

EXHIBIT NO. 1

16
9-13-03

Docket Item #28
SPECIAL USE PERMIT #2003-0053

Planning Commission Meeting
June 3, 2003

ISSUE: Consideration of the revocation of a special use permit to operate a restaurant.

APPLICANT: Department of Planning and Zoning

LOCATION: 4111 Duke Street
Dancing Peppers Restaurant

ZONE: CC/Commercial Community

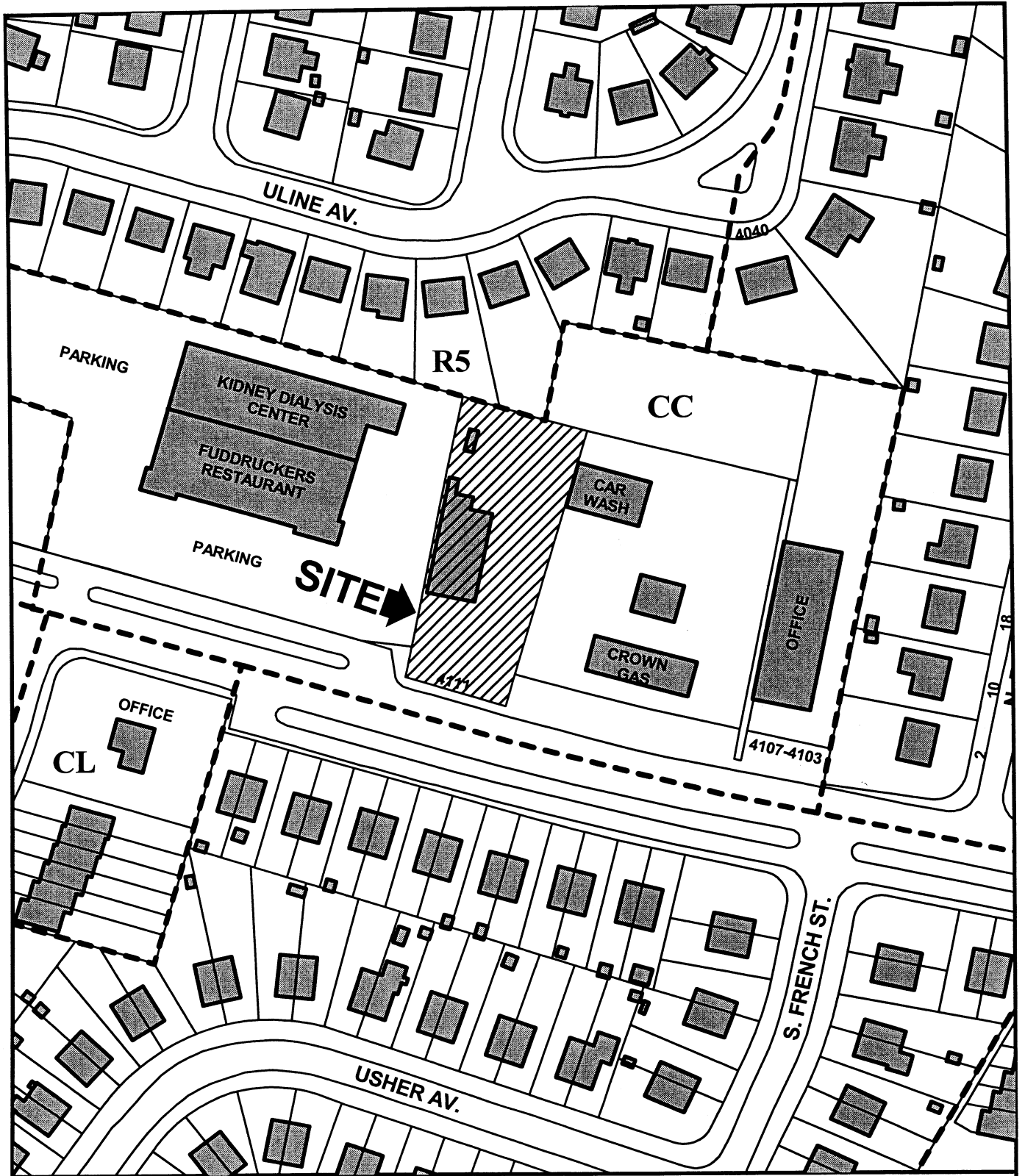
CITY COUNCIL ACTION, JUNE 14, 2003: City Council deferred this item until September

PLANNING COMMISSION ACTION, JUNE 3, 2003: On a motion by Mr. Komoroske, seconded by Mr. Leibach, the Commission voted to recommend **revocation** of the special use permit.

Reason: The Planning Commission expressed its frustration with the applicant in strong terms, including characterizing the applicant as the worst offender of a special use permit the Commission has witnessed. Staff told the Commission that, in the last week prior to the hearing, the applicant had cleaned up its landscape beds which looked considerably better, but still had not completed its landscaping work and had not screened the dumpster.

Speakers:

There were no speakers. The applicant was not present.



SUP #2003-0053

06/03/03



STAFF RECOMMENDATION:

Staff recommends **revocation** of the special use permit. If City Council approves the permit, then staff recommends that the approval be 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. **CONDITION AMENDED BY STAFF:** No equipment including kitchen equipment shall ~~not~~ be cleaned outside, nor shall any cooking residue or other waste be washed onto the streets, alleys or into storm sewers. (T&ES) (SUP #2000-0074)
14. 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 and Environmental Services. (T&ES)
15. **CONDITION AMENDED BY STAFF:** All 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 #2000-0074)~~ (T&ES)
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. The applicant shall install and maintain in good condition screening around the storage trailer, any outbuildings, and the dumpster, and that there be installed a gate and fence around the dumpster, to the satisfaction of the Director of Planning and Zoning. (P&Z) (City Council)
18. The applicant shall maintain the parking lot pavement in good condition. (P&Z) (SUP #2000-0074)
19. The applicant shall construct landscaping beds, narrow the driveway entrance and install landscaping, all consistent with the landscaping plan dated July 31, 2002 as refined by letter of August 30, 2002. The landscaping in at least the front portion of the beds shall be installed prior to November 1, 2002 and shall be maintained in perpetuity thereafter. (P&Z) (City Council)
20. Condition deleted. (SUP 2002-0026)
21. **CONDITION AMENDED BY STAFF.** The Director shall review the permit in one year and docket it 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. In addition, if the work required by these conditions has not been completed within the next ~~six months~~ thirty days, the City Attorney's Office is directed to institute legal proceedings to require compliance with all provisions of the permit or to require the termination of the use. ~~s to then this permit shall be docketed so that its revocation can be considered by the Commission and Council.~~ (P&Z)

22. Condition deleted. (SUP #2000-0074 - City Council)
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)

DISCUSSION:

1. The applicant, Grupo Dos Chiles LLC, by Alfred W. Shriver III, is before the Planning Commission for review of a special use permit for a restaurant located at 4111 Duke Street. Staff is recommending that the permit be revoked for failure to comply with its conditions.
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. A Crown gas station is located to the east of the restaurant, and Fuddrucker's restaurant abuts the property to the west. Immediately behind the restaurant are residential properties, and there are residential properties across Duke Street to the south.
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 then more recently as Mango Mike's. Prior to Dancing Peppers, the only special use permit granted for the restaurant was Special Use Permit #1774, approved by City Council on May 18, 1985, at the time of the expansion of the restaurant to include outdoor seating.
4. The Dancing Peppers special use permit was originally approved on June 17, 2000, (SUP #2000-0074) when the ownership of the restaurant was changed to the current business, Grupo Dos Chiles LLC, by Tripp Shriver. Dancing Peppers 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. Since its approval in June 2000, there have been notable problems achieving compliance with outstanding site work required by City Council in its initial approval.
 - Two years ago, on the first one year review of the case, the applicant had failed to comply with conditions regarding landscaping, screening its dumpster and lowering its sign, and had outstanding building and fire code violations. After a series of hearings at Planning Commission and Council, and after several meetings between the applicant and staff, Council approved the continuation of the restaurant (SUP #2001-0061) on December 15, 2001, but gave the restaurant until May 4, 2002 to comply.
 - When the required work was not performed by the applicant by May 2002, staff brought the case forward for revocation citing three remaining violations (the sign had not been lowered, the dumpster was not completely screened, and no landscaping had been installed) and a chronology of zoning and code enforcement problems. At its hearing on June 4, 2002, the Commission deferred the revocation case after the

applicant represented that it would lower the sign, fully enclose the dumpster and work with staff on an acceptable landscape plan.

- When the Planning Commission met on July 2, 2002, the applicant had lowered the sign in front of the restaurant. It had not enclosed the dumpster and had not installed the landscaping as required.
 - Staff, with Commissioner Larry Robinson, and the city's landscape architect consultant worked with the applicant through the summer of 2002 to find an acceptable compromise plan. After several iterations which were agreed to by the applicant and then not installed (see plans of June 6, July 31, and amendment dated August 30, 2002), and after Planning Commission hearings on the issue on June 4, and July 2, the applicant finally agreed to install the reduced, compromise landscaping plan.
 - When the Planning Commission met on October 1, 2002, the applicant had installed some individual plantings as required by the landscape plan; however the bulk of the work, specifically the extension of the landscaped beds into the drive area, and the planting of material in the rear portions of the beds had not been completed. The applicant stated that the entire scope of the landscape work would be done as he agreed to do. The applicant specifically represented that the increased landscaping area in the front, to be created by removing asphalt, as required by the agreed to landscape plan, would be completed by November 1, 2002. Despite his objection, the Commission required that the dumpster be fully enclosed.
 - At its hearing of October 19, 2002, City Council agreed with the Planning Commission, and approved the SUP with conditions requiring that
 - a.. The agreed to landscaping plan be fully installed, with at least the front portion of the landscaping (which required removal of asphalt) completed by November 1, 2002 (Condition #19);
 - b. The dumpster be fully enclosed with a fence and gate(Condition #17);
 - c. If the work required by the SUP is not completed within six months, the case be docketed so that revocation can be considered by the Commission and Council (Condition #21).
 - The work required by the SUP has not been completed.
6. The work to create the landscaped beds - both the front and rear portions - has not been completed. The plants that had been installed in the front beds last June, prior to Council's

action, have not been maintained. Weeds fully cover the existing planting. The extension of the front beds into the drive area, to then be framed by a timber wall and photinia plants, with additional planting in front of them, has yet to be done. The rear beds, which the applicant had argued so successfully were to be tailored to the restaurant's southwestern theme, to include cacti, mariachi figures, a wagon, etc, have not been created as proposed. See attached photos, memorandum and sketch from Aimee Vosper, City Landscape Architect, Department of Recreation, Parks and Cultural Activities, regarding existing conditions.

7. In addition, the dumpster has not been screened. See attached photos.
8. Staff has also received complaints from neighboring residents regarding loud noise and yelling at the restaurant on May 22, 2003, which it is investigating.

STAFF ANALYSIS:

Because the applicant has not complied with the requirements of his SUP, and has had three years to do so, staff recommends that the permit be revoked. The landscape plan that was finally agreed to with the applicant, staff, Commissioner Robinson, and a landscape architect hired by the City for the purpose, is a much reduced version of the original plan that staff proposed for the site. The compromise plan was reached, in part, because of the applicant's assertion that staff had unilaterally imposed its own more elaborate design without consulting the applicant, after the city's consultant worked out the details of the plan with the applicant, including several elements at his specific request, and after the applicant expressly agreed to implement the plan quickly. None of the applicant's representations proved reliable. The result is that the front of the Dancing Peppers restaurant looks worse than before the applicant undertook any landscaping effort. The front beds, with overgrown weeds, have not been maintained. Parts of the front of the site look like a construction site. The rear beds are empty, unattractive spaces, also with weeds.

Despite zoning citations, staff assistance, and extensive efforts to work with the applicant – with his needs and his schedule – the permit requirements have been ignored. In fact, no work has been done since the applicant was last before the Commission and Council. Nevertheless, the applicant continues to enjoy the benefits of his permit. For these reasons, staff recommends revocation. If the Commission and Council believe that the applicant should be given more time to perform the required work, then staff has redrafted the review condition (#21), allowing him an additional 30 days, but directing the City Attorney to bring an injunction action if the applicant has not met the requirements of the permit within that deadline.

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

CITY DEPARTMENT COMMENTS

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

Transportation & Environmental Services:

- R-1 No equipment including kitchen equipment shall not be cleaned outside, nor shall any cooking residue or any other waste be washed onto the streets, sidewalks, alleys, or into storm sewers.
- R-2 The applicant shall control 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 and Environmental Services.
- R-3 All loudspeakers shall be prohibited from the exterior of the building and no amplified noise will be audible at the property line.
- C-1 The applicant shall comply with the City of Alexandria's Noise Control Code, Title 11, Chapter 5, which sets the maximum permissible noise level as measured at the property line.

Code Enforcement:

- F-1 The applicant has been issued a permit to upgrade their hood fire suppression system to a UL300 system. The permit was issued on 4/25/03. No inspections requested at the time of this review.
- F-2 A Fire Prevention Permit inspection was conducted on 4/25/03. The following violations were cited:
 - Extinguishing system in the kitchen is outdated over 6 months
 - Sprinkler system test and inspection is due
 - Storage in electrical closet and on the hot water heater and sprinkler pipe
 - Fire extinguishers are outdated.

A follow up inspection is scheduled in 30 days. See FPP2003-00457 for results. (As of a May 13, 2003, inspection, the facility was in compliance.)

Health Department:

F-1 No objections to continued use.

Police Department:

F-1 No objections.

APPLICATION for SPECIAL USE PERMIT # 2003-0053 26

[must use black ink or type]

PROPERTY LOCATION: 4111 Duke St.

TAX MAP REFERENCE: D60-01-01-01 ZONE: CC

APPLICANT Name: Grupo Dos Chiles LLC

Address: Alfred W. Shriver 1005 Bronoco St.

PROPERTY OWNER Name: _____

Address: _____

PROPOSED USE: Review

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: RECOMMEND REVOCATION 7 TO 0

ACTION - CITY COUNCIL: 6/14/03PH--CC deferred this item until September.

City of Alexandria, Virginia

MEMORANDUM

DATE: MAY 16, 2003

TO: BARBARA ROSS, Deputy Director, *B Ross*
Department of Planning and Zoning

FROM: AIMEE VOSPER, Landscape Architect Supervisor, *W*
Department of Recreation, Parks and Cultural Activities

SUBJECT: DANCING PEPPERS LANDSCAPING

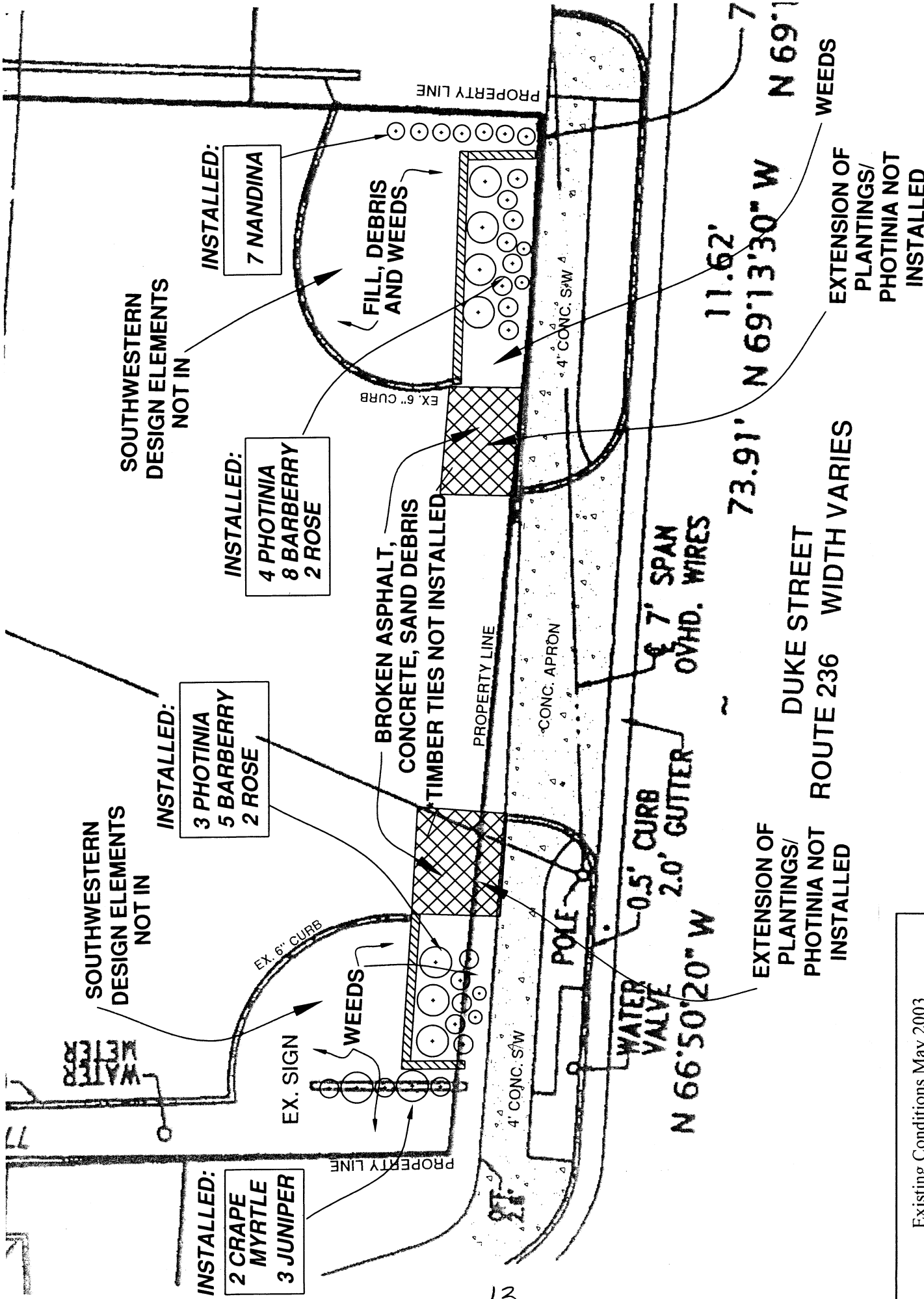
After review of the site and planning documents, I offer the following comments:

- These elements of the approved landscaping scheme are not complete:
 1. The “southwestern” design elements, which includes features, plants and bed preparation on both sides of the drive into the parking lot.
 2. The asphalt removal and planting bed preparation for the areas being transferred from asphalt to planting, on both sides of the drive aisle.
 3. The timber tie retaining wall extensions, on both sides of the drive aisle.
 4. Extension of evergreen hedge in the lower front beds.

- Maintenance of the landscape scheme is lacking:
 1. Weeds within all beds and/or proposed beds, exist over the height of the planted landscape material.

According to the planning documents, condition #19 reads, “the landscaping in at least the front portion of the beds shall be installed prior to November 1, 2002 and shall be maintained in perpetuity thereafter.” The installation of the plant material is not complete in the front beds, based on the discussion item #8 and refinement of the July 31st plan (and agreement of August 31). The refinement included an extension of both the timber wall and the photina hedge. On three separate site visits by the Department of Recreation, Parks and Cultural Activities Landscape Architect and Assistant LA, it was determined that the Landscaping Plan agreed upon by all parties is not complete and maintenance of the landscaping beds appears to be nonexistent.

cc: Sandra Whitmore, Director, RP&CA
Kirk Kincannon, Deputy Director, RP&CA



SOUTHWESTERN
DESIGN ELEMENTS
NOT IN

INSTALLED:
3 PHOTINIA
5 BARBERRY
2 ROSE

INSTALLED:
2 CRAPE
MYRTLE
3 JUNIPER

INSTALLED:
4 PHOTINIA
8 BARBERRY
2 ROSE

INSTALLED:
7 NANDINA

BROKEN ASPHALT,
CONCRETE, SAND DEBRIS
TIMBER TIES NOT INSTALLED

FILL, DEBRIS
AND WEEDS

EXTENSION OF
PLANTINGS/
PHOTINIA NOT
INSTALLED

DUKE STREET
ROUTE 236 WIDTH VARIES

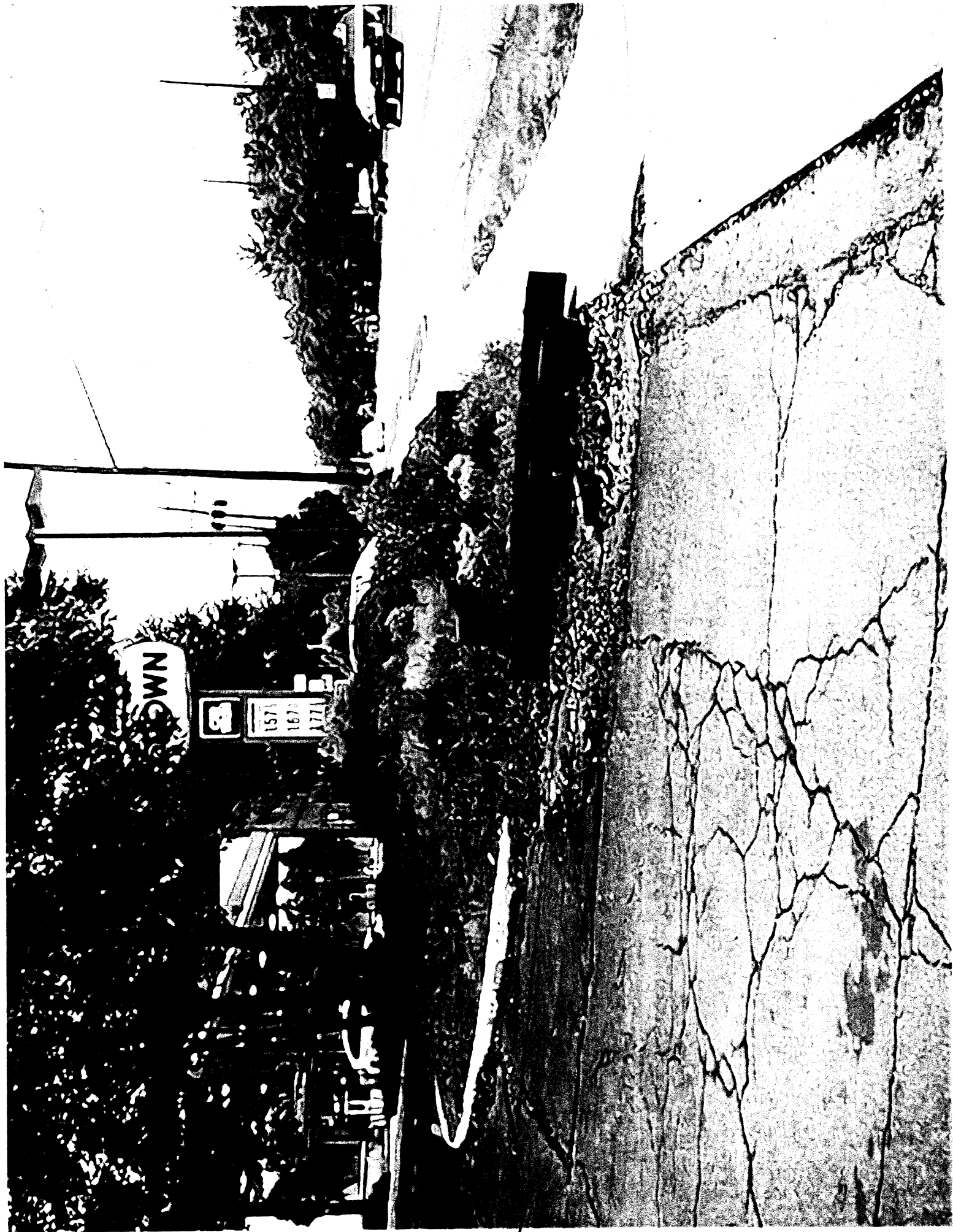
EXTENSION OF
PLANTINGS/
PHOTINIA NOT
INSTALLED

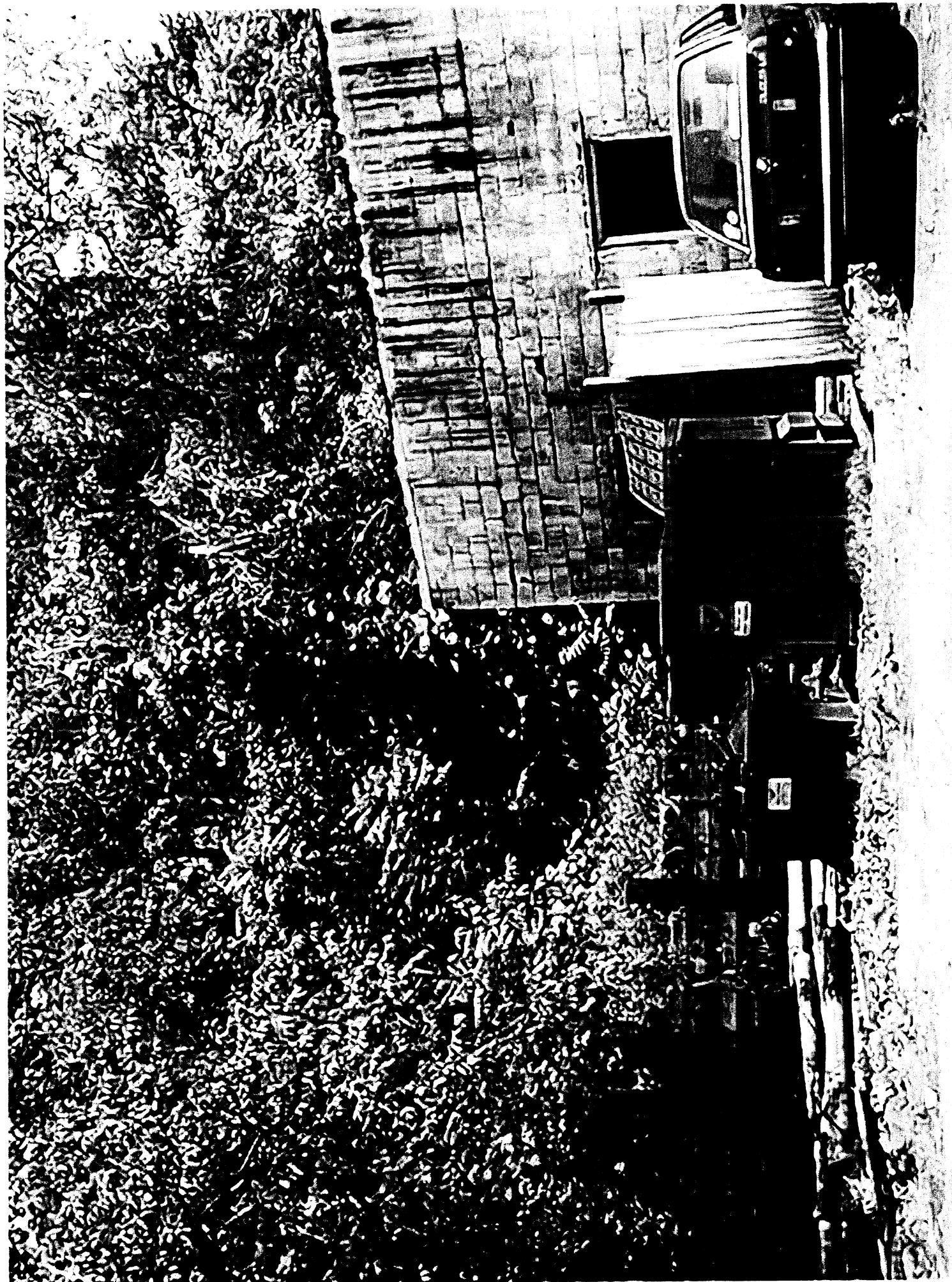
Existing Conditions May 2003
Aimee Vosper, City Landscape Architect
Dept. Recreation, Parks & Cultural Activities

DANCING PEPPERS RESTAURANT
4111 DUKE STREET

DAVID'S PEPPERS
CANTINA
THE BEST MEXICAN RESTAURANT

14





LAND, CLARK, CARROLL, MENDELSON & BLAIR, P.C.

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June 17, 2003

Ms. Barbara Ross
Deputy Director
Department of Planning & Zoning
City of Alexandria
301 King Street, City Hall
Alexandria, Virginia 22314

**In Re: SUP 2003-0053 4111 Duke Street, Alexandria, VA
Dancing Peppers**

Dear Barbara:

On Tuesday June 17, 2003 I received a check in the amount of \$500.00 from Grupo Dos Chiles, LLC to be held in our firms trust account pursuant to the City Council's motion on Saturday June 14, 2003 deferring action on the application to revoke the above referenced SUP.

These funds will be held in our trust account until released upon completion of certification by the City that the screen for the dumpster enclosure has been completed and the planting of the front beds has been completed.

If you have any questions, please do not hesitate to call.

Very truly yours,



Duncan W. Blair

cc: Albert W. Shriver

City of Alexandria, Virginia

16
9-13-03

MEMORANDUM

DATE: SEPTEMBER 9, 2003

TO: THE HONORABLE MAYOR AND MEMBERS OF CITY COUNCIL

THROUGH: PHIL SUNDERLAND, CITY MANAGER

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

SUBJECT: DANCING PEPPERS RESTAURANT
SUP #2003-0053

The Dancing Peppers restaurant was before the Planning Commission and City Council in June for review of its special use permit. At that time, both staff and the Planning Commission recommended revocation of the permit, based on the applicant's continued lack of compliance with the conditions of its special use permit which had been imposed in 2000. Specifically, the required landscaping had not been fully installed, and the dumpster had not been fully screened. Council deferred the matter in order to give the applicant a final opportunity to comply.

Over the summer, the applicant has added landscaping to the work that had been previously begun, but more importantly, has finished the planting beds in a way that makes them attractive, at least in this summer season. The dumpster screening has been installed as well, although it appears to be in need of maintenance.

Given the work that has been done over the summer, staff recommends that Council approve the continuation of the permit, with a review to occur one year from now to ensure continued compliance. If Council agrees, then Condition #21 should read:

21. The Director shall review the permit in one year and docket it 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.