

EXHIBIT NO. 1

7
4-13-02

Docket Item #10
SPECIAL USE PERMIT #2002-0001

Planning Commission Meeting
April 2, 2002

ISSUE: Consideration of a special use permit review and request to change the hours of operation for a restaurant.

APPLICANT: OAVARS Inc.
by Oswaldo A. Salinas

LOCATION: 3901 Mt. Vernon Avenue
Lillian's Restaurant

ZONE: CL/Commercial Low

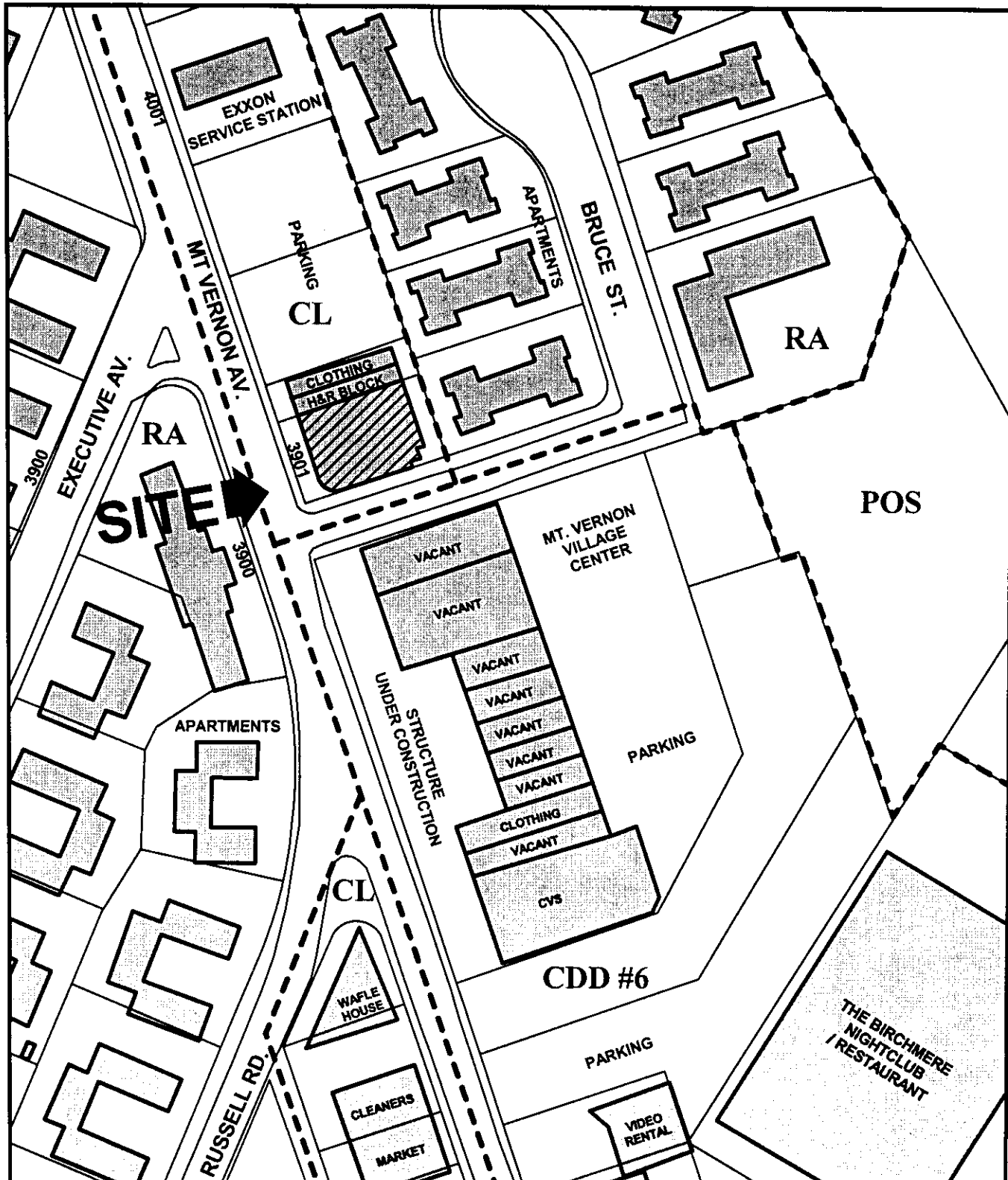
PLANNING COMMISSION ACTION, APRIL 2, 2002: On a motion by Ms. Fossum, seconded by Mr. Leibach, the Planning Commission voted to recommend approval of the request, subject to compliance with all applicable codes, ordinances and staff recommendation. The motion carried on a vote of 7 to 0.

Reason: The Planning Commission agreed with the staff analysis.

Speakers:

Oswaldo Salinas, applicant, stated that he has complied with the conditions of the special use permit.

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



SUP #2002-0001

04/02/02



STAFF RECOMMENDATION:

Staff recommends **approval** for the later hours of operation 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) (SUP #99-008)
2. Seating shall be provided for no more than 300 patrons. (P&Z) (SUP #99-008)
3. Outside dining facilities may be provided in a manner consistent with the plan dated August 28, 2001, provided that alternative flood proofing to the satisfaction of the Directors of Planning and Zoning and Transportation and Environmental Services is provided. (PC) (SUP #2000-0138)
4. Live entertainment may be provided at the restaurant and shall be limited to a three or four piece instrumental and singing group on the first floor only. No live entertainment and no dance floor shall be provided in the basement of the restaurant. (P&Z) (SUP #2000-0138)
5. **CONDITION AMENDED BY STAFF:** The hours of operation shall be limited to between 10:00 a.m. and ~~Midnight daily~~ 1:00 a.m. on Fridays, Saturdays and Sundays, and until Midnight Monday through Thursday. The hours of operation of the outdoor dining area shall be limited from 10:00 a.m. to 10:00 p.m. daily. The outdoor dining area shall be cleared of all diners by 10:00 p.m. and shall be cleaned and washed by 10:30 p.m. ~~(P&Z) (SUP #2000-0138)~~ (P&Z)
6. The applicant shall post the hours of operation at the entrance to the restaurant. (P&Z) (SUP #99-008)
7. The applicant may serve beer, wine and liquor for on premise consumption only. (P&Z)(SUP #99-008)
8. The applicant may not provide alcohol service to standing customers. (P&Z) (SUP #99-008)
9. No food, beverages or other material shall be stored outside. (P&Z) (SUP #99-008)

10. Litter on the site and on public rights-of-way and spaces adjacent to or within 75 feet of the premises shall be picked up at least twice a day and at the close of business, and more often if necessary, to prevent an unsightly or unsanitary accumulation, on each day that the business is open to the public. (P&Z) (SUP #99-008)
11. Kitchen equipment shall not be cleaned outside, nor shall any cooking residue be washed into the streets, alleys or storm sewers. (T&ES) (SUP #99-008)
12. **CONDITION AMENDED BY STAFF:** The applicant shall control cooking odors and smoke and any other air pollution from operations at the site and prevent them from leaving the property or becoming from the property to prevent them from becoming a nuisance to neighboring properties, as determined by the Department of Transportation and Environmental Services. ~~(T&ES) (SUP #2000-0138)~~ (T&ES)
13. 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 containers which does not allow invasion by animals. No trash and debris shall be allowed to accumulate on-site outside of those containers. (P&Z) (SUP #99-008)
14. No music or amplified sound shall be audible at the property line. (P&Z) (SUP #99-008)
15. 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 the employees. (Police) (SUP #99-008)
16. **CONDITION AMENDED BY STAFF:** The Director of Planning and Zoning shall review the special use permit six months after this approval in ~~March~~ October 2002 and six months later in ~~September~~ April 2003 and shall docket the matter for consideration by the Planning Commission and City Council if (a) there have been documented violations of the permit conditions, (b) the director has received a request from any person to docket the permit for review as a result of a complaint that rises to the level of a violation, or (c) the director has determined that there are problems with the operation of the use and that new or revised conditions are needed. ~~(P&Z) (Police) (SUP #2000-0138)~~ (P&Z)
17. In order to ensure compliance with its affidavit, the applicant shall provide a quarterly update to the Police Department. (Police) (SUP #2000-0138)

18. The applicant shall obtain at their expense, one Model SD-42 Bethesda Ironside Series trash container to replace existing container located on the adjacent located on the adjacent right-of-way. (T&ES) (SUP #2000-0138)
19. The outdoor community event as described by the applicant shall be coordinated through the City of Alexandria Special Events Committee. Not more than one event shall occur annually and the hours of operation of the event shall be restricted to between 10:00 a.m. and 6:00 p.m. (Police) (P&Z) (SUP #2000-0138)
20. The outdoor event shall occur only in the on-site parking lot located to the north of the building and only with the permission of the owner of the property. (P&Z) (SUP #2000-0138)
21. No music or other amplified sound shall be audible at the property line and no speakers or entertainment be permitted outside of the building without first obtaining a noise permit from T&ES Division of Environmental Quality. (T&ES) (SUP #2000-0138)
22. The applicant shall apply for a temporary food event permit from the Health Department at least two weeks prior to the event. (Health) (SUP #2000-0138)
23. 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) (SUP #2000-0138)

DISCUSSION:

1. The applicant, OAVARS Inc., represented by Oswaldo A. Salinas, requests special use permit approval to change the hours of operation at his restaurant located at 3901 Mt. Vernon Avenue. The application for the restaurant is also before the Planning Commission for the six month review required by Condition #16 of the permit.
2. The subject property is one lot of record with approximately 70 feet of frontage on Mount Vernon Avenue, 126 feet of frontage on Bruce Street and a total lot area of approximately 8,820 square feet. The subject lot is part of a larger site developed with a one story building with three tenant spaces and a large parking lot to the north of the building. An alley runs along the building to the east. The adjacent storefronts house an H&R Block office and a retail store.
3. On March 13, 1999, City Council granted Special Use Permit #99-008 to the applicant for the operation of a restaurant. On September 15, 2001, City Council granted Special Use Permit #2000-0138 to the applicant to allow limited live entertainment on the first floor of the restaurant, to increase the hours of operation, to provide outdoor dining and to offer an annual outdoor event. As part of that Council action, the applicant's request for live entertainment and dancing was denied.
4. On January 28, 2002, staff visited the subject property to determine if the business was in compliance with the conditions of its special use permit. Staff observed that the existing City trash container located on the public right-of-way in front of the restaurant had not been replaced with the new trash container required by Condition #18. The applicant cites economic hardship as the reason for which he has not paid for the installation of the new container.
5. The applicant requests permission to operate the restaurant until 1:00 a.m. on Fridays, Saturdays and Sundays. The restaurant is currently permitted to operate until Midnight daily. The applicant justifies his requests for the later closing hour due to the restaurant's loss of revenue after the September 11, 2001 terrorist attacks. According to the application materials, his customers are primarily minorities who worked in the construction and restaurant industries and who were most impacted by the economic downturn and the temporary closure of Reagan National Airport. In light of these circumstances, he states that he has reduced the number of employees who operate the restaurant and may have to make further reductions if business does not improve. He believes that the additional hour will bolster his business and help him to remain in business.

6. The application had also included a request for additional live entertainment and dancing. However, under Section 11-507 of the zoning ordinance, that request may not proceed at this time because a very similar request was denied by City Council on September 15, 2001 (SUP #2000-0138). Pursuant to that section, the Planning Commission and City Council may not consider an application for the same special use on the same site again within one year of the date of denial unless the new application differs in a substantial and material way from the prior application. Therefore, staff is not processing this request at this time. If the applicant wishes to seek permission for live entertainment and dancing, he must file a new application for consideration by the Planning Commission and City Council after September 2002.
7. The Police have advised staff that two fights occurred at the restaurant during the weekend of February 16 and 17, 2002. According to the Police, one fight resulted in the arrest of two people for assaulting a person in the restaurant. No other details were available regarding the second fight. The Police have also advised that the applicant has not updated the affidavit he submitted to them last year as required by Condition #17. Staff has spoken with the applicant regarding this requirement and advised him to contact the Police to provide the update in order to comply.
8. Zoning: The subject property is located in the CL/Commercial Low zone. Section 4-103(M) of the zoning ordinance allows a restaurant in the CL zone only with a special use permit.
9. Master Plan: The proposed use is consistent with the Potomac West chapter of the Master Plan which designates the property for Commercial Low use.

STAFF ANALYSIS:

With the exception of the fights that recently occurred at the restaurant, staff knows of no other complaints from other City departments or area residents and businesses regarding the operation of the restaurant. In addition, the Police reported that prior to these fights there had been little Police activity at the restaurant. Staff believes the applicant is working to improve the business and notes that he has taken an active interest and regularly participates in the ongoing Upper Potomac West work group meetings. For these reasons and because staff recognizes the applicant's difficulty in trying to keep his restaurant operating over the past six months, staff is willing to support an extension of the hours of operation by one hour from Midnight to 1:00 a.m. on Fridays, Saturdays and Sundays with the caveat that the restaurant be reviewed six months from this approval and with the understanding that permission for the extended hours may be revoked if the extension proves to be problematic for the community and the City.

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 Noise Control Code, Title 11, Chapter 5, which sets maximum permissible noise level as measured at the property line.
- F-1 Outdoor seating Plan shows intention to remove concrete wall along Mt. Vernon Avenue. This is a flood proofing wall installed by the City per an agreement with the former property owner. (DB 987 PG 427) Flood proofing of this building is required and any modification to the flood proofing wall must be approved by the Engineering & Design Division of T&ES.
- R-1 Applicant shall obtain at their expense, one Model SD-42 Bethesda Ironside Series trash container to replace existing container located on the adjacent located on the adjacent right-of-way.
- R-2 No music or other amplified sound shall be audible at the property line and no speakers or entertainment be permitted outside of the building without first obtaining a noise permit from T&ES Division of Environmental Quality.
- R-3 Kitchen equipment shall not be cleaned outside, nor shall any cooking residues be washed into the streets, alleys or storm sewers.
- R-4 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.

Code Enforcement:

- F-1 No comments.

Health Department:

- F-1 No comments.

Police Department:

- R-1 There has been little police activity related to the business. We would request a six month review and a one year review of the permit.

KB

APPLICATION for SPECIAL USE PERMIT # 2002-0001

[must use black ink or type]

PROPERTY LOCATION: 3901 Mt. VERNON AVE

TAX MAP REFERENCE: 7.00-02-13 ZONE: CL

APPLICANT Name: OAVARS Inc.

Address: 3444 N. FAIRFAX DR. Suite 102

PROPERTY OWNER Name: PALMAS Investment LLC

Address: 3903 Mt. VERNON AVE Alex. VA 22305

PROPOSED USE: Existing RESTAURANT

Remain open one additional hour (Fri Sat Sun)
Lillian's 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.

Oswaldo A. SALINAS
Print Name of Applicant or Agent

[Signature]
Signature

5406 Wycklow CT
Mailing/Street Address

703-820-3725
Telephone # Fax #

Alexandria VA 22304
City and State Zip Code

1-9-02
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.

Mr. Oswaldo Salinas, 3444 N. Fairfax Dr.
Suite 102, Arlington Va. 22201

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.

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)

Add One hour Friday - Sunday
Restaurant operation.

Also, Allow dancing on the First
Floor. () only

The propose band will have between
7 and 8 members, maximum of
10 members

Dancing will accord Friday
- Sunday 10pm - 1am

* When dancing does not occur space
will be used for approved seating

SUP 2002 - 0001

The Request change in hours, is due to economic since Sept. 11. My Business have lost 50% of Revenue, My clients are mostly minorities, which work in the construction + Restaurant business, and as you are aware this industry was effected the most. I am trying to survive this crises. My personal has being cut down and if business don't change many will lose their job. The Request in hour change will help me ~~to~~ stay in business. Anybody it welcome to check my business and will see for them self. Please helping in maintain my business or help people keep their job.

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: Same As SUP #2000-0138

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).

Same As SUP #2000-0138

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

No change

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

Day:

Mon. Thurs.

Fri - Sun

Hours:

10:AM to Midnight

10:AM to ~~Midnight~~ (1:00am)

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

B. How will the noise from patrons be controlled?

No change

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

No change

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

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

No change

C. How often will trash be collected?

No change

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

No change

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

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

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

No change

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

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?

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

_____ Standard spaces

_____ Compact spaces

_____ Handicapped accessible spaces.

_____ Other.

SAME AS

SUP #2000-0138

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.

SAME AS
SUP #2000-0138

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? _____

B. How many loading spaces are available for the use? NO CHANGE

C. Where are off-street loading facilities located? _____

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

No change

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

No change

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

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?

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

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: 275 At a bar: 25 Total number proposed: 300

2. Will the restaurant offer any of the following?

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

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

same as currently served.

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

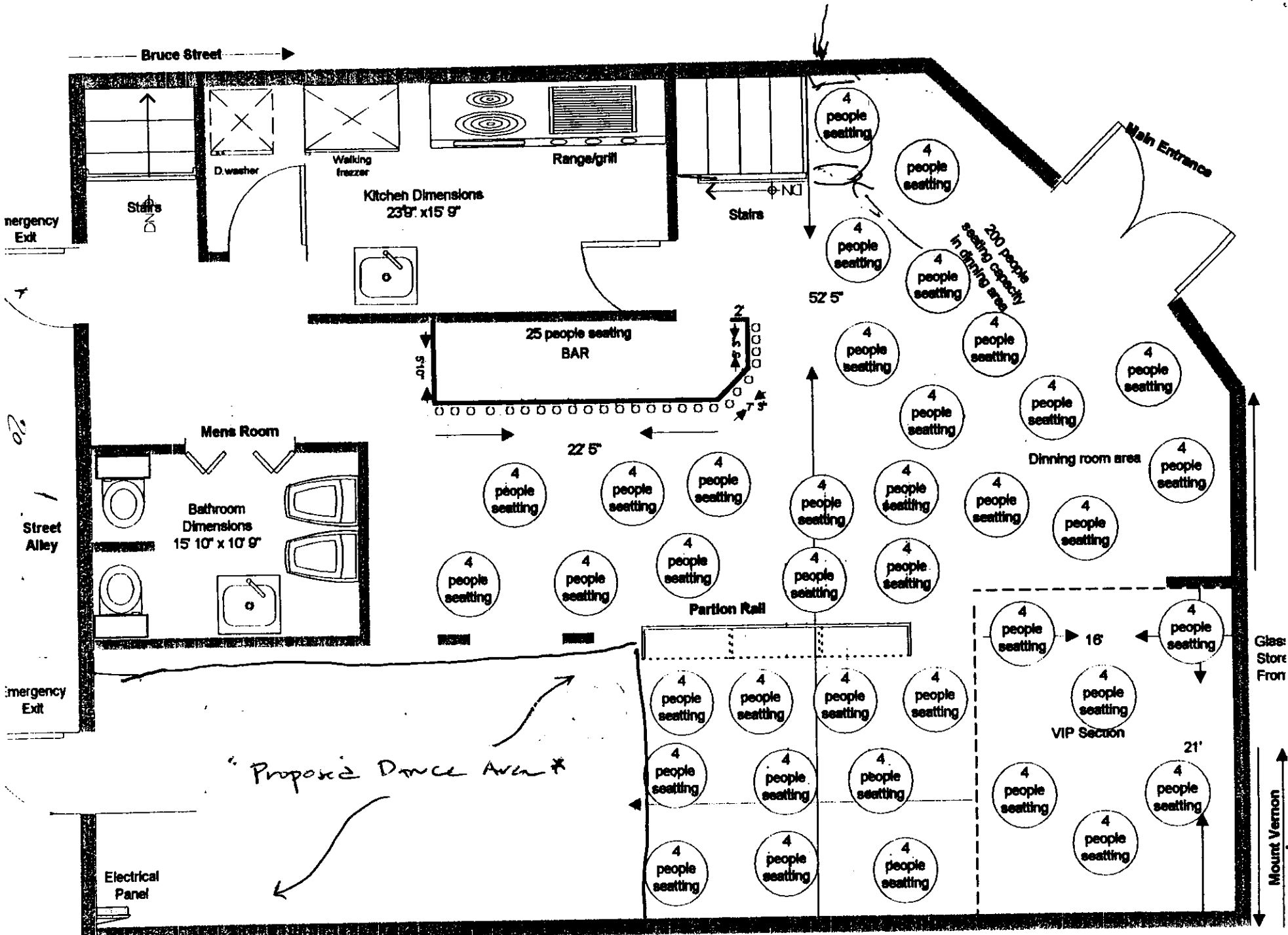
table service bar carry-out delivery

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

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: dancing on first floor only; see
narrative description

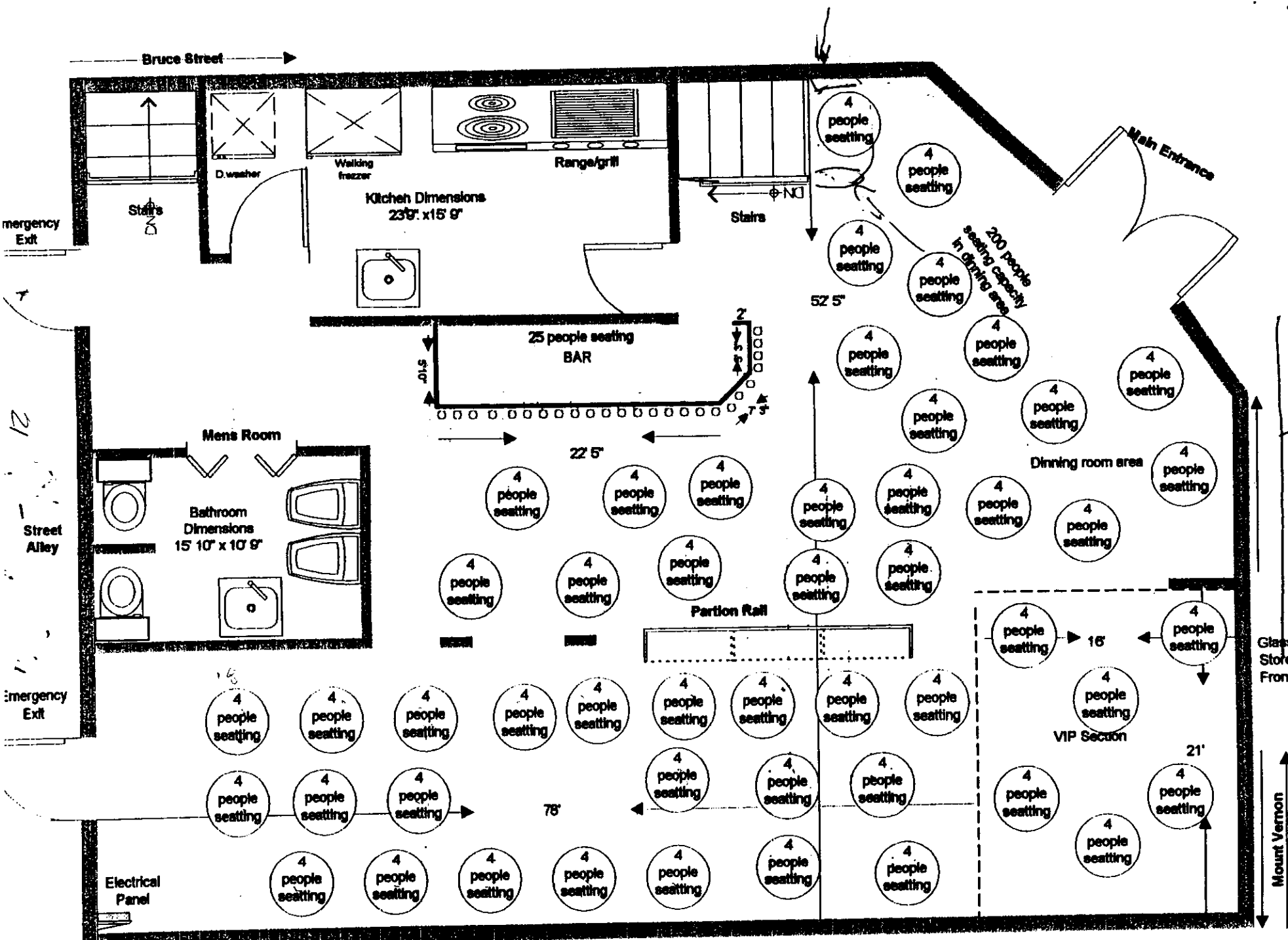


Proposed Space

* When dancing does not occur space will be used for restaurant seating (72 seats) see existing approved plan

UPSTAIRS SITE PLAN
 3901 Mount Vernon Ave.
 Alexandria, VA

SUP 2.002-0001

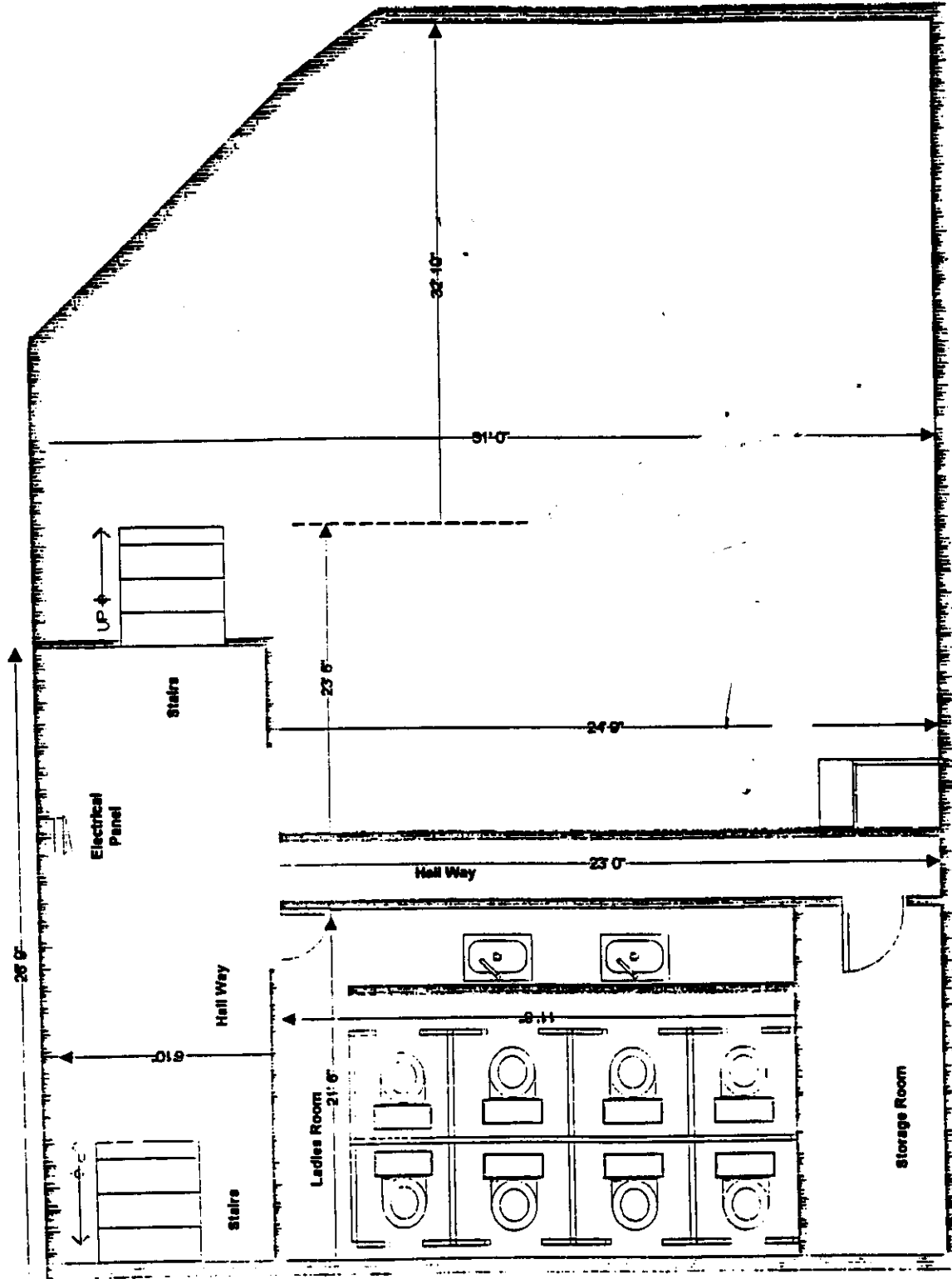


Existing approved first floor

UPSTAIRS SITE PLAN
3901 Mount Vernon Ave.
Alexandria, VA

SUP 2002-0001

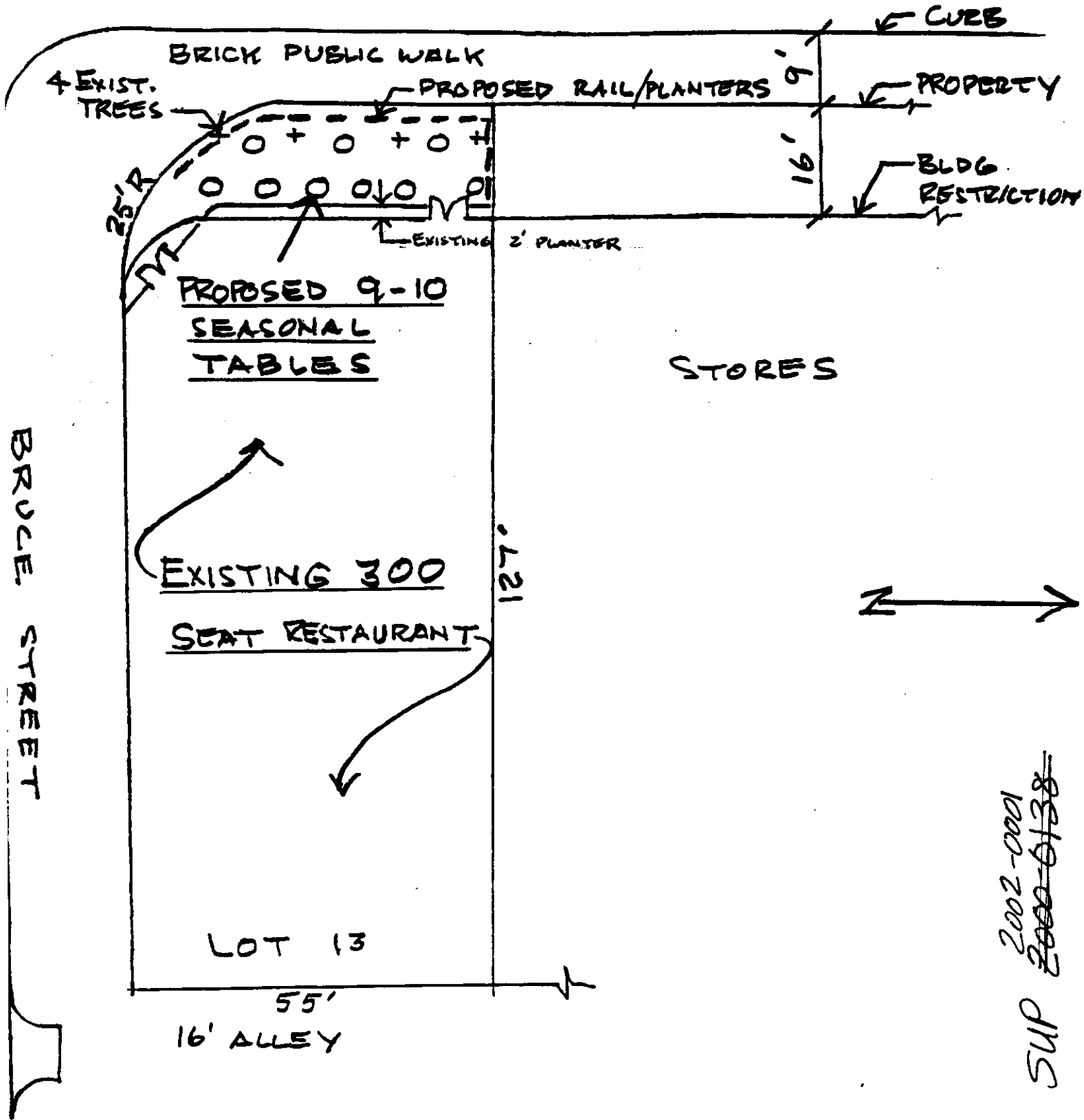
Lower Level "Basement"
Approved Space



DOWNSTAIRS SITE PLAN
3801 Mount Vernon Ave.
Alexandria, VA

SID 7-11-00

MOUNT VERNON AVENUE (R/W VARIES)



LILLIAN'S RESTAURANT
3901 MOUNT VENON AVE.
SCALE 1" = 20'

KB

APPLICATION for SPECIAL USE PERMIT # 2002-0001 7

[must use black ink or type]

PROPERTY LOCATION: 3901 Mt. VERNON AVE

TAX MAP REFERENCE: 7.00-02-13 ZONE: CL

APPLICANT Name: OAVARS Inc.

Address: 3444 N. FAIRFAX DR. Suite 102

PROPERTY OWNER Name: PALMAS Investment LLC

Address: 3903 Mt. VERNON AVE Alex. VA 22305

PROPOSED USE: Existing Restaurant

Remain open one additional hour (Fri Sat Sun)

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Oswaldo A. SALINAS
Print Name of Applicant or Agent

Oswaldo Salinas
Signature

5406 Wycklow CT
Mailing/Street Address

703-820-3725
Telephone # Fax #

Alexandria VA 22304
City and State Zip Code

1-9-02
Date

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

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

ACTION - PLANNING COMMISSION: 4/02/02 RECOMMEND APPROVAL 7-0

ACTION - CITY COUNCIL: 04/13/02PH-- See attached. (SEPARATE MOTION)

REPORTS OF BOARDS, COMMISSIONS AND COMMITTEES (continued)

ACTION CONSENT CALENDAR (continued)

Planning Commission (continued)

8. SPECIAL USE PERMIT #2002-0005
1501 DUKE ST
ST COLETTA SCHOOL
Public Hearing and Consideration of a request for a special use permit for a private school; zoned OCH/Office Commercial High. Applicant: St. Coletta of Greater Washington, Inc., by Mary Catherine Gibbs, attorney.

COMMISSION ACTION: Recommend Approval 7-0

END OF ACTION CONSENT CALENDAR

City Council approved the Action Consent Calendar as presented with the exception of docket item nos. 4 and 7. The action of City Council follows:

3. City Council approved the recommendation of the Planning Commission.

4. Councilman Speck spoke to his concern of the cumulative effects on parking and traffic of individual parking reductions given to applicants, similar to the Bradlee situation. Planning and Zoning Deputy Director Ross participated in the discussion, as did Mayor Donley, Vice Mayor Cleveland, and Councilwoman Pepper.

City Council approved the recommendation of the Planning Commission.
(Separate Motion)

5. City Council approved the recommendation of the Planning Commission.

6. City Council approved the recommendation of the Planning Commission.

7. Councilman Speck removed this item because of his concern about the expanded hours. Planning and Zoning Deputy Director Ross responded to his queries, and Councilwomen Eberwein and Woodson participated in the discussion.

City Council approved the recommendation of the Planning Commission.
(Separate Motion)

8. City Council approved the recommendation of the Planning Commission.

END OF ACTION CONSENT CALENDAR

Council Action: _____