

EXHIBIT NO. 1

4
2-22-03

Docket Item # 4
SPECIAL USE PERMIT #2002-0121

Planning Commission Meeting
February 4, 2003

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

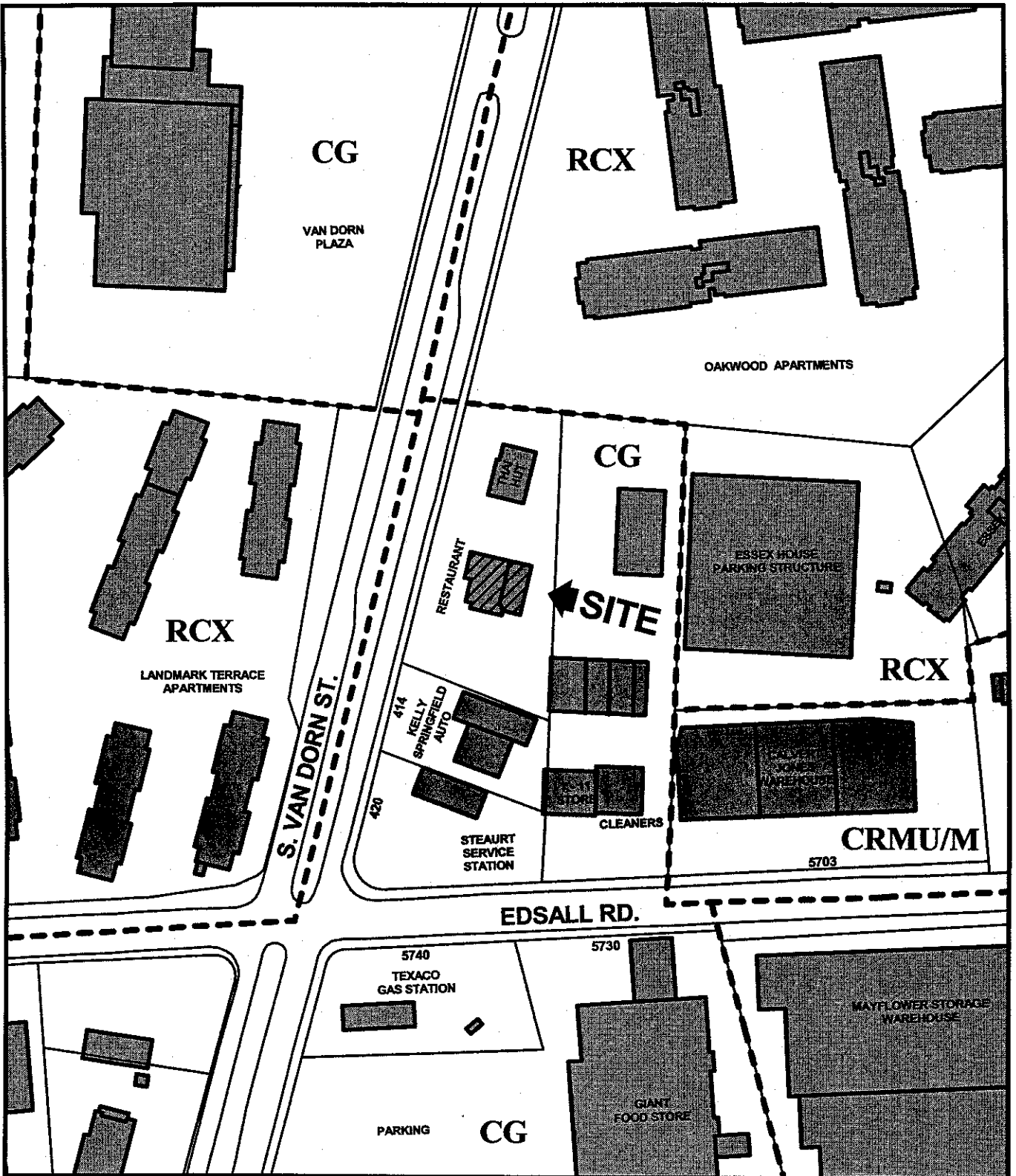
APPLICANT: El Paso of Landmark
by Rigoberto Gomez

LOCATION: 410 South Van Dorn Street
El Paso of Landmark

ZONE: CG/Commercial General

PLANNING COMMISSION ACTION, FEBRUARY 4, 2003: By unanimous consent, the Planning Commission recommended approval of the request, subject to compliance with all applicable codes, ordinances and staff recommendations.

Reason: The Planning Commission agreed with the staff analysis.



SUP #2002-0121

02/04/03



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 or to any corporation in which the applicant has a controlling interest only. (P&Z) (SUP #1706)
2. Seating shall be provided inside for no more than 123 patrons in the restaurant. (P&Z) (SUP #1706)
3. No outside dining facilities shall be located on the premises. (P&Z)(SUP #1706)
4. The hours during which the business is open to the public shall be restricted to between 6:00 a.m. and Midnight daily. (P&Z)(SUP #1706)
5. No food, beverages, or other material shall be stored outside. (P&Z)(SUP #1706)
6. Trash and garbage shall be stored inside or in a dumpster. (P&Z)(SUP #1706)
7. Condition deleted. (P&Z) (SUP #98-0078)
8. 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 daily, and more often if necessary, to prevent an unsightly and unsanitary accumulation, on each day that the business is open to the public. (P&Z)(SUP #1706)
9. **CONDITION DELETED BY STAFF:** ~~The applicant shall pick up the drainage from the existing large gravel lot before it comes down the proposed slope. (T&ES)(SUP #1706)~~
10. **CONDITION DELETED BY STAFF:** ~~The applicant shall show his right to remove the existing gravel driveway that encroaches on this site. (T&ES)(SUP #1706)~~
11. **CONDITION DELETED BY STAFF:** ~~The applicant shall provide a guardrail on top of the eastern, southern and western retaining walls. (T&ES)(SUP #1706)~~

12. The applicant shall install an automatic sprinkler system in the restaurant. (Fire)(SUP #1706)
13. The applicant shall post the hours of operation at the entrance to the restaurant. (P&Z) (SUP #98-0078)
14. On-site alcohol service is permitted; no off-premise sales are permitted. (P&Z) (SUP #2001-0063)
15. 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 these containers. (P&Z) (SUP #98-0078)
16. Kitchen equipment shall not be cleaned outside, nor shall any cooking residue be washed into the streets, alleys or storm sewers. (T&ES) (SUP #98-0078)
17. 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 Transportation and Environmental Services. (T&ES) (SUP #2001-0063)
18. The new 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 employees. (P&Z) (SUP #2001-0057)
19. The landscaping shall be maintained in good condition. (P&Z) (SUP #99-0064)
20. **CONDITION AMENDED BY STAFF:** The Director of Planning and Zoning shall review the special use permit ~~one year from approval~~ in June of 2004 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 #2001-0063)

21. Live entertainment shall be limited to one, four-piece mariachi band on the weekends only. All entertainment must be subordinate to the principal function of the restaurant as an eating establishment. Any advertising of the entertainment shall reflect the subordinate nature of the entertainment by featuring the food service as well as the entertainment. (P&Z) (SUP #2001-0063)
22. **CONDITION AMENDED BY STAFF:** Loudspeakers shall be prohibited from the exterior of the building, and no music or amplified sound shall be audible at the property line. (P&Z) (SUP #2001-0063)
23. **CONDITION AMENDED BY STAFF:** The applicant shall install a screen hedge along the western frontage of the property in front of the restaurant building between the existing trees and the curb adjacent to the front parking lot and shall continue the same hedge along the southern frontage of the site. The applicant shall remove and replace an existing tree stump with a new tree in the northeastern parking lot island adjacent to the service drive behind the building. Shrubs shall be planted in the parking lot island near the front of the building. Juniper shrubs shall be installed around the base of the existing free standing sign. All landscaping shall be installed within one year of approval. (P&Z) (SUP #2001-0063)

The applicant shall install the landscaping required above in the following manner and schedule:

Phase One: Spring 2003 – Plant the screening hedge along the western property line. The shrubs can be Hetzi Holly (a Japanese holly) or something similar, must be 18 to 24 inches tall minimum at installation, and should be placed 2 ½ to 3 feet on center.

Phase Two: Fall 2003 – Remove the tree stump located to the north of the restaurant building in a parking lot landscape island. Replace tree stump with a medium shade tree, preferably a Maple, that complies with the City of Alexandria's Landscape Guidelines.

Phase Three: Spring 2004 – Plant the screen hedge at the southern property line. The shrubs can be Yew or something similar, must be 18 to 24 inches tall minimum at installation, and should be placed 2 ½ to 3 feet on center.

24. The recycling dumpster shall be screened to the satisfaction of the Director of Planning and Zoning, and the screening shall be maintained in good condition. (P&Z) (SUP #2001-0063)

25. The pavement in front of the dumpsters shall be repaired and maintained in good condition. (P&Z) (SUP #2001-0063)
26. 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 #2001-0063)
27. **CONDITION ADDED BY STAFF:** The applicant shall conduct employee training sessions on an ongoing basis, including as part of any employee orientation process, to discuss all special use permit provisions and requirements. (P&Z)
28. **CONDITION ADDED BY STAFF:** The applicant shall require its employees who drive to work to use off-street parking. (P&Z)

DISCUSSION:

1. The applicant, Rigoberto Gomez, is before the Planning Commission for a review of a special use permit for the restaurant located at 410 South Van Dorn Street.
2. The subject property is one lot of record with 302.6 feet of frontage on South Van Dorn, and a total lot area of 1.1 acres. The site is developed with two buildings that are each occupied by restaurants. The subject business, 410 S. Van Dorn Street, is the El Paso Mexican Restaurant and is located on the southern portion of the lot. The second building is occupied by the Thai Hut Restaurant, 408 S. Van Dorn Street. These two businesses share a surface parking lot that has 53 parking spaces. Surrounding land uses include multi-family residential properties to the north and west, and commercial properties to the east and south.
3. A special use permit for a restaurant at this site was originally approved in 1984. In 1998, the ownership was changed to allow a Friendly's (SUP #98-0078). According to the applicant, Friendly's restaurant ceased operation in December 2000. On July 5, 2001, an administrative change of ownership approval was granted allowing the applicant to operate the restaurant. On October 13, 2001, City Council approved alcohol sales and live entertainment for the existing restaurant under Special Use Permit #2001-0063.
4. The existing restaurant serves Mexican cuisine, is approved for on-premise alcohol sales, provides seating for 123 patrons, is permitted to showcase one, four-piece mariachi band on the weekends, and operates from 6:00 a.m. to midnight daily. No outside dining is permitted. Parking is provided on-site.
5. Staff inspected the subject site on November 27, 2002, pursuant to Condition #20 (one year review) of Special Use Permit #2001-0063, and found violations of Conditions #5 (outside storage), #8 (litter), #18 (security survey and robbery awareness program), #19 (maintaining landscaping), and #23 (installing landscaping). Staff reinspected the site on December 19, 2002 and found that the applicant had corrected several of the violations, but that landscaping violations remained.
6. Condition #23 required the applicant to install a screen hedge at the western and southern property lines (only as adjacent to the subject restaurant), to remove a tree stump and replace it with a new tree, plant shrubs in the parking lot island at the front of the building, and install juniper shrubs at the base of the free-standing sign. At the time of staff's inspections, the applicant had not installed the screen hedge in its entirety or removed the tree stump and replaced it with a new tree. There were a few shrubs along the southern property line, but

several of them needed to be replaced. Condition #19 requires the applicant to maintain the landscaping in good condition.

7. The applicant stated that slow sales in 2001 and 2002 have made purchase of the required shrubs and tree an economic hardship. He has offered to provide the required landscaping in phases so that he can meet the special use permit requirements and spread out the expense of the landscaping over time.
8. Staff also found that the guardrail on the eastern property line of the site was leaning crookedly. The guardrail was originally required for the site in Special Use Permit #1706. Staff contacted Code Enforcement and they will inspect the guardrail for safety and work with the applicant or property owner to have any violations corrected.

STAFF ANALYSIS:

Staff supports the continued operation of the restaurant located at 410 South Van Dorn Street. This case is under review due to violations, as required in Condition #20 of the existing special use permit. The applicant readily corrected most of the violations (ones involving litter, outdoor storage and the security survey and robbery awareness program) and has cited economic hardship for not having provided and maintained the required landscaping. The applicant requested the opportunity to install the required landscaping (Conditions #19 and #23) over several planting seasons, and staff supports this request. Staff, in consultation with the City's Landscape Architect, recommends the following with regard to phasing of the installation and the type of plants used.

Phase One: Spring 2003 – (April-May) Plant the screening hedge along the western property line since that fronts South Van Dorn Street and is the most visible portion of the lot. The shrubs can be Hetzi Holly (a Japanese holly) or something similar, must be 18 to 24 inches tall minimum at installation, and should be located 2 ½ to 3 feet on center. The applicant is responsible for planting the screening hedge along the property line adjacent to his restaurant, and this totals approximately 150 feet. This length will require an estimated 50 to 60 shrubs to create the basis for an adequate screening hedge.

Phase Two: Fall 2003 – (October-November) Staff recommends that the tree be planted in the fall since that season is a better time to plant trees. The applicant must remove the tree stump located to the north of the restaurant building in a parking lot landscape island and replace it with a medium shade tree, preferably a Maple, that complies with the City of Alexandria's Landscape Guidelines. The guidelines provide a list of medium shade trees and provide minimum size requirements, specifically 2 to 2.5 inches in caliper and 12 to 14 feet in height.

Phase Three: Spring 2004 – (April-May) The applicant must plant the screen hedge at the southern property line. The shrubs can be Yew or something similar, must be 18 to 24 inches tall minimum at installation, and should be placed 2 ½ to 3 feet on center. The applicant is responsible for planting the screening hedge along the property line adjacent to his restaurant, and this totals approximately 140 feet. This length will require an estimated 40 to 50 shrubs to create the basis for an adequate screening hedge.

Staff also recommends that Conditions #9 through #11 be deleted because these conditions were previously met and no longer hold any requirements for the applicant. Additionally, staff recommends that the special use permit be reviewed in June 2004 to allow for review of all phases of the required landscaping. Staff also recommends that conditions regarding training employees to understand the special use permit and requiring employees to use off-street parking be added. With these recommendations and the existing conditions, staff recommends approval of the special use permit.

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

CITY DEPARTMENT COMMENTS

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

Transportation & Environmental Services:

The following conditions should be removed as recommendations on the Special Use Permit as they relate to a Site Plan #84-038 and the applicant is in compliance:

1. The applicant shall pick up the drainage from the existing large gravel lot before it comes down the proposed slope. (T&ES)
2. The applicant shall show his right to remove the existing gravel driveway that encroaches on this site. (T&ES)
3. The applicant shall provide a guardrail on top of the eastern, southern and western retaining walls. (T&ES)

The following existing conditions remain:

- C-1 The applicant shall comply with the City of Alexandria's Noise Control Code, Title 11, Chapter 5, which sets the maximum permissible noise level as measured at the property line.
- R-1 Kitchen equipment shall not be cleaned outside, nor shall any cooking residue be washed into the streets, alleys or storm sewers. (T&ES)
- R-2 The applicant shall control cooking odors and smoke 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)
- R-3 Loudspeakers shall be prohibited from the exterior of the building, and no amplified sounds shall be audible at the property line. (T&ES)

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 revised egress plan showing fixture location, aisles and exit doors shall be submitted for review with the permit application. This condition is required due to the increase and scope of public assembly use regardless of the current fire prevention permit status.
- C-3 Alterations to the existing structure and/or installation 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.

Health Department:

- F-1 No objections.

Police Department:

- F-1 Concur



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

TICKET NO. **2760**

NOTICE OF VIOLATION
YOU ARE CHARGED WITH VIOLATING THE ALEXANDRIA, VIRGINIA ZONING ORDINANCE

11-27-02 Wed. 12:05
Date ticket served Day of Week Time AM/PM

Location of Violation: 410 S. Van Dorn St.

Ord. Section: 11-500

Description of Violation: Conditions # 5 (boxes stored outside), #8 (litter in the parking lot), #18 (needs to do security survey), #19 (dead landscaping), #23 (dead or insufficient landscaping)

Penalty \$: No Fee - Warning Only

1st 2nd
 3rd/MORE Warning only

IF THE VIOLATION IS NOT CORRECTED BY 10 DAYS AN ADDITIONAL MONETARY PENALTY WILL BE ASSESSED.

Mary Hashemi
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.

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

NOTICE SERVED ON:
Gomez Rigo
NAME: LAST FIRST MIDDLE

PROPERTY OWNER
 COMPANY

NAME

OTHER Co-owner Restaurant
POSITION

410 S. Van Dorn
ADDRESS

Alexandria, VA
CITY/TOWN STATE ZIP

[Signature]
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

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 _____



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**

12/19/02 Thursday 2:18
Date ticket served Day of Week Time AM/PM

Location of Violation: 410 S. Van Dorn St.

Ord. Section: 11-500

Description of Violation: Conditions #19
and #23 (landscaping)

Penalty \$: 50.00

1st 2nd
 3rd/MORE

**IF THE VIOLATION IS NOT CORRECTED BY
10 DAYS AN ADDITIONAL MONETARY
PENALTY WILL BE ASSESSED.**

Mary W. Hashemi
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.

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

NOTICE SERVED ON:

Gomez Rigo
NAME: LAST FIRST MIDDLE

PROPERTY OWNER
 COMPANY

NAME

POSITION

OTHER

ADDRESS

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

TICKET NO. **2763**

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.

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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 _____

APPLICATION for SPECIAL USE PERMIT # 2002-0121

[must use black ink or type]

PROPERTY LOCATION: 410 S VANDORN ST.

TAX MAP REFERENCE: 057.00-04-02 ZONE: CG

APPLICANT Name: EL Paso of Landmark

Address: _____

PROPERTY OWNER Name: _____

Address: _____

PROPOSED USE: Consideration of review of a special use permit review 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.

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: 2-4-03 Recommended Approval: UC

ACTION - CITY COUNCIL: 2/22/03PH--CC approved the Planning Commission recommendation.