

EXHIBIT NO. 1

14
12-15-01

Docket Item # 9
SPECIAL USE PERMIT #2001-0061

Planning Commission Meeting
December 4, 2001

ISSUE: Consideration of a special use permit review for a restaurant.

APPLICANT: Grupo Dos Chiles LLC
by Alfred W. Shriver, III

LOCATION: 4111 Duke Street
Dancing Peppers Restaurant

ZONE: CC/Commercial Community

PLANNING COMMISSION ACTION, DECEMBER 4, 2001: 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 recommendations, and to amend Condition #20. The motion carried on a vote of 6 to 1, with Mr. Leibach voting against.

Reason: The Planning Commission discussed at length its disappointment with the unsatisfactory record of compliance by the applicant and his continuing reluctance to recognize the importance of conditions of the special use permit. It also discussed the fact that the applicant was not present at the hearing despite the Planning Commission's deferral last month so the applicant could work with staff on landscaping. It proceeded to hear and decide the case given the applicant's letter to the Commission stating his position and the fact that the applicant did not ask for another deferral.

As to the merits of the case, the Commission agreed with staff on the importance of improving the appearance of the site and imposing conditions as to landscaping and signage similar to those required of its Duke Street neighbors. The Commission disagreed with the staff's recommendations as to the time for lowering the sign. It amended Condition #20 to give the applicant only two months to complete that work and, if the work is not done within that time, to require staff to bring the case back for consideration of whether the permit approval should be reconsidered. The dissenting vote on the Commission motion was by Mr. Leibach, who expressed reluctance to allow the continuation of the restaurant given the applicant's record and his absence at the hearing.

Speakers:

There were no speakers on the application.

PLANNING COMMISSION ACTION, NOVEMBER 8, 2001: By unanimous consent, the Planning Commission deferred the request.

Reason: The Planning Commission deferred the request in order to allow the applicant the opportunity to work with staff on a revised landscaping plan which would combine his proposed southwestern landscaping elements and the streetscape elements, including shrubs and trees, recommended by staff for other businesses along Duke Street. The Planning Commission also expressed its desire that the applicant actively pursue contracts with professionals to provide the site improvements in a timely manner as suggested by adjacent residents.

Speakers:

Elizabeth Hamilton, 124 N. Furman, stated that the applicant should comply with its special use permit conditions and noted that the applicant had 14 months to do so. She stated that, in addition to the violations described in the staff report, she heard amplified music at her house, located more than one block from the restaurant, several times during the past summer. She suggested that the applicant be required to provide adequate proof to the City that he has secured contracts to do the required site improvements within 60 days of approval.

Will Hamilton, 124 N. Furman, stated that he owns a business at 4510 Duke Street and takes pride in maintaining his parking lot and landscaping in good condition. He stated that responsible business owners comply with their special use permit conditions, and that he believes it is important to do so in order to improve the appearance of Duke Street.

Alfred Shriver, applicant, stated that he will have the parking lot repaired before the City Council meeting on November 17 and has no objection to screening his dumpster. He stated that he has met with staff regarding his landscaping plan and that he disagrees with staff's recommendation that street trees and shrubs, similar to the landscaping improvements at the adjacent Crown gas station and the proposed auto repair business adjacent to Crown, be installed at his property. He explained that his plan, with artificial cactus and yucca, is appropriate for his Mexican style restaurant. He stated that he objects to lowering his sign because Michael Anderson, operator of Mango Mike's at 4580 Duke Street, was not required by his special use permit to lower his sign.

PLANNING COMMISSION ACTION, OCTOBER 2, 2001: The Planning Commission noted the deferral of the request.

Reason: The applicant failed to comply with the requirements for legal notice.

PLANNING COMMISSION ACTION, SEPTEMBER 4, 2001 : The Planning Commission noted the deferral of the request.

Reason: The applicant failed to comply with the requirements for legal notice.



12/04/01

SUP #2001-0061



STAFF RECOMMENDATION:

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

1. The special use permit be granted to the applicant or to any corporation in which the applicant has a controlling interest only. (P&Z) (SUP #1774)
2. Seating may be provided for no more than 143 patrons, of which no more than 40 seats shall be located on the outdoor area. (CC) (SUP #2000-0074)
3. Outside dining facilities shall be provided for no more than 40 patrons within the front porch area. When outside dining facilities are provided: (a) litter shall be picked up as it is generated, and (b) the outside dining area shall be scrubbed and washed down at the close of each day of operation. (CC) (SUP #2000-0074)
4. The hours during which the business is open to the public shall be restricted to between 11:00 A.M. and 2:00 A.M., daily. (PC) (SUP #2000-0074)
5. No food, beverages, or other material shall be stored outside. (P&Z) (SUP #1774)
6. Trash and garbage shall be stored inside or in a dumpster. (P&Z) (SUP #1774)
7. 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 #2000-0074)
8. Condition deleted. (CC) (SUP #2000-0074)
9. Live entertainment shall be permitted to provide background ambient music to dining patrons. (P&Z) (SUP #2000-0074)
10. The applicant shall post the hours of operation at the entrance to the restaurant. (P&Z) (SUP #2000-0074)
11. On-site alcohol service is permitted; no off-premise alcohol sales are permitted. (P&Z) (SUP #2000-0074)

12. 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 #2000-0074)
13. Kitchen equipment shall not be cleaned outside, nor shall any cooking residue be washed into the streets, alleys or storm sewers. (T&ES) (SUP #2000-0074)
14. **CONDITION AMENDED BY STAFF:** 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 ~~Department of Health~~ Department of Transportation and Environmental Services. (~~Health~~) (SUP #2000-0074) (P&Z)
15. No music or amplified sound shall be audible at the property line. (P&Z) (SUP #2000-0074)
16. 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 #2000-0074)
17. **CONDITION AMENDED BY STAFF:** The applicant shall ~~remove the storage trailer within one year from the date of City Council approval and establish something permanent~~ install and maintain in good condition screening around the storage trailer, any outbuildings, and the dumpster to the satisfaction of the Director of Planning and Zoning. The work shall be completed by May 4, 2002. (~~CC~~) (SUP #2000-0074) (P&Z)
18. **CONDITION AMENDED BY STAFF:** The applicant shall repair the pavement at the rear of the parking lot by May 4, 2002 and maintain it in good condition. (P&Z) (SUP #2000-0074)
19. **CONDITION AMENDED BY STAFF:** The applicant shall install landscaping generally consistent with either staff's proposed alternative #1 or #2 and to the satisfaction of the Director of Planning and Zoning. The exterior of the restaurant shall not be cluttered with three dimensional signage in the form of objects, figures or a flag pole, although one element, preferably a wagon may be installed on the parking lot side of the landscape area where gravel is now shown on Alternative #2. The landscaping shall be installed prior to May 4, 2002 and shall be maintained in perpetuity thereafter. The applicant shall submit a landscaping plan to the satisfaction of Planning and Zoning. (~~CC~~) (SUP #2000-0074) (P&Z)

20. **CONDITION AMENDED BY PLANNING COMMISSION:** The height of the freestanding sign shall be lowered to 15 feet within two months or by February 15, 2002, ~~by May 4, 2002:~~ within a year., and if the work is not completed within that time, the special use permit shall be brought back for consideration of whether the permit should be allowed to continue. ~~(CC)~~ ~~(SUP #2000-0074)~~ ~~(P&Z)~~ ~~(PC)~~
21. **CONDITION AMENDED BY STAFF:** The Director of Planning and Zoning shall review the special use permit six months ~~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, (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)~~ ~~(SUP #2000-0074)~~ ~~(P&Z)~~
22. Condition Deleted. (SUP #2000-0074 - City Council)
23. **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)

City of Alexandria, Virginia

MEMORANDUM

DATE: NOVEMBER 26, 2001

TO: CHAIRMAN AND MEMBERS OF THE PLANNING COMMISSION

FROM: EILEEN FOGARTY, DIRECTOR, PLANNING AND ZONING *Eileen Fogarty*

SUBJECT: DANCING PEPPERS RESTAURANT
SUP #2001-0061

This case is before the Commission, after being deferred last month, because the applicant and operator of the Dancing Peppers Restaurant has failed to comply with several conditions imposed by the Commission and City Council when the restaurant was originally approved in June 2000. In addition, there are building code violations at the restaurant. The continuing issues are:

1. **Landscaping.** Condition # 19 requires the applicant to submit a landscaping plan to the satisfaction of the Director of Planning and Zoning. Staff issued a citation for noncompliance in May 2001, when the restaurant's official one year review took place. As of that time, the applicant had neither installed landscaping nor submitted a plan for review. There being a violation of the permit, the matter was docketed for review before the Planning Commission in September.

After he received a citation, the applicant came in and met with staff to discuss each of his violations. The applicant was advised that the City hoped to achieve landscaping here in the form of street trees and evergreen shrubbery to match neighboring properties, creating a unified street presence and a street edge. Shortly before the September hearing, the applicant submitted a plan for landscaping the front of the site, with species native to the Southwest, a stone wall, and large gravel areas. The plan includes no trees and no evergreen shrubbery. The plan as submitted also includes two fake cactus plants. Staff advised the applicant of its concerns and the matter was discussed at the last Commission meeting.

Since the Commission hearing in November, staff has met with the applicant and proposed two alternative plans for his consideration. Alternative #1 is a simple landscape plan of the sort that staff

would prefer. It is consistent with the landscaping proposed for the neighboring properties and includes street trees and evergreen shrubs, but is not identical.

Alternative #2 responds to the applicant's desire for a Southwestern theme and includes elements of both the staff's concept and the applicant's. It shows street trees at the street frontage, a low stone wall behind that, and then grasses, yucca and other plant species suggested by the applicant planted beyond the wall. Alternative #2 includes more plants than the applicant's does in order to achieve a massing effect and soften the street edge. It does include some gravel area within the parking lot area. The two concepts work together as a compromise plan to create the desired street presence and entry area for the public and customers, as well as to frame the space as perceived by customers from within the parking area.

Staff presented both plans to the applicant for his consideration, and gave him copies to discuss with his landscaper. As of the date of this memorandum, the applicant has not indicated whether he is willing to comply with either of the plans.

One issue raised by the applicant in the recent meeting is his plan to include, as part of the landscape plan, fake cactus plants, a wagon, and metal mariachi figures. He also spoke about his desire for a tall flag pole to fly the flags of the United States, Texas and Mexico. Staff believes that these extra elements will detract from the unified street presence staff is attempting to create along Duke Street. They add visual clutter, are not natural elements, and amount to three dimensional signage. They also set a precedent for use of manmade objects at other locations instead of landscaping. While it may be that one feature, for example, a wagon, could add character and identity if limited to a fairly small area, the inclusion of all of these elements adds to the chaotic effect on Duke Street that staff is trying to eliminate.

Staff is willing to work with the applicant on landscaping but believes that, in order to best ensure compliance, the special use permit needs to be very clear about what is expected of the applicant. Staff recommends a new Condition #19 that states:

The applicant shall install landscaping generally consistent with either staff's proposed alternative #1 or #2 and to the satisfaction of the Director of Planning and Zoning. The exterior of the restaurant shall not be cluttered with three dimensional signage in the form of objects, figures or a flag pole, although one element, preferably a wagon may be installed on the parking lot side of the landscape area where gravel is now shown on Alternative #2. The landscaping shall be installed prior to May 4, 2002 and shall be maintained in perpetuity thereafter.

2. **Sign.** The freestanding sign at the front of this restaurant lot is approximately 25 feet tall. Two years ago, staff recommended that it be lowered to a maximum of 15 feet, and staff strongly recommends that the condition be enforced, despite the applicant's refusal to comply. Precisely the same requirement has been made as to the Crown Station next door, as well as at 4103-4107 Duke Street, the prior site of the Northern Virginia Law School. The two neighboring property owners have agreed to lower their signs.

Staff's effort in this part of Duke Street is to reduce the visual clutter created by numerous curb cuts, signs, parking lots and the lack of any landscaping to unify the different properties and soften their streetscape appearance. The visual chaos is controlled by reducing those physical elements that detract, such as tall signs, flag poles and curb cuts, and by installing landscaping along the street edge. The result should be, as seen along Duke Street near the new Beatley Library, a street with a unified, framed edge at an urban but human scale, so that the experience of both the pedestrian and driver is enhanced. With regard to signs, there is no intent to limit the business' ability to identify itself or attract customers and the 15 foot tall sign staff recommends will allow that identity while helping improve the appearance of the street frontage.

3. **Trailer.** There has historically been a trailer structure installed immediately behind the restaurant, which staff recommended be removed when the Dancing Peppers special use permit was approved. Staff's recommendation was based on the fact that trailers are not permitted under the zoning ordinance and that the trailer made the rear of the lot unsightly. Since that time, the applicant has argued successfully to staff that the "trailer" is actually a building, in that it has a foundation and utilities. In addition, the applicant has erected a tall fence surrounding the outbuilding to make the area more attractive. Given these facts, staff agrees with the applicant that the trailer can remain.

4. **Dumpster screening.** Staff is recommending that the applicant screen, with the typical wood fencing and gate, the dumpster at the rear of the property. The applicant stated at the hearing in November that he is willing to do that.

5. **Parking lot paving.** The paving in the parking lot, especially in the rear, is in need of repair. Areas of the top layers of asphalt are missing or buckling. The applicant has indicated that he is willing to do the paving work but has not done so to date.

6. **Building code violations.** There are two outstanding code issues relating to the restaurant. First, the outside floor drain that was discharging on the adjacent property has been closed with a temporary, removable plug. While acceptable as a short term fix, a permanent plug needs to be installed. In addition, the restaurant has extended the size of its outdoor dining area without obtaining the necessary permits. A Notice of Violation was served requiring plans by a licensed engineer or architect to be submitted for review. Although the applicant has indicated he wanted to appeal this requirement, no appeal has been filed.

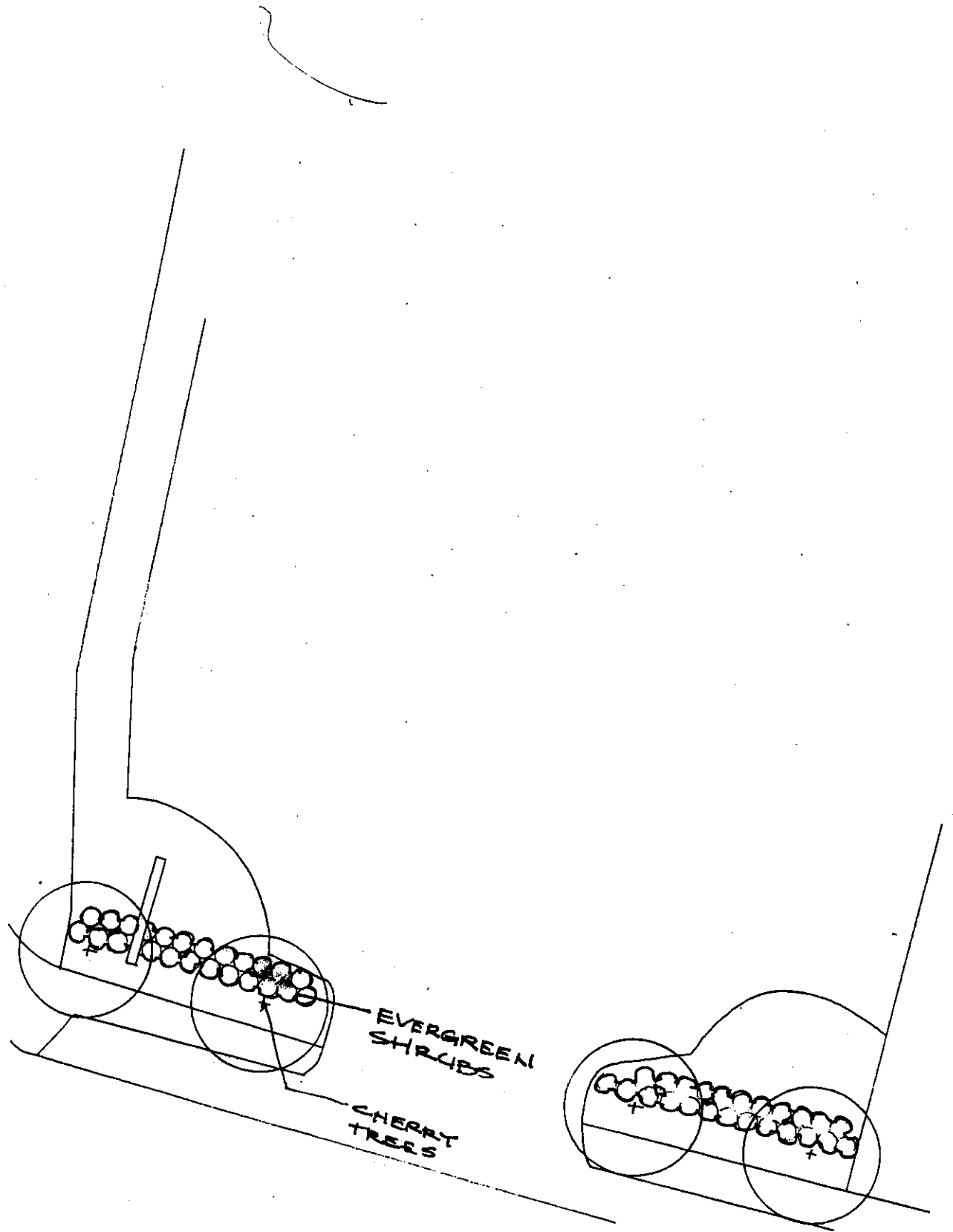
7. **Notice of hearings.** Staff feels compelled to point out that this applicant, unlike any others with which staff has dealt over the years, has been unable to provide notice to adjoining property owners in the manner required by Virginia law, and has failed to do that three times over the last several months. After the applicant's failure to provide legal notice for the September and October hearings, staff itself mailed the required notices for the November hearing. At its recent meeting with Mr. Shriver, staff explained the rules for notice again, expressed the importance of providing notice, and emphasized the fact that it was a requirement of Virginia law. Mr. Shriver stated that while he had actually sent letters to neighbors for the November hearing, he simply had not provided the required proof of that fact to staff. He agreed to provide the notice for December, but staff has done so itself in an abundance of caution.

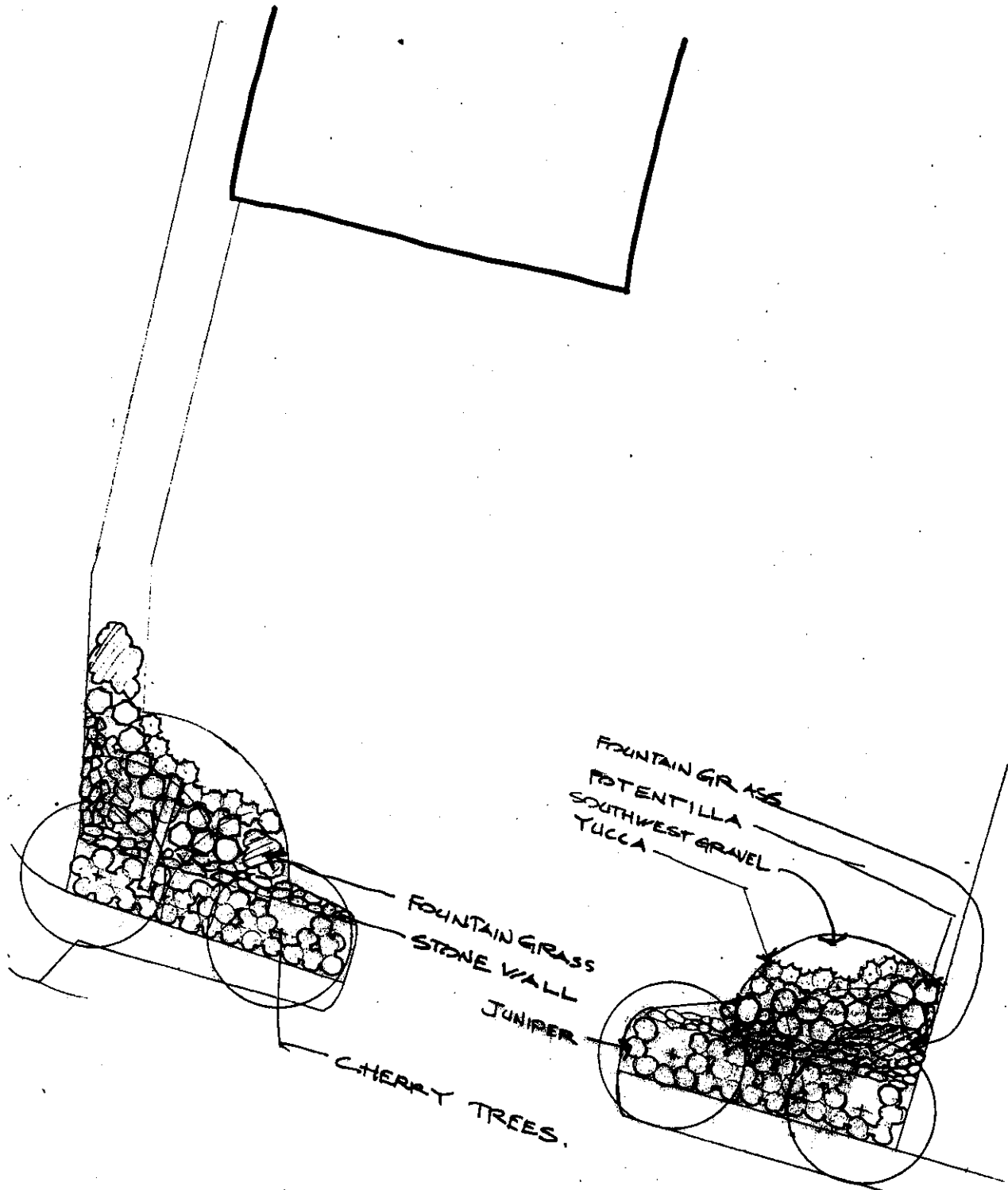
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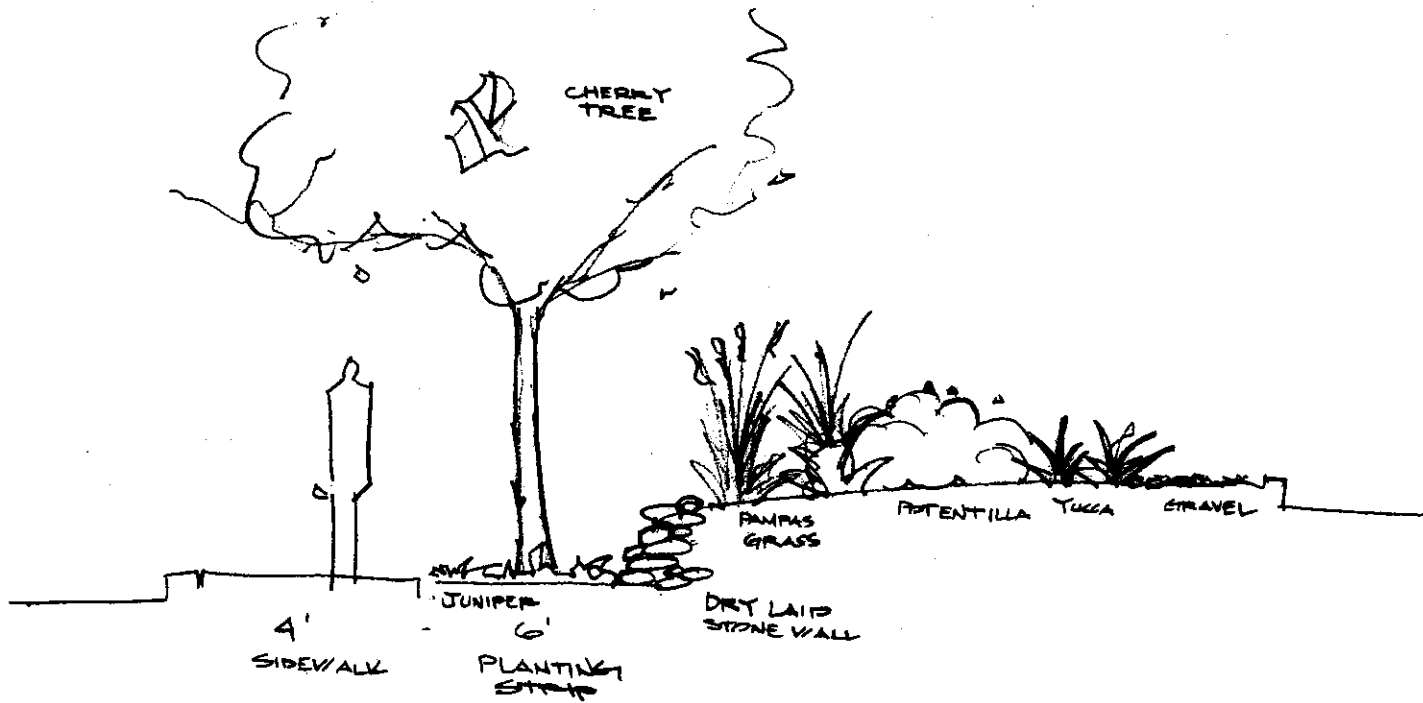
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After 18 months time, and repeated efforts and zoning citations by staff, the applicant refuses to comply with several conditions of the special use permit. The landscaping, signage and paving requirements above will make his site more attractive and unified with the neighboring properties on Duke Street. Correction of the building code violations are necessary to comply with state law and for the safety of the public. Staff recommends that the Commission amend the landscaping condition and require that all outstanding issues, including landscaping be addressed and resolved within six months of approval, or by May 4, 2002. Staff has also proposed that the review condition be amended to require an official staff review in six months to assure such compliance.

Attachment: Staff proposed landscape plans, Alternatives #1 and #2.







ALTERNATIVE 2 SECTION 14

NTS.

DISCUSSION:

1. The applicant, Grupo Dos Chiles LLC, by Alfred W. Shriver III, is before the Planning Commission for a review of the special use permit for a restaurant located at 4111 Duke Street.
2. The subject property is one lot of record with approximately 73 feet of frontage on Duke Street and a total lot area of approximately 26,000 square feet. The site is developed with a one story restaurant building and parking.
3. The property has been used as a restaurant by various owners since the 1970s. It operated for many years as the Eastport Raw Bar and most recently has been known as Mango Mike's. The only prior special use permit granted for the restaurant is Special Use Permit #1774, approved by City Council on May 18, 1985, at the time of the expansion of the restaurant to include 28 seats outdoors. On June 17, 2000, City Council granted Special Use Permit #2000-0074 allowing the ownership of the restaurant to change.
4. The current restaurant offers Mexican food and alcoholic beverages. The approved hours of operation are 11:00 a.m. to 2:00 a.m. daily. Live entertainment is permitted to provide background ambient music to dining patrons.
5. On May 15, 2001, in conjunction with Condition #21 which requires a review of the restaurant one year after Council's approval, staff made an inspection of the subject property to determine if the applicant was in compliance with the conditions of the special use permit. Staff observed the following violations, issued a citation, and docketed the permit for review:

Condition #3(b) Outside dining facilities shall be provided for no more than 40 patrons within the front porch area. When outside dining facilities are provided: (a) litter shall be picked up as it is generated, and (b) the outside dining area shall be scrubbed and washed down at the close of each day of operation.

Comment: Staff observed food stains and food debris on the porch.

Condition #17 The applicant shall remove the storage trailer within one year from the date of City Council approval and establish something permanent.

Comment: Staff observed that the trailer has not been removed.

Condition #18 The applicant shall repair the pavement at the rear of the parking lot and maintain it in good condition.

Comment: Staff observed that the pavement in the rear parking lot has not been repaired or maintained in good condition.

Condition #19 The applicant shall submit a landscaping plan to the satisfaction of Planning and Zoning.

Comment: The applicant has not submitted a landscaping plan.

Condition #20 The height of the freestanding sign shall be lowered to 15 feet within a year.

Comment: The height of the freestanding sign has not been lowered as required.

6. In addition staff has issued a zoning citation for illegal signs.
7. The Police Department has advised staff that the applicant has not contacted them regarding the security survey and robbery awareness program as required by Condition #16.

STAFF ANALYSIS:

Staff has discussed the permit violations with Mr. Shriver, the applicant, and the fact that he has effectively done nothing to comply with the conditions imposed by City Council a year ago. Mr. Shriver objects, for example, to having to remove the storage building to the rear, repair the driveway pavement, change the freestanding sign or install landscaping, and believes such conditions are inappropriate. He also argues that the City is not applying such requirements consistently to all businesses along Duke Street.

Staff has revisited the site, reviewed the conditions, and reviewed conditions at other Duke Street operations, with Mr. Shriver's concerns in mind. Staff's objective is to make sites more attractive while not creating an undue burden on businesses. Staff agrees that the newly installed fence in the rear of the property effectively screens the storage building in the rear. It has therefore recommended that Condition #17 be modified to allow the screening as a substitute. By the same token, staff noted that the applicant's dumpster is unscreened. Consistent with its efforts city-wide, staff recommends

that the dumpster be screened and maintained in good condition and has included language to this effect. As to the need to repair the driveway pavement, the condition is one frequently required, and necessary in this case. T&ES staff have recently inspected the parking area, and T&ES staff advise us that the base material that lies underneath the asphalt pavement is visible, and that, if the lot is not repaired, the breakdown of both layers will require more extensive repair. The condition as written gives the applicant one year in which to complete the work which staff believes is reasonable.

On the other hand, staff believes strongly that the attractiveness of this part of Duke Street will be considerably enhanced by landscaping and a lowered freestanding sign. Those requirements are identical to the ones imposed on the adjacent Crown site and other sites along Duke Street. Several months ago, staff worked with Dunkin Donuts to renovate the parking lot, the freestanding sign and the landscaped strip at the front of the lot. Council agreed that the changes were beneficial, required them as conditions of the special use permit, and the work will be done in the near future. At Mango Mike's, although the restaurant was not required to lower its freestanding sign, the special use permit required extensive landscaping upgrades, and staff has been working closely with Mike Anderson on the landscape plan to make the site more attractive. In short, the requirements imposed on Dancing Peppers are consistent with the special use permit conditions imposed in recent years for other Duke Street businesses. Therefore, staff cannot agree to delete or change these particular conditions.

Finally, staff has retained Condition #21 which requires a review of the restaurant one year after this approval in order to ensure that the applicant complies with the permit conditions. 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:

F-1 No comments.

Code Enforcement:

F-1 A fire inspection was performed at the facility in question on August 20, 2001 with the following violations noted:

1. Secure all compressed gas cylinders.
2. Electrical extension cords should not be used as permanent wiring.
3. Perform annual test of sprinkler system and forward results to this office.
4. The range hood suppression system needs to be inspected/tested.
5. Repair and/or replace all damaged ceiling tiles and seal all penetrations.
6. All open electrical junction boxes shall be covered.
7. Provide missing blank covers for the electrical panel .
8. Repair all exit lights.
9. Adjust all suppression nozzles in the range hood to provide proper protection of the appliances.
10. Repair all damaged walls and seal all penetrations.
11. Label the fire department connection (fdc) and remove all obstructions from the fdc.
12. Provide an egress seating plan for review.
13. Remove decorative material that is blocking the operation of the sprinkler heads.

Health Department:

- C-1 An Alexandria Health Department Permit is required for all regulated facilities.
- C-2 Permits are non-transferable.
- C-3 This facility must meet current Alexandria City Code requirements for food establishments. Contact Environmental Health at 703-838-4400 Ext. 250 to arrange for a “change of ownership” inspection.
- C-4 If changes to the facility are to be done, five sets of plans must 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 fee for review of plans for food facilities.
- C-5 Permit must be obtained prior to operation.
- C-6 The facility must comply with the Alexandria City Code, Title 11, Chapter 10, Smoking Prohibitions.
- C-7 Certified Food Managers must be on duty during all hours of operation.
- C-8 Restrooms, including those in common areas, serving the restaurant, are to meet Alexandria City Code, Title 11, Chapter 2, requirements.
- C-9 This facility is currently operating as Dancing Peppers Cantina under permit # 16F-1146-1, issued to Jamie A. Rivera.
- C-10 Provide a menu or list of foods to be handled at this facility to the Health Department prior to opening.

Police Department:

- F-1 To date the applicant has not had the security survey and robbery awareness program completed.

APPLICATION for SPECIAL USE PERMIT # 2001-0061

[must use black ink or type]

PROPERTY LOCATION: 4111 DUKE ST

TAX MAP REFERENCE: 60.01-01-01 ZONE: CC

APPLICANT Name: GRUPO DOS CHILES, LLC

Address: _____

PROPERTY OWNER Name: _____

Address: _____

PROPOSED USE: REVIEW of SUP for a RESTAURANT
(DANCING PEPPERS)

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.

ALFRED W. SHRIVER, III
Print Name of Applicant or Agent

Signature

Mailing/Street Address

Telephone #

Fax #

City and State

Zip Code

Date

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

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

ACTION - PLANNING COMMISSION: _____

ACTION - CITY COUNCIL: _____



ALEXANDRIA DEPARTMENT OF
PLANNING AND ZONING
301 King Street, Room 2100
Alexandria, Virginia 22314

NOTICE OF VIOLATION

YOU ARE CHARGED WITH VIOLATING THE
ALEXANDRIA, VIRGINIA ZONING ORDINANCE

5/15/01 Tuesday
Date ticket served Day of Week Time AM/PM

Location of Violation: 4111 Duke St

Ord. Section: 11-505

Description of Violation: Conditions of SUP #'s 17, 18, 19, 20, 3(B)

10

Penalty \$: 50.00
 1st 2nd
 3rd/MORE

IF THE VIOLATION IS NOT CORRECTED BY
5/25/01 AN ADDITIONAL MONETARY
PENALTY WILL BE ASSESSED.

[Signature] 103
Inspector's Signature ID Number

I personally observed or investigated the commission of the violation noted above and/or violation was based upon signed affidavit.

- VIOLATORS COPY - WHITE
- CITY ATTORNEY COPY - YELLOW
- FINANCE COPY - PINK
- PLANNING AND ZONING COPY - ORANGE

NOTICE SERVED ON: SUP 2001-0074

NAME: LAST FIRST MIDDLE

PROPERTY OWNER
 COMPANY Dancing Peppers
NAME

OTHER POSITION

4111 Duke St
ADDRESS Alexandria Va

CITY/TOWN STATE ZIP

SIGNATURE DATE

I hereby acknowledge receipt of this Notice of Violation. Signature is not an admission of guilt.

PERSON REFUSED TO SIGN DATE

CERTIFICATE OF SERVICE

Mailed/posted a true copy of this notice to the last known home or business address of the respondent or the respondent's agent

Name of Person or Business Served

Address of Service

City/State

Posted true copy of this notice at the site of the infraction

The undersigned states that he/she is an employee of the City of Alexandria Department of Planning and Zoning and knows this Certificate of Service to be true to the best of his/her knowledge.

Signature _____
Print Name _____
Date Phone # _____

WARNING

YOU ARE REQUIRED TO RESPOND TO THIS NOTICE OF VIOLATION WITHIN 15 DAYS OF THE DATE OF SERVICE IN ONE OF THE FOLLOWING WAYS

Z-01

TICKET NO 2211

1. TO PAY PENALTY AND WAIVE YOUR RIGHT TO A HEARING: ✓

- Check the "Admit Violation" or "No Contest" box below;
- Make personal check, cashier's check, certified check or money order payable to City of Alexandria. Do not send cash through the mail;
- Print violation notice number on the check or money order;
- Payment may be made by mail, or in person, at the Treasury Office, City Hall, 301 King Street, Room 1510, Alexandria, Virginia, between the hours of 8:00 a.m. - 5:00 p.m., Monday-Friday, phone 703-838-4949.

2. TO REQUEST A COURT HEARING:

- Check the "Contest in Court" box below and;
 - (a) Mail this completed notice to the Office of the City Attorney, City Hall, Suite 1300, 301 King Street, Alexandria, Virginia, 22314; or
 - (b) Appear in person or by an authorized representative, at the above address between the hours of 8:00 a.m. - 5:00 p.m., Monday-Friday, phone 703-838-4433.
- If you wish to contest this violation a date will be set for trial in the General District Court of Alexandria, Virginia. Failure to appear in court on the date set for trial, unless prior approval has been granted by a judge of that court, will result in the entry of a default judgement against you.

3. TO CONTEST THE INTERPRETATION OF THE ORDINANCE:

- You have the right to appeal the interpretation of the zoning ordinance upon which this violation is based to the Board of Zoning Appeals within 30 days in accordance with 15.2-2311 of the Code of Virginia. The interpretation shall be final and unappealable if not appealed within 30 days.

FOR INFORMATION CONCERNING THIS TICKET CALL PLANNING AND ZONING AT 703-838-4688

FAILURE TO RESPOND AS PROVIDED ABOVE WILL RESULT IN THE ISSUANCE OF A SUMMONS TO APPEAR IN COURT AND ANSWER TO THE VIOLATION FOR WHICH THIS NOTICE WAS ISSUED

YOU MUST COMPLETE AND SIGN THIS CERTIFICATION:
 ADMIT VIOLATION NO CONTEST CONTEST IN COURT

Name (print) _____
Street Address _____
City _____ State _____ Zip _____

I hereby certify under penalty of law, that I have answered as indicated above, and corrected or made substantial efforts to correct the violation that I have admitted or for which I have pleaded no contest.

Signature _____ Date _____

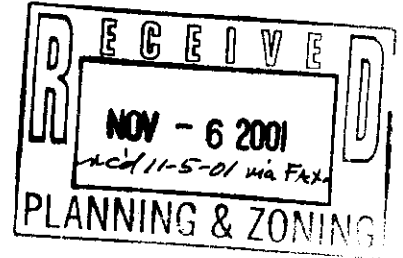
SUP 2001-0061

SPAULDING & SLYE

COLLIERS
INTERNATIONAL

November 5, 2001

Ms. Kathleen Beaton
City of Alexandria, Virginia
Department of Planning and Zoning
301 King Street, Room 2100
Alexandria, Virginia 22313



Re: Special Use Permit #2001-0061
Dancing Peppers Restaurant
4111 Duke Street

Dear Ms. Beaton:

We received the Notice of Public Hearing dated October 23, 2001 for the above-referenced Special Use Permit. Spaulding & Slye represents Pacific Realty Associates, the owners of the property known as 4141 Duke Street (Fuddruckers Restaurant and Bio-Med), located just west of the Dancing Peppers Restaurant.

We have noted that there is a drainpipe that comes out the (west) side of the restaurant that drains directly onto our property. We believe that this pipe may be somehow connected to the restaurant's dishwasher or sinks, as the run-off discharge is very dirty and often contains bits of food (see attached sketch for approximate location). This pipe should be re-routed at Dancing Peppers' cost to not drain onto our property.

We would also recommend a review of the amount of parking provided by Dancing Peppers, as we have noticed a number of vehicles parking in the Fuddruckers lot and climbing up the (dirt) slope to the restaurant.

Should you have any questions or require additional information, please do not to hesitate to contact me at (703) 770-4359.

Sincerely,

Louise Zimmerman White

Louise Zimmerman White, RPA
Property Manager

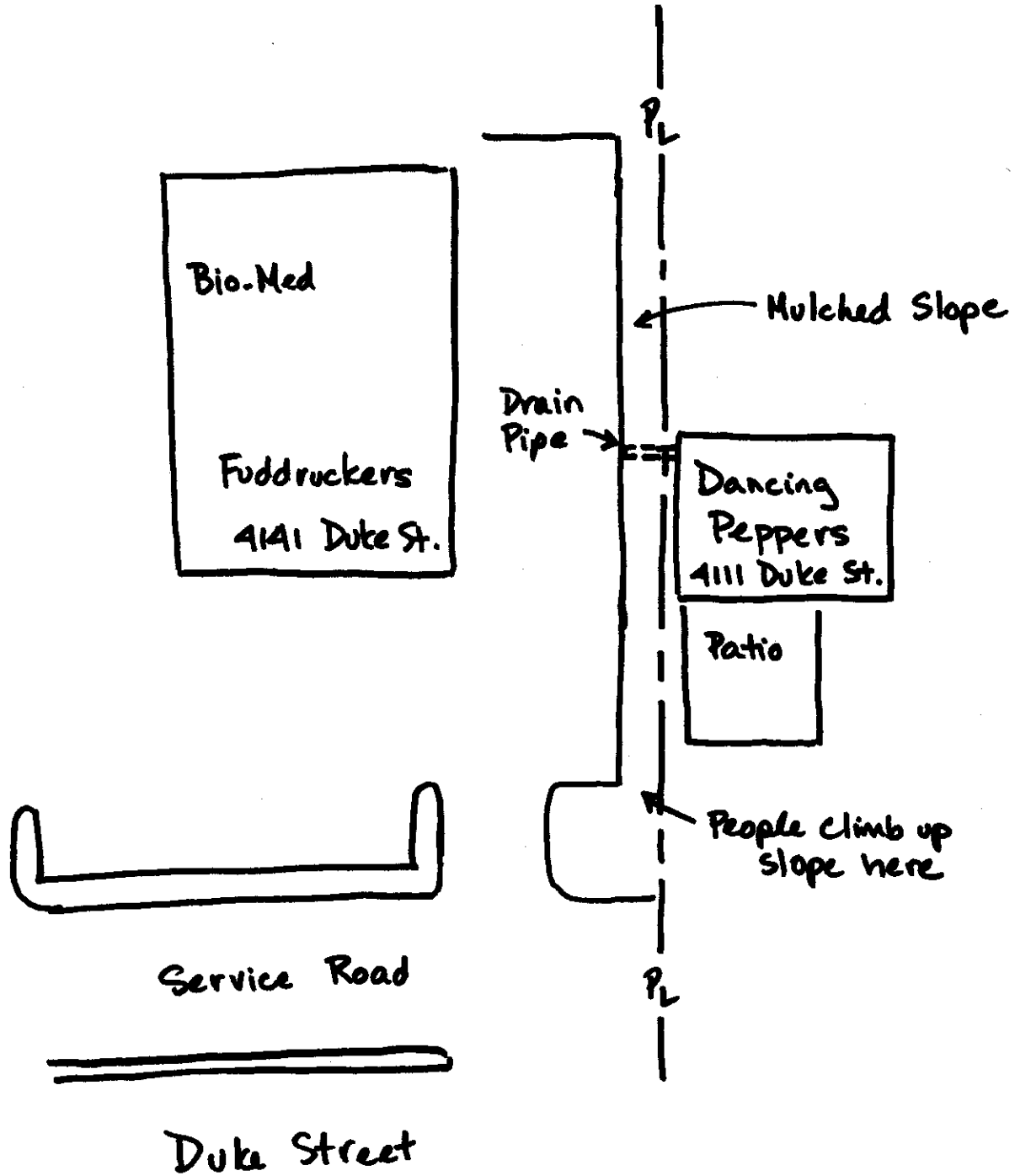
Cc: Mark Olson, PacTrust

Attachment

Integrated Real Estate Services

3190 Fairview Park Drive
Suite 150
Falls Church, VA 22042
703-849-9700
Fax: 703-204-0168
www.SpauldSlye.com

23



SUP 2001-0061

#10. SUP 2001-0061
acd 11-8-01 at PC mtg.

November 8, 2001
Planning Commission Meeting
Docket Item #10
Dancing Peppers Restaurant
4111 Duke Street

My name is Elizabeth Hamilton and I live at 124 N. Furman Street the block behind this restaurant. I was born and raised in Alexandria less than a mile from where I now live and this is the first home we have ever owned. This is the first time I have ever come to speak to the Planning Commission.

I am here to make some suggestions to ensure that this is a neighborhood friendly business. I welcome this restaurant to the area. We need good solid businesses in our neighborhood along Duke Street. I am thrilled, by the way, to hear about the improvements that will be made to the Crown Station next door.

But I also believe every business should comply with the conditions of its special use permit. It should respect the neighborhood where its located and the residents who live there.

We know that the applicant has failed to comply with 6 of its conditions: the five noted in the Staff Report, as well as condition #15. I am bringing this up because during the summer they had more than a few gatherings with music that could be heard at my house - a block away.

The applicant has had a year to comply with the conditions of it's SUP. It has had an additional 2 months because of deferrals. They have been given ample time to contact companies and arrange for the work to be done. They should be held to the same standards as all other businesses with an SUP in the City and comply with the conditions.

I ask that you add a condition (i.e. #24) to read, "The Applicant shall provide adequate proof of compliance with the conditions of this use permit to the satisfaction of the Director of Planning and Zoning within *sixty (60) days* of approval which may include signed agreements with contractors to perform the required improvements."

Thank you for listening to me and I hope you will help us make this restaurant a neighborhood friendly business.

FROM :

FAX NO. :

May. 01 2001 04:59PM P1

#9.

SUP 2001-0061

December 4, 2001

Planning Commission Meeting

I will not be able to attend the meeting tonight I am not feeling well and Yolanda is out of the country. However, let me take this opportunity to thank staff for meeting with me and trying to work out the differences between our landscape plans. The plan they came up with was denser than what we had figured on. I think we can meet somewhere in the middle on that issue. Which would leave the tree issues as the only problem area. Putting two trees on each side of the driveway seems to me to be too much and I have to disagree on putting them in.

On the condition of my SUP which calls for fixing the parking lot that has been done. I would request it be removed from my SUP. I have contacted both the trash company and the grease company to move their dumpsters so I will be able to erect the fence to screen them. The trash company has moved theirs but the grease company has not. As soon as they do I will put up the fence.

As to the request to lower my sign, I still contend it is a zoning issue and this area was zoned for that sign and you can not rezone just one property. This sign is "grandfathered" and I should not have that in my SUP. Plus you have not treated me the same as my competitor down the street so with out any clear directive from City Council to require businesses in this area to lower there signs I do not feel it should be required of me. Please remove that condition from my SUP.

Again let me express I am only looking for each business to be treated the same. I am sure you will give this matter and my points due consideration and I regret not being able to attend the meeting. I will contact staff later this week and discuss the out come of this meeting.

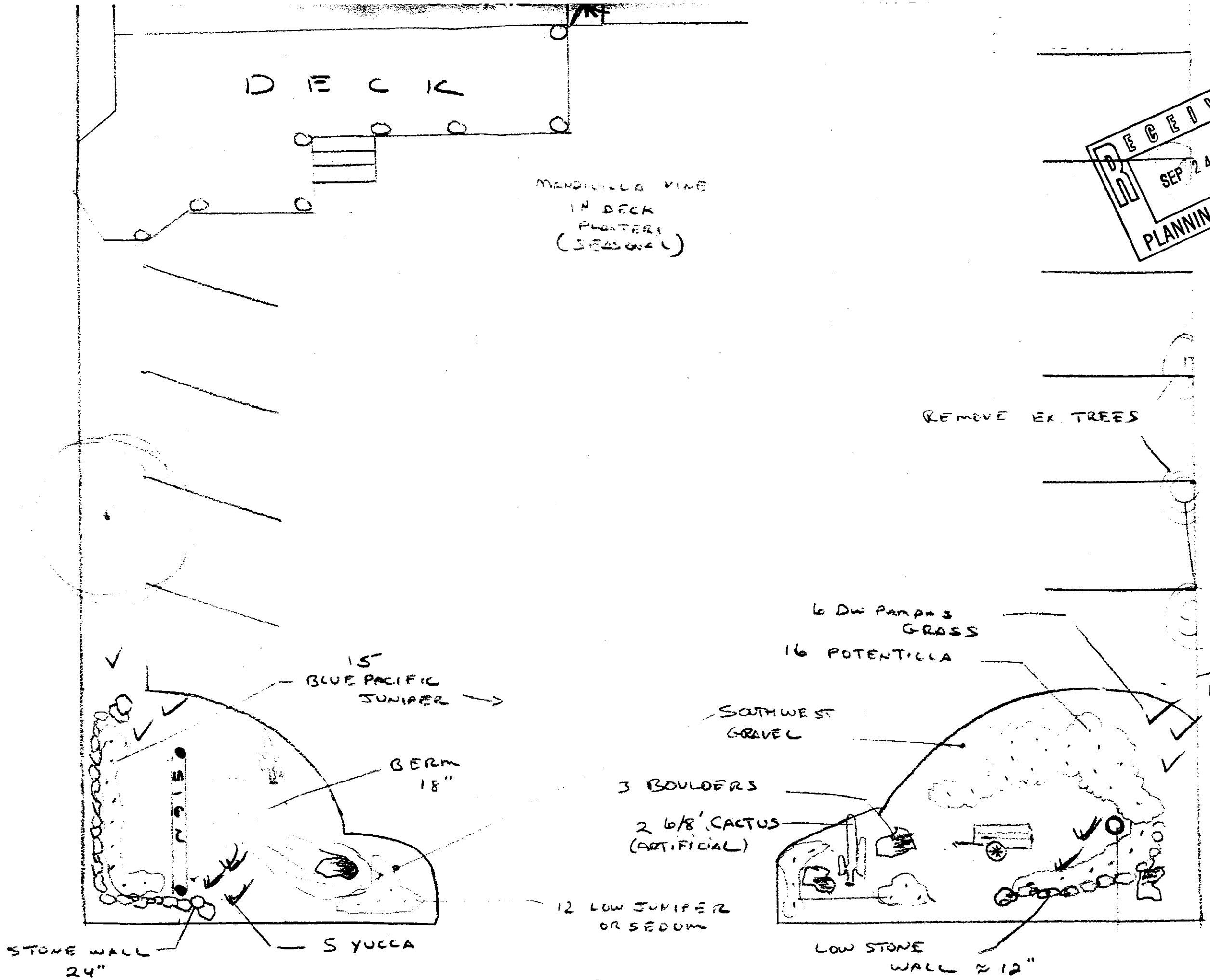
Thanks


A. W. Shriver, III

Dancing Peppers Cantina

Campbell & Ferrara

NURSERIES, INC.

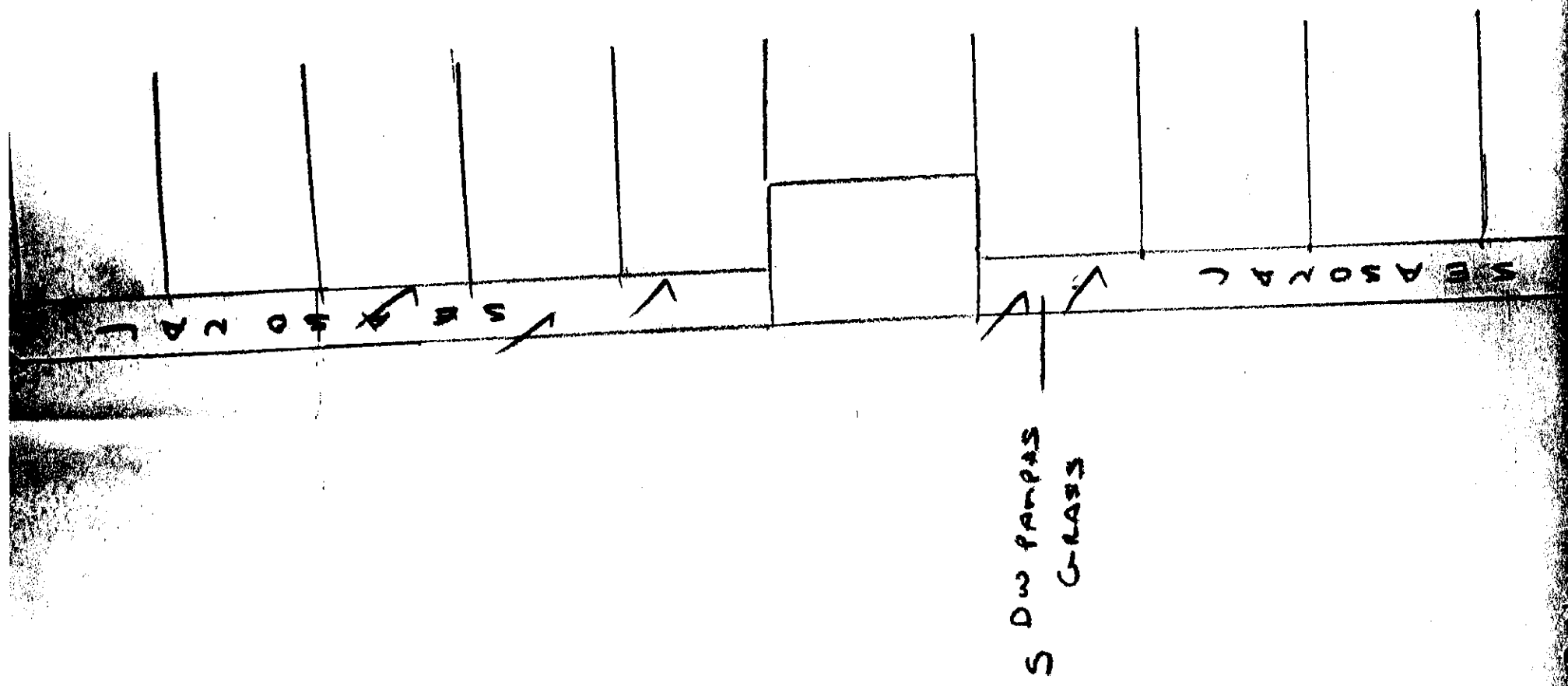


RECEIVED
SEP 24 2001
PLANNING & ZONING

SUP #2001-0061
4111 Duke St
Dancing Peppers Restaurant

14
12-15-01

14
12-15-01



STONE WALLS	4500 -
BOULDERS	1000 -
SOIL-MULCH-GRAVEL	1600 -
PLANTS - INSTALLED	3900 -
SEASONAL COLOR	1000 -
	<hr/>
	\$ 12000 -

ANCING PEPPERS
 1 DUKE ST ALEX VA
 T. 2000 By J. CAMPBELL

JOB NO: 1	SCALE: 1/8" = 1'
SHEET NO:	DESIGN: J.C.
DATE:	
REVISIONS:	

14
12-15-01

December 14, 2001

Alexandria City Council

In an effort to expedite the hearing process tomorrow I will give you my thoughts on various items of my Special Use Permit. I have taken time to meet with staff to work out as many of the items as possible. Through this process we have been able to come to agreements on a few items. However, there are other items, which I feel City Council needs to address.

Let me state for the record I am not trying to be a pain in the system. I am just looking for an even hand and some common sense in regard to my S.U.P. I have looked at a number of my competitors S.U.P.'s and find some glaring differences in wording when addressing the same issue. It is my hope the Council will try to level the playing field and allow me the same opportunity as some of my competitors who are within the same area of Duke Street.

I will address each of the violations first and then look at a couple of other items.
Condition #17 – After working with staff we have agreed that the fence which I installed would be sufficient to satisfy this condition. However, a request was made to also screen the dumpster area. I have agreed, as soon as the recycle grease company relocates their dumpster a fence will be installed. I would request the wording be changed to reflect our agreement.

Condition #18 – I have asked staff to inspect the repair which was done to the driveway, however, I have not been advised that the inspection has been accomplished. I would request this condition be removed from my S.U.P. as it has been met.

Condition #19 – I have submitted a landscape plan and have meet with staff to try to come up with a compromise. To date we are at odds over four trees which staff wants to place in front of my lot. I have asked for a copy of the directive, which your Council as issued, to the Planning Commission and Staff to require all commercial properties to conform to this requirement. I was told there was nothing in writing from City Council. I do not feel I should have to have the same look as a gas station because staff wants each property to look the same. I have a southwest theme and feel the trees do not fit the look. I was also told the purpose of the plan was to hide the driveway. My driveway has an up hill slop, which you cannot hide so the effort to hide it is lost, anyway.

We are looking at spending almost \$1,500 to get a nice low maintenance attractive entrance to our property. I am requesting we be able to go with our plan and not what the Planning Commission past last week. This is a major expense and we are trying to ensure the growth of our business. I feel the break staff is looking for is meet with our design. The other issue, which is important to consider is the safety issue. This area of Duke Street is very congested and visibility for patrons pulling into our out of my lot is of concern.

Condition #20 – This is the condition which I feel is the most unreasonable. It is my understanding from my council that this property was zoned to allow the sign to be the height it is. I was told you couldn't rezone one property at a time. I was advised this sign was grand fathered and should be a mute point. The other problem is, I went through the S.U.P. process last year with a competitor just down the street. I have a copy of their S.U.P., which has no condition requiring them to lower their sign. That to me is discrimination. When I brought it to the attention of the Planning Commission staff was asked why. The response from staff was that restaurant was in a different quadrant of Duke Street. That answer, was good enough for the Planning Commission, but not for me. I am asking for the same treatment as my competition

Condition #3(b) – I feel this item was unfairly documented as a violation. On one day an inspector looks at my deck and sees a stain or two, which we must have missed and all of a sudden I am in violation of my S.U.P. I keep my deck clean and free of trash on a daily basis. I have not had complaints from my neighbors or my patrons in reference to this issue. I request this be dropped.

There is one other condition, which I would like to have the wording change. My S.U.P. #2 needs to be reworded to reflect the same wording as my competitor down the street. His S.U.P. states, "A total of 280 seats shall be permitted indoors and outdoors." It is funny that this other restaurant is also the one who does not have to lower his sign. Again I think this is discriminating. As I stated at the start of this letter, I am looking for some evenhandedness with regard to the wording in the S.U.P.'s.

The last area I would like to bring to your attention is the controversy of the repairs I did last summer to my deck. I called down and asked if I needed a permit to repair the deck. I was told no. Six months after I did the work code enforcement stormed my site with three cars to issue a "stop work order". At that time I was told I did need a permit. I called Mr. Art Dahlberg's office and was informed he was on vacation. I was past down to the next person in charge. I was told to come down and fill out a form and go from office to office then pay the fee and get my permit. I did just that. A few days later I get a letter revoking my permit.

I had a meeting with Mr. Dahlberg and was shown plans from 1983. I told him that was two operators before me. He told me that was too bad I needed to get plans and submit them for review. I was issued an S.U.P. when I came into this property. At the time there was no requirement to provide these drawing. It should not be my responsibility to bring the cities records up to date. All I did was repair what was a safety issue.

I know time is limited during the hearing process, which is why I wrote this letter. I hope we can come to terms on these issues and move forward. Thanking you in advance for your time and consideration.



A.W. Shriver, III
Yolanda Martinez
Grupo Dos Chiles, LLC



APPLICATION for SPECIAL USE PERMIT # 2001-0061

[must use black ink or type]

PROPERTY LOCATION: 4111 DUKE ST

TAX MAP REFERENCE: 60.01-01-01 ZONE: CC

APPLICANT Name: GRUPO DOS CHILES, LLC

Address: _____

PROPERTY OWNER Name: _____

Address: _____

PROPOSED USE: REVIEW of SUP for a 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.

ALFRED W. SHRIVER, III
Print Name of Applicant or Agent

Signature

Mailing/Street Address

Telephone # Fax #

City and State Zip Code

Date

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

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

ACTION - PLANNING COMMISSION: 12/4/01 Recommend Approval 7-0

ACTION - CITY COUNCIL: 12/15/01PH--See attached.

13. ENCROACHMENT #2001-0007
315 MADISON ST
FLATBREADS

Public Hearing and Consideration of a request for encroachment into the public sidewalk right-of-way for restaurant seating; zoned CRMU-X/Commercial Residential Mixed Use. Applicant: Ahmad Amarlooi.

COMMISSION ACTION: Recommend denial 7-0

City Council upheld the Planning Commission with regard to SUP #2001-0069, deleting Condition #3, and with regard to the encroachment 2001-0007, upheld the staff's new recommendation as outlined in the December 12, 2001 memorandum. Those new conditions read as follows: "1. **Outdoor seating is permitted which generally complies with the attached plan proposed by the applicant, which includes eight seats at four tables and plantings to include a large evergreen bush against the building plus planters, a low fence, and plantings at the perimeter of the outdoor dining area, all to the satisfaction of the Director of Planning and Zoning.**"; and "2. **Must at all times keep at least four feet of the public sidewalk clear for pedestrian access.**"

Council Action: _____

14. SPECIAL USE PERMIT #2001-0061
4111 DUKE ST
DANCING PEPPERS

Public Hearing and Consideration of a special use permit review of restaurant; zoned CC/Commercial Community. Applicant: Grupo Dos Chiles, LLC, by Alfred W. Shriver, III.

COMMISSION ACTION: Recommend approval 7-0

City Council approved the Planning Commission recommendation, **amended by changing the date in Condition #20 back to May 4, 2002, and on Condition #19, that negotiations will continue on the landscaping, but that it will include four trees.**

Council Action: _____

15. SPECIAL USE PERMIT #2001-0065
2700 JEFFERSON DAVIS HY
AFGHAN RESTAURANT

Public Hearing and Consideration of a special use permit review and request to change the ownership and to increase the hours of operation of the restaurant; zoned I/Industrial. Applicant: Afghan Restaurant, by Harry P. Hart, attorney.

COMMISSION ACTION: Recommend approval 7-0

For the record, Mayor Donley commended Mr. Hart, attorney for the applicant, for working with the applicant to improve what was a tenuous situation for them six or seven months ago.

City Council approved the Planning Commission recommendation.

Council Action: _____