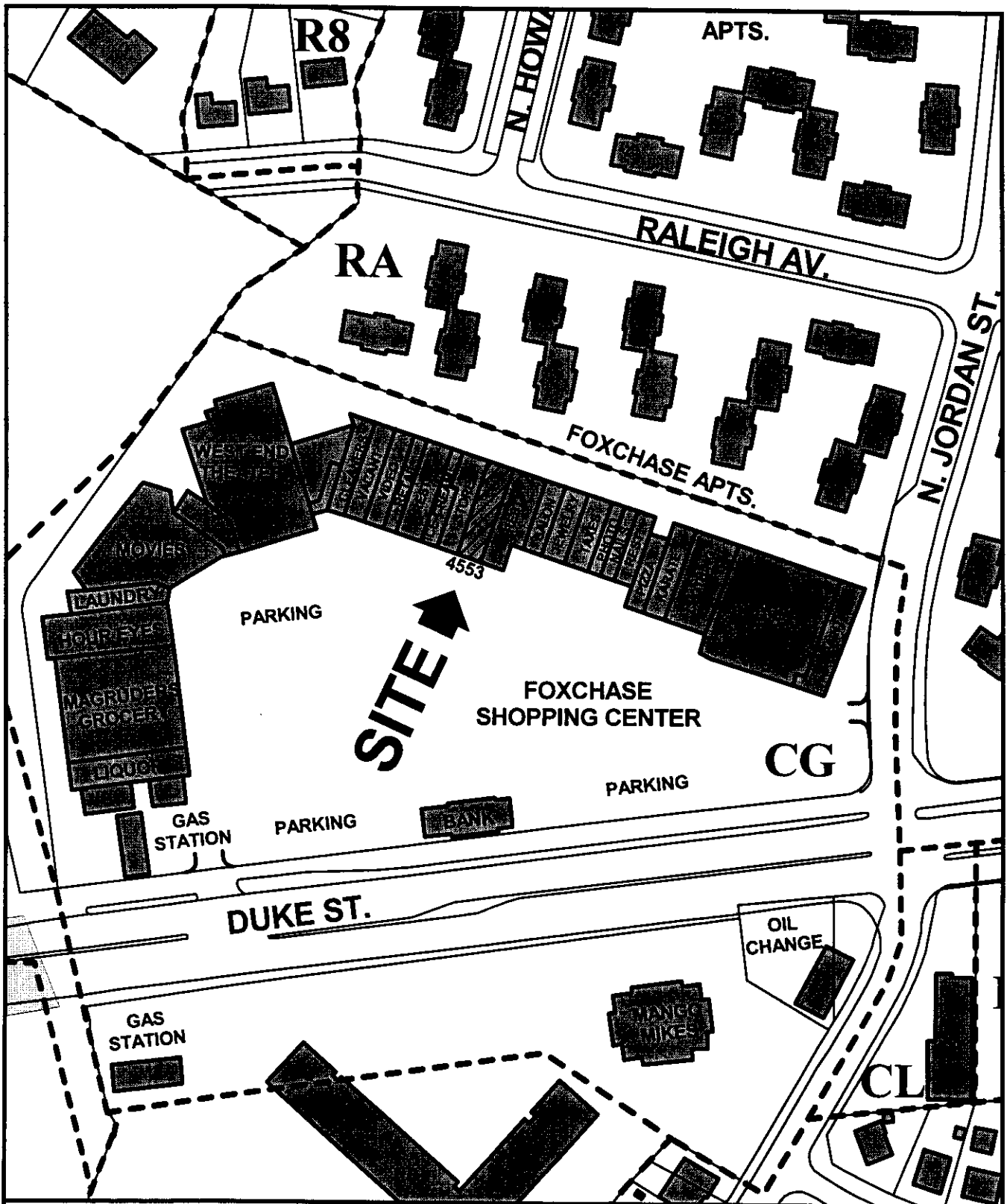
**PLANNING COMMISSION ACTION, MAY 1, 2001:** On a motion by Mr. Komoroske, seconded by Mr. Leibach, the Planning Commission voted to recommend approval of the request, subject to compliance with all applicable codes, ordinances and staff recommendations and to amend Condition #8. The motion carried on a vote of 7 to 0.

Reason: The Planning Commission agreed with the staff analysis and had no objection to the applicant's request to delete the language of Condition #8 regarding the number of deliveries that the applicant may receive.

Speakers:

M. Catharine Puskar, attorney representing the applicant, requested that the limitation on the number of deliveries per week be deleted. She stated that the application materials indicate that the applicant expects two deliveries weekly but that the applicant would like the flexibility to receive additional deliveries if necessary.

No one spoke in opposition to the applicant's request.



**SUP #2001-0022**

**05/01/01**



STAFF RECOMMENDATION:

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

1. The special use permit shall be granted to the applicant only or to any business or entity in which the applicant has a controlling interest. (P&Z)
2. Seating shall be provided for no more than 36 patrons. (P&Z)
3. Outside dining facilities shall be prohibited. (P&Z)
4. No live entertainment shall be provided at the restaurant. (P&Z)
5. The hours of operation shall be limited to 10:00 a.m. to 10:00 p.m. Sunday through Thursday, and from 10:00 a.m. to Midnight Friday and Saturday. (P&Z)
6. The applicant shall post the hours of operation at the entrance to the restaurant. (P&Z)
7. Alcoholic beverages are not permitted. (P&Z)
8. **CONDITION AMENDED BY PLANNING COMMISSION:** All loading and unloading operations shall be restricted to two deliveries per week to occur only before 10:00 a.m. ~~(P&Z)~~ (PC)
9. No food, beverages, or other material shall be stored outside. (P&Z)
10. Trash and garbage shall be placed in sealed containers which do not allow odors to escape and shall be stored inside or in a closed container which does not allow invasion by animals. No trash and debris shall be allowed to accumulate on site outside of those containers. (P&Z)
11. 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)
12. The applicant shall install at least one trash container within the restaurant for patrons' use. (P&Z)

13. All disposable paper goods or drink containers shall be clearly marked so that the source of any litter can be identified. (P&Z)
14. Kitchen equipment or other types of equipment shall not be cleaned outside, nor shall any cooking residue or other wastes be washed into the streets, alleys, sidewalks, or storm sewers. (T&ES)
15. No amplified sound shall be audible at the property line. (P&Z)
16. The applicant shall control cooking odors and smoke from the property to prevent them from becoming a nuisance to neighboring properties, as determined by the Health Department. (Health)
17. The applicant shall contact the Crime Prevention Unit of the Alexandria Police Department for a security survey for the business and a robbery awareness program for all employees. (Police)
18. 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, (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)

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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.

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

DISCUSSION:

1. The applicant, Subway Real Estate by M. Catharine Puskar, attorney, requests special use permit approval for the operation of a restaurant within the Foxchase Shopping Center at 4553 Duke Street.
2. The subject property is one lot of record with approximately 787 feet of frontage on Duke Street, approximately 284 feet of frontage on North Jordan Street and a total lot area of 10.2 square feet. The site is developed with a one and two story shopping center.

To the north and east of the site is the Foxchase Apartments. To the west is Raleigh Park. To the south across Duke Street is the 4600 Duke Street condominium and Mango Mike's restaurant.

3. The applicant proposes to operate a 2,000 square foot restaurant and carry-out with 56 seats. No outside seating is proposed. The menu will consist of standard Subway menu, including submarine sandwiches and salads. No alcoholic beverages will be offered.
4. The applicant proposes to operate the restaurant from 10:00 a.m. to 10:00 p.m. Sunday through Thursday and from 10:00 a.m. to Midnight on Fridays and Saturdays.
5. The restaurant will be operated by a maximum of five employees during peak hours of operation between 11:00 a.m. and 3:00 p.m., and three employees during non-peak hours.
6. Food waste and cardboard will constitute the majority of trash generated by the restaurant. Trash will be collected twice a week.
7. The applicant indicates that deliveries of food and supplies will occur twice weekly between 10:00 a.m. and 4:00 p.m.
8. Based on a variance granted by the Board of Zoning Appeals in 1982, the number of required parking spaces for the shopping center is 613 (BZA #3065). In 1992, City Council granted Special Use Permit #2594 allowing the owner of the shopping center to add land for additional parking spaces, and the 1999 as-built parking plan depicts a total of 629 spaces, 16 spaces in excess of the amount required by the BZA variance.

Section 8-200(A)(8) of the zoning ordinance requires a restaurant with 56 seats to provide 14 parking spaces. The prior retail use required 12 parking spaces. In order to fit within the number of parking spaces required by previous retail use and comply with the technical requirement, the applicant has amended its request to include not more than 36 seats.

9. Zoning: The subject property is located in the CG/Commercial General zone. Section 4-403(Y) of the zoning ordinance allows a restaurant in the CG zone only with a special use permit.
10. Master Plan: The proposed use is consistent with the Seminary Hill/Strawberry Hill small area plan chapter of the Master Plan which designates the property for commercial general use.

STAFF ANALYSIS:

Staff has no objection to the proposed restaurant located at 4553 Duke Street within the Foxchase Shopping Center. Staff believes that the proposed restaurant use is appropriate in a shopping center and will be compatible with the existing retail, office and personal service uses in the center and the residences to the north.

Staff believes that as a general proposition loading should occur from the rear of the building so as not to compete for or interfere with customer parking spaces within the shopping center. However, in this case the applicant does not have access to a rear door. In addition, the applicant is able and willing to restrict its loading operations to occur before 10:00 a.m. Restricting the loading operations to the least busy time for the center will reduce the likelihood of the delivery trucks competing for parking spaces, as well as any possible traffic congestion associated with the loading operations.

Staff has also included a condition requiring a review of the restaurant after it has been operational so that if there are problems with its operation, additional conditions may be imposed. With these conditions, staff recommends approval of the special use permit.

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

CITY DEPARTMENT COMMENTS

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

Transportation & Environmental Services:

- C-1 The applicant shall comply with the City of Alexandria's Noise Control Code, Chapter 11, Section 5, which sets the maximum permissible noise level as measured at the property line.
- R-1 The applicant shall control odors and smoke from the property to prevent them from becoming a nuisance to neighboring properties, as determined by the Department of Transportation & Environmental Services.
- R-2 Kitchen equipment or other types of equipment shall not be cleaned outside, nor shall any cooking residue or other wastes be washed into the streets, alleys, sidewalks, or storm sewers.
- R-3 All loudspeakers be prohibited from the exterior of the building.

Code Enforcement:

- C-1 Alterations to the existing structure must comply with the current edition of the Uniform Statewide Building Code (USBC).
- C-2 A fire prevention code permit is required for the proposed operation. An egress plan showing fixture location, aisles and exit doors shall be submitted for review with the permit application.
- C-3 Alterations to the existing structure and/or altering of equipment therein requires a building permit. Four sets of plans, bearing the signature and seal of a design professional registered in the Commonwealth of Virginia, must accompany the written application. The plans must include all dimensions, construction alterations details, kitchen equipment, electrical, plumbing, and mechanical layouts and schematics.
- C-4 When a change of use requires a greater degree of structural strength, fire protection, exit facilities or sanitary provisions, a construction permit is required.

- C-5 This structure contains mixed use groups and is subject to the mixed use and occupancy requirements of VUSBC 313.0.
- C-6 Required exits, parking, and accessibility for persons with disabilities must be provided to the building.
- C-7 The following code requirements apply where food preparation results in the development of grease laden vapors:
  - (a) All cooking surfaces, kitchen exhaust systems, grease removal devices and hoods are required to be protected with an approved automatic fire suppression system.
  - (b) A grease interceptor is required where there is drainage from fixtures and equipment with grease-laden waste located in food preparation areas of restaurants. Food waste grinders can not discharge to the building drainage system through a grease interceptor.
- C-8 A rodent control plan shall be submitted to this office for review and approval. This plan shall include the following components:
  - (a) Trash storage, control and removal measures.
  - (b) Foodstuff storage
  - (c) Rodent baiting

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 Permits must be obtained prior to operation.
- C-4 This facility must comply with the Alexandria City Code, Title 11, Chapter 10, Smoking Prohibitions.



- C-5 Certified Food Managers must be on duty during all hours of operation.
- C-6 Provide a menu or list of foods to be handled at this facility to the Health Department prior to opening.

Police Department:

- R-1 Security survey and robbery awareness program, prior to opening the business.
- F-1 No request for ABC license Concur.

APPLICATION for SPECIAL USE PERMIT # 2001-0022

[must use black ink or type]

PROPERTY LOCATION: 4513 Duke Street (Tax Map address)  
4553 Duke Street (Tenant Space) (FOXCHASE S.C.)

TAX MAP REFERENCE: 49.00-06-04 ZONE: CG

APPLICANT Name: Subway Real Estate Corporation  
c/o Subway Development Corporation of Washington  
Address: 8280 Greensboro Drive, Suite 110  
McLean, VA 22102

PROPERTY OWNER Name: Washington Real Estate Investment Trust  
Address: 6110 Executive Blvd., Suite 800, Rockville, MD 20852

PROPOSED USE: Restaurant

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.

M. Catharine Puskar, Attorney/Agent  
*Print Name of Applicant or Agent*  
Walsh, Colucci, Stackhouse  
Emrich & Lubeley  
*Mailing/Street Address*  
2200 Clarendon Blvd., 13th Floor  
Arlington, VA 22201  
*City and State*                      *Zip Code*

M Catharine Puskar  
*Signature*  
(703) 528-4700      (703) 525-3197  
*Telephone #*                      *Fax #*  
February 20, 2001  
*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.

Subway Real Estate Corporation

wholly owned by Doctor's Associates Inc.  
c/o Subway Development Corporation of Washington

8280 Greensboro Drive, Suite 110  
McLean, VA 22102

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.



**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,
- 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).  
Approximately 20 patrons per hour

B. How many employees, staff and other personnel do you expect? Specify time period (i.e., day, hour, or shift).  
Approximately 5 employees during peak hours (11:00 a.m. to 3:00 p.m.)  
Approximately 3 employees during non-peak hours

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

Day:

Hours:

Sunday through Thursday

10:00 a.m. to 10:00 p.m.

Friday and Saturday

10:00 a.m. to Midnight

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

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

Normal noise levels for restaurant use

B. How will the noise from patrons be controlled?

Noise will not be excessive

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

Normal odors for restaurant use

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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?

Cardboard boxes and patron trash

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

3 to 4 35-gallon bags per day

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C. How often will trash be collected?

Twice a week

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

Staff will pick up litter in front of the store on a daily basis.

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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:

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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:

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

Alarm system, video cameras and managers on duty.

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### 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.

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**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?

14

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

           Standard spaces

           Compact spaces

           Handicapped accessible spaces.

629 Other. (per 1999 as-built parking plan)

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:

\_\_\_\_\_  
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?              N/A          

B. How many loading spaces are available for the use?              N/A          

C. Where are off-street loading facilities located?              N/A



D. During what hours of the day do you expect loading/unloading operations to occur?  
10 a.m. to 4 p.m.

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

2 per week

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?

street access is adequate

#### 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?

2,000 sq. ft. (existing) + \_\_\_\_\_ sq. ft. (addition if any) = 2,000 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: Foxchase

an office building. Please provide name of the building: \_\_\_\_\_

other, please describe: \_\_\_\_\_

**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: 56 At a bar: \_\_\_\_\_ Total number proposed: 56

2. Will the restaurant offer any of the following? N/A

\_\_\_\_\_ alcoholic beverages \_\_\_\_\_ beer and wine (on-premises)  
\_\_\_\_\_ beer and wine (off-premises)

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

Subs, sandwiches and salads. Soft drinks, chips, cookies and other  
dessert items.

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

\_\_\_\_\_ table service \_\_\_\_\_ bar  carry-out \_\_\_\_\_ delivery  
and dine-in

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)? \_\_\_ Yes.  No.

If yes, please describe: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

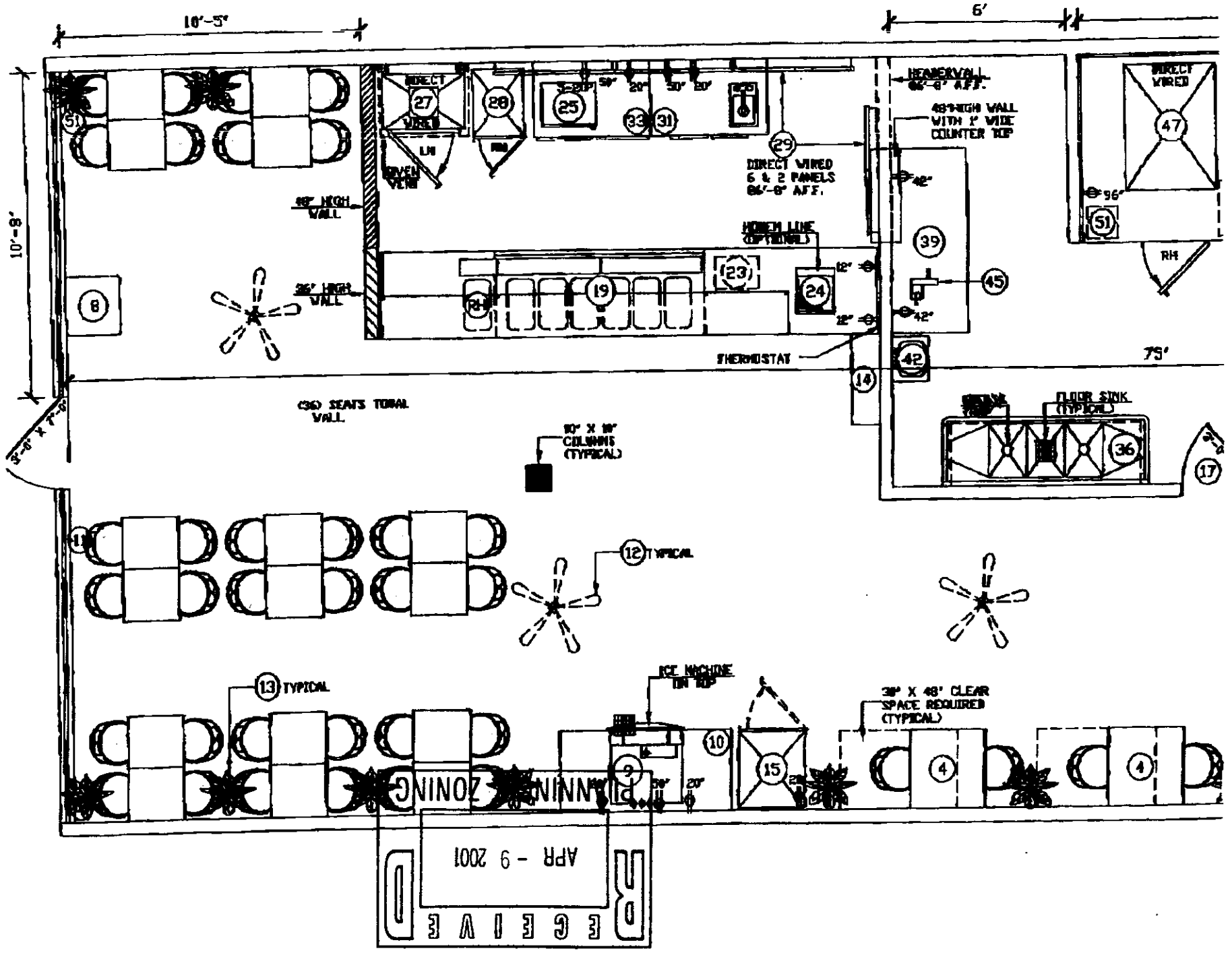
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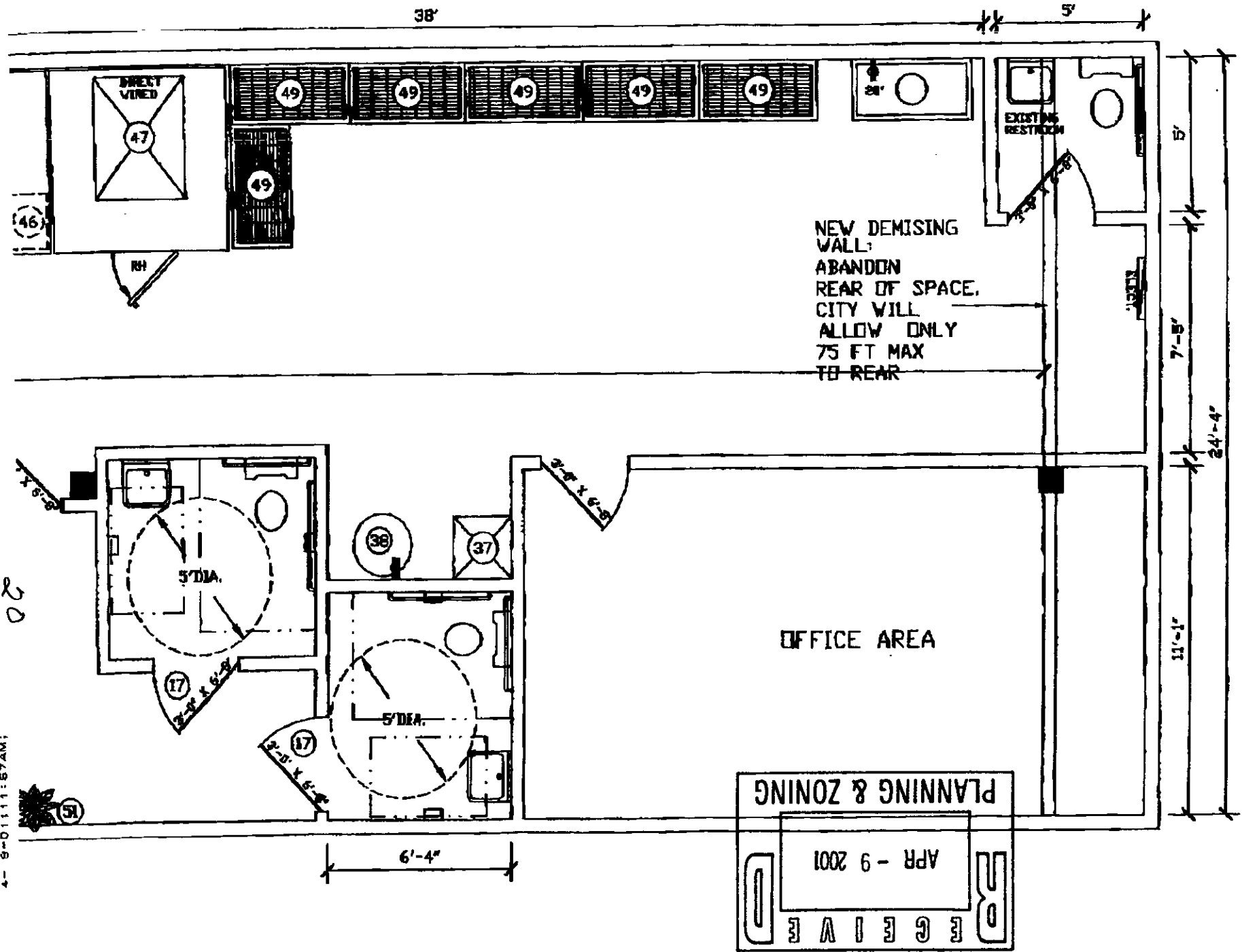
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SUP #2001-0023

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SUP # 2001-0022

APPLICATION for SPECIAL USE PERMIT # 2001-0022

[must use black ink or type] 4513 Duke Street (Tax Map address)  
PROPERTY LOCATION: 4553 Duke Street (Tenant Space) (Forc. ASE S.C.)  
TAX MAP REFERENCE: 49.00-06-04 ZONE: CG  
APPLICANT Name: Subway Real Estate Corporation  
c/o Subway Development Corporation of Washington  
Address: 8280 Greensboro Drive, Suite 110  
McLean, VA 22102  
PROPERTY OWNER Name: Washington Real Estate Investment Trust  
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M. Catharine Puskar, Attorney/Agent  
Print Name of Applicant or Agent  
Walsh, Colucci, Stackhouse  
Emrich & Lubeley  
Mailing/Street Address  
2200 Clarendon Blvd., 13th Floor  
Arlington, VA 22201  
City and State Zip Code

M Catharine Puskar  
Signature  
(703) 528-4700 (703) 525-3197  
Telephone # Fax #  
February 20, 2001  
Date

DO NOT WRITE BELOW THIS LINE - OFFICE USE ONLY

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

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

ACTION - CITY COUNCIL: 5/12/01PH -- CC approved the Planning commission recommendation.