



City of Alexandria, Virginia

MEMORANDUM

DATE: JANUARY 13, 2005

TO: THE HONORABLE MAYOR AND MEMBERS OF CITY COUNCIL

THROUGH: JAMES K. HARTMANN, CITY MANAGER 

FROM: EILEEN FOGARTY, DIRECTOR, PLANNING AND ZONING 

SUBJECT: LAS TAPAS RESTAURANT, 710 KING STREET, SUP 2004-0106

The Planning Commission voted unanimously to recommend denial of this request. The request is to allow the Las Tapas Restaurant to extend its closing hour from 1:00 a.m. to 1:30 a.m. on Friday and Saturday.

The Planning Commission was concerned that by extending the hours at this restaurant, other restaurants along King Street and vicinity would be requesting similar extensions, which could result in potential disruption to surrounding residential areas.

The vast majority of restaurants in the King Street corridor have closing times at 1 am or earlier. There are very few restaurants that are allowed to stay open until 2 a.m. under grandfathering provisions, and not all do so. In the same block (700 block King) as Las Tapas, no restaurants are permitted to be open past 1 a.m. In the neighboring 800 block of King Street there are two restaurants (Café Salsa at 808 King Street and Asian Bistro at 809 King Street) that are grandfathered to stay open until 2 a.m. and neither are currently operating that late.

More recently, City Council has approved restaurants on King Street limiting the closing hour to 1:00 a.m. daily, including O'Connell's Irish Restaurant at 112 King Street, and the Fish Market at 105-109 King Street. The Old Town Theater was approved with a 2:00 a.m. closing hour daily to provide some flexibility in movie times, however, the theater cannot serve alcohol past 1:00 a.m.

The applicant's request for later hours, including later alcohol service, is inconsistent with all recent approvals for closing hours on King Street, and would establish a precedent for future special use permits for later hours. In addition, City Council denied the same request for later hours at Las Tapas three years ago.

The Planning Commission and staff do not recommend that the closing hours of this restaurant be extended.

Docket Item #6
SPECIAL USE PERMIT #2004-0106

Planning Commission Meeting
January 6, 2005

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

APPLICANT: 710 King Street, LLC
by Robert Test

LOCATION: 710 King Street
Las Tapas Restaurant

ZONE: CD/Commercial Downtown

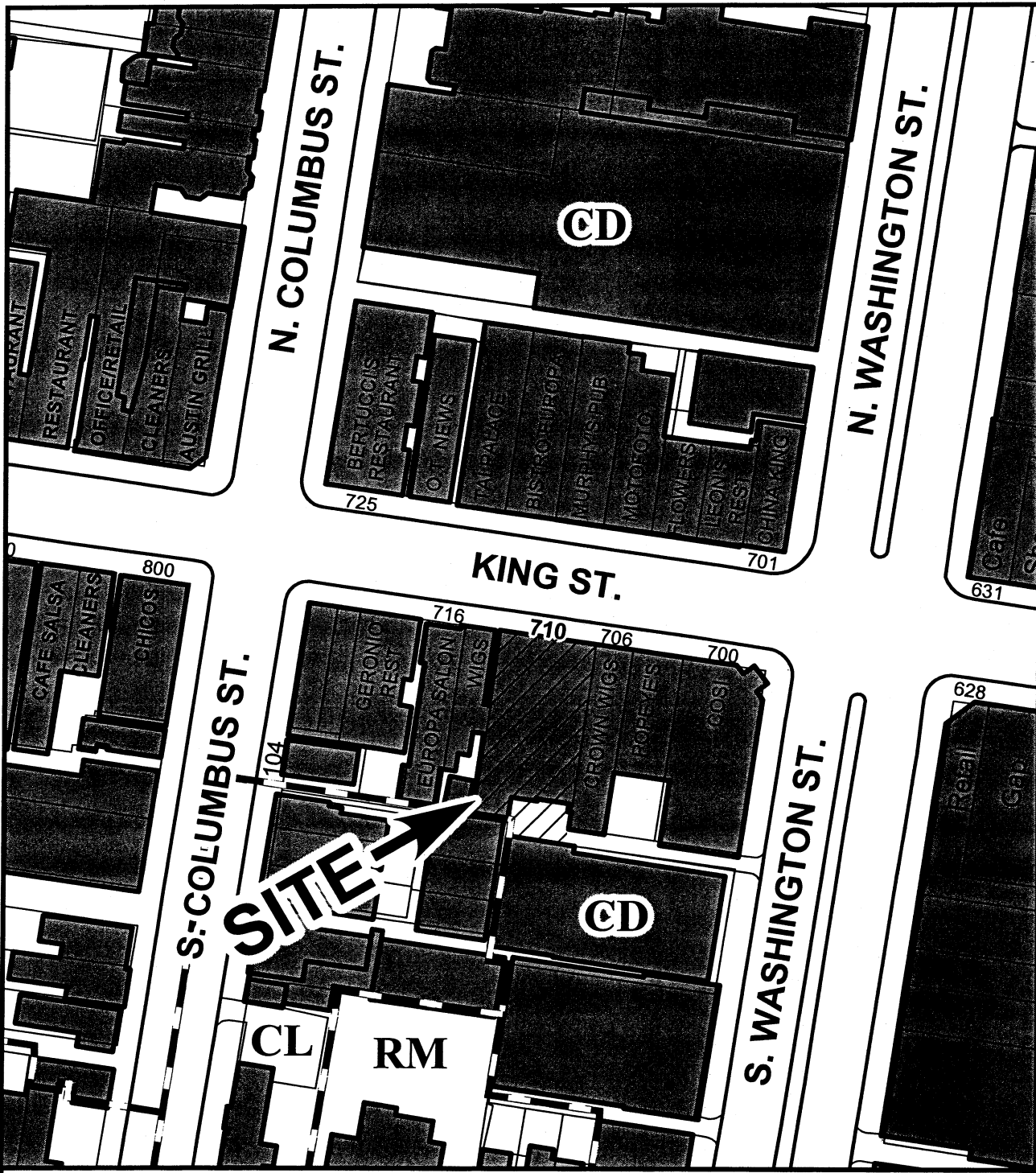
PLANNING COMMISSION ACTION, JANUARY 6, 2005: On a motion by Mr. Dunn, seconded by Mr. Leibach, the Planning Commission voted to recommend denial of the request. The motion carried on a vote of 7 to 0.

Reason: The Planning Commission agreed with the staff analysis.

Speakers:

Robert J. Test, applicant's attorney, spoke in support of the application, stating that the owner is trying to be competitive with other area businesses that are open during late hours.

STAFF RECOMMENDATION: Staff recommends **denial** of this application. If Council approves the request, staff recommends approval subject to compliance with all applicable codes and ordinances and the Permit Conditions found in Section III of this report.



SUP #2004-0106

01/06/05



I. DISCUSSION

REQUEST

The applicant, 710 King St. LLC, by Robert Test, attorney, requests special use permit approval to amend the hours of operation for an existing restaurant located at 710-714 King Street.

SITE DESCRIPTION

The subject property is one lot of record with an area of 6,397 square feet, approximately 53 feet of frontage along King Street, and a depth of approximately 105 feet. It is located in the heart of Downtown Alexandria and surrounded by commercial and restaurant uses.

CURRENT RESTAURANT CHARACTERISTICS

The applicant is operating as Las Tapas restaurant with 205 seats and a bar area. The restaurant has a full on-premise alcohol license and provides occasional live entertainment in the form of small musical and dance ensembles. The approved hours of operation are 11:00 a.m. to 11:00 p.m. Sunday through Thursday, and 11:00 a.m. to 1:00 a.m. on Friday and Saturday.

PROPOSED AMENDMENT

The applicant proposes to extend the closing hour from 1:00 a.m. to 1:30 a.m. Fridays and Saturdays, with all patrons leaving by 2:00 a.m. The applicant states that the expansion is primarily proposed to accommodate the weekend demand for orders after 1:00 a.m.

No change is requested to the Sunday through Thursday hours of operation and no other changes are proposed to the operation of the restaurant.

Staff visited the subject property to determine if the business was in compliance with the conditions of its special use permit, and found that the applicant was not offering parking validation as required by Conditions #13, #14, and #15. The manager stated that it only recently ceased validating parking. Following the inspection, the applicant pursued an arrangement with the Alfred Street garage as required. The applicant is in the process of obtaining a written agreement from the garage to provide to staff as required.

SUP HISTORY

A restaurant has operated in this location since 1982 when City Council granted Special Use Permit #1498 to Kai Dong. Since that approval, the ownership of the restaurant has changed hands. In May 2001, City Council granted SUP #2001-0028, which changed the ownership and combined the special use permits for this restaurant and the next door 'La Costa Del Sol' restaurant into a single permit. In October 2001 (SUP #2001-0088), City Council approved an amendment to allow live entertainment until the closing hour rather than 11:00 p.m., but denied the applicant's request to extend the hours of operation to 1:00 a.m. Monday through Thursday and to 1:30 a.m. on Fridays and Saturdays.

PARKING

The restaurant's location within the Central Business District of Historic Alexandria technically exempts the applicant from the requirement to provide off-street parking. However, in accordance with condition #13, which was added to the restaurant SUP in 1997, the applicant is required to provide subsidized parking for all patrons during evenings and weekends in a nearby public parking garage.

ZONING / MASTER PLAN

The subject property is located in the CD/Commercial Downtown zone. Section 4-503(W) of the Zoning Ordinance allows a restaurant in the CD zone only with a special use permit. The restaurant use is consistent with the Old Town Small Area Plan chapter of the Master Plan which designates the property for commercial downtown use.

II. STAFF ANALYSIS

Staff is concerned about the applicant's request for later hours of operation for the existing restaurant located at 710 King Street. Although in recent years many problems have subsided, there have historically been problems with late night drinking and noise spilling over into the adjacent residential areas that were attributed to the restaurants in the lower King Street area. The City has spent considerable resources, in the form of police and inspectors, to control the problem. While Old Town residents have not recently experienced the late night impacts of 15 and 20 years ago, those problems were very significant at the time. Staff remains mindful of the important balance to be struck in a mixed use community such as Old Town between the economic health of the business community and the need for quiet enjoyment of residential areas. For this reason, there has more recently been a consistent approach to the closing hours for restaurants with SUPs along King Street, which is no later than 1:00 a.m.

The closing hours of the other restaurants on the 700 and 800 blocks of King Street vary. There are some grandfathered restaurants, such as Bistro Europa and Murphy's, that close at 1:00 a.m. daily. For other restaurants that operate pursuant to SUPs, such as China King, Taj Palace, Geranio's, Bertucci's, Cajun Bangkok, and Leon's, their closing hours range from 10:30 p.m. to 1:00 a.m. depending on the day of the week. Of those restaurants, however, none is permitted to operate past 1:00 a.m. In these blocks, only Café Salsa at 808 King Street and Asian Bistro at 809 King Street are permitted to stay open until 2:00 a.m. on Fridays and Saturdays under old special use permits, and neither are currently operating that late.

More recently, City Council has approved restaurants on King Street limiting the closing hour to 1:00 a.m. daily, including O'Connell's Irish Restaurant at 112 King Street, and the Fish Market at 105-109 King Street.

One recent exception to the 1:00 a.m. closing hour is the Old Town Theater, which was approved with a 2:00 a.m. closing hour daily. These hours were recommended for a number of reasons. The economic health of King Street is one of the City's principal concerns, and the Old Town Theater contributes to the City's economic health. There is also a concern about the lack of evening activity on King Street as a business generator. The late hour allows the theater to provide two shows in an evening. However, the applicant agreed to stop serving alcohol at 1:00 a.m., which is consistent with the current hours that alcohol sales are provided at the subject restaurant, and to not begin shows after 11:30 p.m. during the week and after 12:00 midnight on weekends and holidays. Those limitations help limit the potential for loud patrons leaving the theater at 2:00 a.m.

The applicant's request for later hours to accommodate later service, including alcohol service, is inconsistent with all recent approvals for closing hours on King Street, and would establish a precedent for future special use permits for later hours. In addition, City Council denied the same request for later hours at Las Tapas three years ago. Therefore, staff recommends denial of the request for extended hours.

If City Council approves the request, staff recommends approval subject to compliance with all applicable codes and ordinances and the following conditions.

III. RECOMMENDED CONDITIONS

Staff recommends **denial** of the request but approval of the continued operation of the restaurant. If Council approves the request, staff recommends approval subject to compliance with all applicable codes and ordinances and the following conditions:

1. The special use permit shall be issued to the applicant only or to any corporation or entity in which the applicant has a controlling interest. (P&Z)(SUP 1498)
2. **CONDITION AMENDED:** The hours of operation shall be limited to 11:00 a.m. to 11:00 p.m. Sunday through Thursday, and 11:00 a.m. to ~~1:00 a.m.~~ 1:30 a.m. on Friday and Saturday. (P&Z)(PC)(SUP #97-0005)
3. Trash and garbage shall be placed in sealed containers which do not allow odors to escape and shall be stored inside or in a closed container which does not allow invasion by animals. No trash and debris shall be allowed to accumulate on-site outside of those containers. (P&Z) (SUP #97-0005)
4. Seating shall be provided for no more than 205 patrons. Seating in the bar area on the ground floor of the restaurant space at 714 King Street shall be limited to a total of 44 seats, of which at least 30 seats shall be located at tables and not more than 10 stools shall be located at the bar. (P&Z) (SUP#2001-0088)

5. Live entertainment may be provided at the restaurant as follows:
 - (A) (1) Flamenco dancing and demonstration with acoustic guitar players and a maximum of two professional dancers may occur on an occasional basis;
(2) [condition deleted] (City Council)
(3) a single acoustic guitar player may be present in each restaurant daily.
 - (B) All dancing and amplified music must cease at closing. (City Council)
 - (C) 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 #2001-0028)
6. The applicant shall post the hours of operation at the entrance to the restaurant. (P&Z)(SUP #97-0005)
7. The applicant may serve mixed drinks, beer and wine for on-premise consumption only. (P&Z)(SUP #97-0005)
8. Service in the bar area shall be limited to 10 people seated on bar stools. (P&Z) (SUP #97-0005)
9. No food, beverages, or other material shall be stored outside. (P&Z)(SUP #97-0005)
10. Litter on the site and on public rights-of-way and spaces adjacent to or within 75 feet of the premises shall be picked up at least twice a day and at the close of business, and more often if necessary, to prevent an unsightly or unsanitary accumulation, on each day that the business is open to the public. (P&Z) (SUP #97-0005)
11. Kitchen equipment shall not be cleaned outside, nor shall any cooking residue be washed into the streets, alleys or storm sewers. (T&ES) (SUP #97-0005)
12. The applicant shall require that its employees who drive to work use off-street parking. (CC) (SUP 99-0094)

13. The applicant shall (a) provide subsidized parking for all patrons under the Park Alexandria program during evenings and weekends in a public parking garage, (b) advertise such parking by posting notice at its restaurant and including such notice in any advertising, and (c) urge patrons who drive to use the space. (P&Z) (SUP #97-0005)
14. The applicant shall post signs directing patrons to the availability of discounted validated parking at the Church Square garage located at the 100 block of North Alfred Street. City Council hereby authorizes an agreement with the garage to allow restaurant parking in the garage consistent with this approval. (P&Z) (SUP #98-0055)
15. On each anniversary of the approval of the special use permit, the applicant shall provide to the Director of Planning and Zoning a copy of the lease or other arrangement by which the applicant makes off-street parking available for customers and employees. (P&Z) (SUP #98-0055)
16. The applicant shall employ the best cost-effective technology available to control odors at the time this permit takes effect, to the satisfaction of the Director of Health. (P&Z) (SUP #97-0005)
17. **CONDITION AMENDED BY STAFF:** The new applicant shall contact the Crime Prevention Unit of the Alexandria Police Department at 703-838-4520 for a security survey for the business and a robbery awareness program for employees. (P&Z) (SUP #2001-0028)
18. **CONDITION AMENDED BY STAFF:** The Director of Planning and Zoning shall review the special use permit one year after Council 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, which were not corrected immediately, constitute repeat violations or which create a direct and immediate adverse zoning impact on the surrounding community; (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) (City Council) (SUP#2001-0088)~~ (P&Z)
19. No music or noise shall be audible at the property line, the two restaurants together construed as occupying one lot. (P&Z) (SUP #98-0055)

20. **CONDITION AMENDED 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 2:00 a.m. ~~one hour after the closing hour.~~ (P&Z) (SUP#2001-0088) (P&Z)
21. **CONDITION ADDED BY STAFF:** The applicant shall encourage its employees to use mass transit or to carpool when traveling to and from work, by posting information regarding DASH and METRO routes, the location where fare passes for transit are sold, and advertising of carpooling opportunities. (P&Z)
22. **CONDITION ADDED BY STAFF:** The applicant shall conduct employee training sessions on an ongoing basis, including as part of any employee orientation, to discuss all SUP provisions and requirements, and to provide instruction preventing underage sales of alcohol. (P&Z)

STAFF: Eileen Fogarty, Director, Department of Planning and Zoning;
Richard Josephson, Deputy Director;
Bettina Irsps, Urban Planner.

Staff Note: In accordance with section 11-506(c) of the zoning ordinance, construction or operation shall be commenced and diligently and substantially pursued within 18 months of the date of granting of a special use permit by City Council or the special use permit shall become void.

IV. CITY DEPARTMENT COMMENTS

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

Transportation & Environmental Services:

F-1 No objections to the proposed changes to the existing operation.

Code Enforcement:

F-1 No comments.

Health Department:

F-1 No comments.

Police Department:

- R-1 The applicant is to contact the Crime Prevention Unit of the Alexandria Police Department at 703-838-4520 regarding a security survey for the business.
- R-2 The applicant is to contact the Crime Prevention Unit of the Alexandria Police Department at 703-838-4520 regarding a robbery awareness program for all employees.
- R-3 Recommend "ABC On" license only. If "ABC Off" is approved we recommend the following conditions:
1. Beer or wine coolers may be sold only in 4-packs, 6-packs or bottles of more than 40 fluid ounces. Wine may be sold only in bottles of at least 750 ml or 25.4 ounces. Fortified wine (wine with an alcohol content of 14% or more by volume) may not be sold.
 2. That the SUP is reviewed after one year.

APPLICATION for SPECIAL USE PERMIT # 2004-0106
~~2001-0000~~

[] Change of Ownership or [] Minor Amendment

[must use black ink or type]

PROPERTY LOCATION: 710 King Street

TAX MAP REFERENCE: 074.02-10-07 ZONE: CD

APPLICANT Name: 710 King Street, LLC t/a Las Tapas

Address: 710 King Street, Alexandria, Virginia 22314

PROPERTY OWNER Name: Mel & Oud LLC

Address: 710 King Street, Alexandria, Virginia 22314

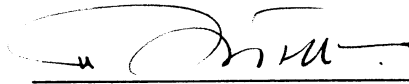
SITE USE: Restaurant

[] THE UNDERSIGNED hereby applies for a Special Use Permit for Change in Ownership, in accordance with the provisions of Article XI, Division A, Section 11-503 (5)(f) of the 1992 Zoning Ordinance of City of Alexandria, Virginia. THE UNDERSIGNED, having read and received a copy of the special use permit, hereby agrees to comply with all conditions of the current special use permit, including all other applicable City codes and ordinances.

THE UNDERSIGNED hereby applies for a Special Use Permit for Minor Amendment, in accordance with the provisions of Article XI, Division A, Section 11-509 and 11-511 of the 1992 Zoning Ordinance of City of Alexandria, Virginia.

THE UNDERSIGNED, having obtained permission from the property owner, hereby requests this special use permit. The undersigned also attests that all of the information herein required to be furnished by the applicant are true, correct and accurate to the best of their knowledge and belief.

Robert J. Test
Print Name of Applicant or Agent


Signature

918 Prince Street
Mailing/Street Address

703-837-9070
Telephone # Fax #

Alexandria, VA 22314
City and State Zip Code

August 28, 2004
Date

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

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

ADMINISTRATIVE ACTION: _____

Date

Director, Planning & Zoning

All applicants must complete this form. Supplemental forms are required for child care facilities, restaurants, automobile oriented uses and freestanding signs requiring special use permit approval.

1. The applicant is (check one) the Owner Contract Purchaser
 Lessee or Other: _____ of the subject property.

State the name, address and percent of ownership of any person or entity owning an interest in the applicant, unless the entity is a corporation or partnership in which case identify each owner of more than ten percent.

SAID QUDHURI 710 KING ST., ALEX. VA. 22314
MUSTAFA MELIANI 710 KING ST., ALEX. VA. 22314

If property owner or applicant is being represented by an authorized agent such as an attorney, realtor, or other person for which there is some form of compensation, does this agent or the business in which the agent is employed have a business license to operate in the City of Alexandria, Virginia?

- Yes. Provide proof of current City business license
 No. The agent shall obtain a business license prior to filing application, if required by the City Code.

2. Submit a floor plan and a plot plan with parking layout of the proposed use. One copy of the plan is required for plans that are 8½" x 14" or smaller. Twenty-four copies are required for larger plans or if the plans cannot be easily reproduced. The planning director may waive requirements for plan submission upon receipt of a written request which adequately justifies a waiver. This requirement does not apply if a Site Plan Package is required.

USE CHARACTERISTICS

4. The proposed special use permit request is for: (check one)

- a new use requiring a special use permit,
- a development special use permit,
- an expansion or change to an existing use without a special use permit,
- expansion or change to an existing use with a special use permit,
- other. Please describe: _____

5. Please describe the capacity of the proposed use:

A. How many patrons, clients, pupils and other such users do you expect? Specify time period (i.e., day, hour, or shift).

205 PATRONS

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

NO CHANGE

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

Day:

Hours:

SATURDAY

CLOSE AT 2:00 AM, LAST CALL 1:30

FRIDAY

CLOSE AT 2:00 A.M., LAST CALL 1:30

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

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

B. How will the noise from patrons be controlled?

NO CHANGE

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

NO CHANGE

9. Please provide information regarding trash and litter generated by the use:

A. What type of trash and garbage will be generated by the use?

NO CHANGE

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

NO CHANGE

C. How often will trash be collected?

NO CHANGE

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

NO CHANGE

10. Will any hazardous materials, as defined by the state or federal government, be handled, stored, or generated on the property?

Yes. No.

If yes, provide the name, monthly quantity, and specific disposal method below:

NO CHANGE

11. Will any organic compounds, for example paint, ink, lacquer thinner, or cleaning or degreasing solvent, be handled, stored, or generated on the property?

Yes. No.

If yes, provide the name, monthly quantity, and specific disposal method below:

NO CHANGE

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

NO CHANGE

ALCOHOL SALES

13. Will the proposed use include the sale of beer, wine, or mixed drinks?

Yes. No.

If yes, describe alcohol sales below, including if the ABC license will include on-premises and/or off-premises sales. Existing uses must describe their existing alcohol sales and/or service and identify any proposed changes in that aspect of the operation.

NO CHANGE

PARKING AND ACCESS REQUIREMENTS

14. Please provide information regarding the availability of off-street parking:

A. How many parking spaces are required for the proposed use pursuant to section 8-200 (A) of the zoning ordinance?

NO CHANGE

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

_____ Standard spaces

_____ Compact spaces

_____ Handicapped accessible spaces.

_____ Other.

C. Where is required parking located? on-site off-site (check one)

If the required parking will be located off-site, where will it be located:

NO CHANGE

Pursuant to section 8-200 (C) of the zoning ordinance, commercial and industrial uses may provide off-site parking within 500 feet of the proposed use, provided that the off-site parking is located on land zoned for commercial or industrial uses. All other uses must provide parking on-site, except that off-street parking may be provided within 300 feet of the use with a special use permit.

D. If a reduction in the required parking is requested, pursuant to section 8-100 (A) (4) or (5) of the zoning ordinance, complete the PARKING REDUCTION SUPPLEMENTAL APPLICATION.

15. Please provide information regarding loading and unloading facilities for the use:

A. How many loading spaces are required for the use, per section 8-200 (B) of the zoning ordinance? _____

B. How many loading spaces are available for the use? _____

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

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

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

16. Is street access to the subject property adequate or are any street improvements, such as a new turning lane, necessary to minimize impacts on traffic flow?

SITE CHARACTERISTICS

17. Will the proposed uses be located in an existing building? Yes No

Do you propose to construct an addition to the building? Yes No

How large will the addition be? _____ square feet.

18. What will the total area occupied by the proposed use be?

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

19. The proposed use is located in: (check one)

a stand alone building a house located in a residential zone a warehouse

a shopping center. Please provide name of the center: _____

an office building. Please provide name of the building: _____

other, please describe: _____

RESTAURANT SUPPLEMENTAL APPLICATION

SEE ATTACHED

All applicants requesting special use permit approval for restaurants shall complete the following section. Applicants requesting approval of a special use permit for a restaurant in Old Town shall complete the SUPPLEMENTAL INFORMATION FOR RESTAURANTS IN OLD TOWN section and submit the required parking management plan and litter reduction plan.

Please provide the following information:

1. How many seats are proposed?

At tables: _____ At a bar: _____ Total number proposed: _____

2. Will the restaurant offer any of the following?

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

_____ beer and wine (off-premises)

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

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

_____ table service _____ bar _____ carry-out _____ delivery

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

Will delivery drivers use their own vehicles? ___ Yes. ___ No.

6. Will the restaurant offer any entertainment (i.e. live entertainment, large screen television, video games)? ___ Yes. ___ No.

If yes, please describe: _____

SUPPLEMENTAL INFORMATION FOR RESTAURANTS IN OLD TOWN

**CRITERIA TO BE USED TO EVALUATE NEW OR EXPANDED RESTAURANTS
ADOPTED BY CITY COUNCIL BY RESOLUTION, NOVEMBER 13, 1993**

Parking

1. The applicant must submit a parking management plan (PMP), which specifically addresses the following issues:
 - A. The parking demand generated by the proposed restaurant.
 - B. The availability of off-street parking for patrons. For the purpose of this policy, availability shall be measured in terms of the number of vacant off-street parking spaces within 500 feet from the entrance to the restaurant.
 - C. How employees who drive will be accommodated off the street at least in the evenings and on weekends.
 - D. The predicted impact of the restaurant on the parking supply at the evening peak, weekend peak, and daytime peak.
 - E. A proposal to reduce the impact of parking created by the restaurant on nearby areas. Acceptable alternatives for reducing parking impacts include, but are not limited to, the following: validated parking or valet parking for patrons, and off-street parking or transit subsidies for employees.

2. Additionally, please answer the following:
 - A. What percent of patron parking can be accommodated off-street?
(check one)
 100%
 75-99%
 50-74%
 1-49%
 No parking can be accommodated off-street

 - B. What percentage of employees who drive can be accommodated off the street at least in the evenings and on weekends?
(check one)
 All
 75-99%
 50-74%
 1-49%
 None

 - C. What is the estimated peak evening impact upon neighborhoods?
(check one)
 No parking impact predicted
 Less than 20 additional cars in neighborhood
 20-40 additional cars
 More than 40 additional cars

Litter

The applicant for a restaurant featuring carry-out service for immediate consumption must submit a plan which indicates those steps it will take to eliminate litter generated by sales in that restaurant.

Alcohol Consumption and Late Night Hours

1. Maximum number of patrons shall be determined by adding the following:

_____	Maximum number of patron dining seats
_____	Maximum number of patron bar seats
+	_____ Maximum number of standing patrons
<hr/>	
_____	Maximum number of patrons

2. _____ Maximum number of employees by hour at any one time

3. Hours of operation:
(check one)

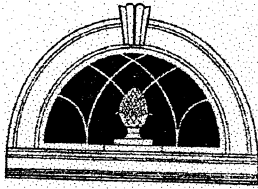
_____	Closes by 8:00 P.M.
_____	Closes after 8:00 P.M. but by 10:00 P.M.
_____	Closes after 10:00 P.M. but by Midnight
_____	Closes after Midnight

[Closing time means when the restaurant is empty of patrons.]

4. Alcohol Consumption:

(Check one)

_____	High ratio of alcohol to food
_____	Balance between alcohol and food
_____	Low ratio of alcohol to food



Old Town Civic Association
P.O. Box 21333
Alexandria, Virginia 22320

PC Docket Item #6
SUP 2004-0106

Received 1/5/05
PM. Planning &
Zoning!

January 5, 2005

The Honorable Chairman and Members of the Planning Commission
City of Alexandria
301 King Street
Alexandria, Virginia 22314

Re: Docket Item #6, Meeting of January 6, 2005
Special Use Permit #2004-0106
Las Tapas Restaurant

Dear Chairman Wagner and Members of the Commission:

Old Town Civic Association urges that you not recommend approval of this application to extend Las Tapas Restaurant's Friday and Saturday operating hours until 1:30 a.m.

The Old Town Small Area Plan states the important factual and policy conclusion that "there is a fragile balance which must be preserved if both [the residential and commercial areas of Old Town] are to remain strong and if the ambience of Old Town is to be preserved." Maintaining that balance is critical to the unique character of Old Town, and thus to the economic vitality of the city and to its residential quality of life. A shift in policy or practice which significantly altered that balance would not serve the best interest of either the commercial or residential community, in the long run, and might indeed injure both.

Because of the intensity of their use, restaurants may have a particularly significant impact on the surrounding neighborhoods, and the conditions of their operation should be reviewed with particular care. The combination of late operating hours, alcoholic beverage service, a large volume of patronage, and a large number of establishments in a small area may contribute to the sorts of negative impacts which were a source of great concern in years past and led to City Council's adoption of the *Old Town Restaurant Policy* in an effort to redress the balance.

Las Tapas is one of those fine restaurants whose proximity adds to the quality of life for nearby residents. But extension of its operating hours would not be consistent with the City's practice in recent years regarding restaurant hours, and would set a potentially damaging precedent for other applications in the future.

The application apparently contemplates extending the "last call" time from 1:00 to 1:30 a.m., while retaining a nominal closing time of 2:00 a.m. But it is at least questionable whether, as a practical matter, it would be feasible to seat patrons as late as 1:30; take, prepare, and serve their orders; and settle their bills in time for them to leave the restaurant, all within one-half hour.

Most restaurants in the immediate neighborhood of Las Tapas (and indeed on lower King Street in general) do not operate later than 1:00 a.m., even on weekends. In significant recent cases (e.g., O'Connell's Irish Restaurant and the Fish Market), the Planning Commission and City Council have limited the applicant's operating hours to 1:00 a.m. although later hours were requested. Fairness to the great preponderance of restaurants whose Special Use Permits include a closing hour of 1:00 a.m. or earlier would not support a later closing hour for one applicant.

If extension beyond the 1:00 a.m. closing time of recent practice were approved for this restaurant, it is reasonable to expect that other restaurants nearby or elsewhere on or near King Street would request amendment of their permits to provide comparable treatment—and it would be difficult to justify their not being afforded the same advantage. Given the very large number of restaurants in this immediate area, the cumulative impact on the close-by residential neighborhoods would be very substantial.

The Old Town Theater might be cited as an establishment that was recently granted a later closing time. But the Old Town Theater is a unique case. It is not a restaurant, but an entertainment facility, for which food service is only an incidental feature. The discussion of the appropriate closing hours for the Old Town Theater had everything to do with the scheduling of its films and other entertainment programs, and very little to do with its food and beverage service. Indeed, the Old Town Theater's permit condition relating to alcoholic beverage service is the same as, not later than, the 1:00 a.m. closing hour that has consistently been applied to beverage service in restaurants. If Las Tapas were a theater, the analogy would have merit; but it is not.

For all of these reasons, Old Town Civic Association endorses the staff recommendation that this application be denied.

Respectfully submitted,



Michael E. Hobbs
President

Statement of Michael E. Hobbs
on behalf of the
Old Town Civic Association
City Council
January 25, 2005

Special Use Permit #2004-0106
Las Tapas Restaurant

Thank you, Mayor Euille, Vice Mayor Pepper, and Members of Council. I am Michael Hobbs, speaking on behalf of the Old Town Civic Association.

We are concerned about the request that you extend the operating hours for Las Tapas Restaurant, and urge that you not approve that request. Our concern has to do both with the reasons for this specific application, and with the precedent that approval might establish for similar requests in the future.

Las Tapas asks to extend their operating hours from 1:00 to 1:30 a.m. on weekends. On its face that might not seem a large request—but bear in mind that the actual impact on nearby residential neighborhoods extends well beyond what is described as the permitted “closing hour” of a restaurant. If the closing hour is stated as 1:00 a.m., there is a grace period of an additional hour during which patrons may finish their meal before they are required to vacate the establishment; and it takes some additional time for the staff to clean up and shut down after the last patrons have left. So a nominal closing hour of 1:00 a.m. may actually mean that some patrons and staff are leaving the premises and transiting through the neighborhoods between 2 and 3 in the morning. Any way you look at it, if an extra half hour is added on to a restaurant’s operating hours, it is likely to be a half hour later that the last patrons and staff will be leaving that restaurant to go home.

In this particular case, we understand that the principal reason for wanting to extend the hours is to allow additional time for a “last call” before the restaurant is required to stop taking weekend orders. Indeed, from testimony before the Planning Commission, we understand that there was concern that, if Las Tapas were not permitted the additional half hour, patrons would leave to go across the street to Murphy’s Pub for their last order. But quite frankly, we do not see that an additional half hour at this one establishment would constitute a public benefit of such significance as to warrant an exception to the general rule regarding the operation of restaurants and bars in Old Town. If patrons come into Las Tapas after 1:00 a.m. on Friday or Saturday night—or if they leave at that hour to go across to Murphy’s—their interest is probably not in placing a final order for tapas before closing.

We would be even more concerned if approval of a later closing hour for this restaurant were taken as a precedent for approval of similar requests from others. There are more than fifty restaurants on or near King Street from Alfred Street down to the waterfront, including ten in this block alone; and the overwhelming majority of them close at 1:00 a.m. or earlier either by choice or by the conditions of their special use permits. It would be difficult to justify or explain extending the operating hours for this restaurant beyond 1:00 a.m. but refusing to do so for their

competitors and others similarly situated who might request comparable treatment in the future. But if the hours of all or a significant number of these restaurants' hours were extended, that would have a very large impact on the residential neighborhoods.

The Old Town chapter of the Master Plan states the fundamental policy conclusion that "there is a fragile balance which must be preserved if both [the residential and commercial areas of Old Town] are to remain strong and if the ambience of Old Town is to be preserved." Maintaining that balance is critical to the unique character of Old Town, and thus to the economic vitality of the city and to its residential quality of life. A shift in policy or practice which significantly altered that balance would not serve the best interest of either the commercial or residential community, in the long run, and might indeed injure both.

Extension of Las Tapas's hours must either be intended as a one-time exception to be limited to this one restaurant, or it must be a precursor for a general shift in the balance between restaurant and residential interests in Old Town. If it is the former—a one-time-only exception—we believe it is not justified by any overriding public policy objective and is not fair to all of the other restaurants. If it is the latter, we believe that is precisely the kind of fundamental change or shift in public policy which should be adopted only after full, open and deliberate public notice, debate and discussion—not as an intended or unintended consequence of a series of decisions on individual cases in which the broader public policy question is not recognized or debated.

We understand the general rule now in operation, as a matter of practice, interpretation and application, to be that restaurants in Old Town in general, and on King Street in particular, will be authorized closing hours no later than 1:00 a.m. on weekends. There is a small and diminishing number of grandfathered restaurants on or near lower King Street that operates later than 1:00 a.m. There are two restaurants in the next block from Las Tapas whose old SUPs would permit operation later than 1:00 a.m., but they do not do so. But so far as we know, there are no restaurant SUPs granted at any time in recent years, anywhere on King Street, including your recent approvals for O'Connells and the Fish Market, which permit operations beyond 1:00 a.m.

Some have asked whether the permit for the Old Town Theater, which you granted just last spring, might not be considered a precedent for Las Tapas's application. We would urge, to the contrary, that these are quite different cases, in several fundamental respects.

First and foremost, of course, is that the Old Town Theater is just that: a theater, whose principal business and central purpose is as an entertainment venue, not as a restaurant or bar. The King Street Retail Study now under discussion points to the importance of a viable entertainment enterprise in attracting activity and visitors to King Street—including to the nearby restaurants and retail shops. It does not suggest or conclude that extending the operating hours of existing restaurants is either necessary to the economic health of Alexandria nor appropriate in the context of the "fragile balance" that the Master Plan speaks of.

Second, while the Old Town Theater has a 2:00 a.m. closing hour, the rationale for that had everything to do with its operation as a theater, and little or nothing to do with the ancillary operation of its food and beverage service for theatergoers, when you approved that application.

The basic point that the owner made to Old Town Civic Association, to the Planning Commission and then to you was that, if they were to be viable, they needed to be open late enough to accommodate two showings of a movie in the evening starting no earlier than 8 o'clock—which a midnight or 1:00 a.m. closing hour would make difficult or impossible. There was no suggestion that liquor sales after 1:00 a.m. were any significant part of their need—let alone essential to their viability. And, indeed, those were not the conditions that you granted. The SUP for the Old Town Theater included conditions:

- (1) first, that no film or other program would start later than 11:30 p.m. on weeknights or midnight on weekends—notwithstanding the final closing hour of 2:00 a.m.; and
- (2) second, that sales of beer and wine would stop at 1:00 a.m.—which is precisely the hour that Las Tapas enjoys under their present permit, but which they are asking that you extend, for them. They are not asking to be treated the same as the Old Town Theater: they are asking for permission to serve beverages a half hour later than the Old Town Theater or any nearby restaurant or pub.

The Old Town Theater's permit would be a precedent for the present case if Las Tapas were a new applicant, if it were a theater, if it were offering long-form entertainment, starting no later than midnight, and if it were serving only beer and wine, and nothing after 1:00 a.m. None of those circumstances applies.

For all of these reasons, we therefore respectfully urge that you approve the unanimous recommendation of the Planning Commission and the staff and that you deny this requested SUP amendment.

Thank you for your consideration.

6
1-22-05

ROBERT J. TEST

ATTORNEY AT LAW

TEL: 703.837.9070

FAX: 703.837.9758

January 20, 2005

William D. Euille, Mayor
Members of City Council
301 King Street
Alexandria, VA 22314

Re: Special Use Application 2004-0106, *Las Tapas Restaurant*

Dear Mr. Euille and Members of Council:

This office represents the owners of *Las Tapas Restaurant* at 710 King Street. They have submitted a request to amend their existing SUP to allow them to serve their patrons for an additional one half hour on Friday and Saturday nights. They are not seeking to extend their closing hours. The Staff report contains some inaccuracies we would like to clarify, which will point out the problem my clients seek to solve with this application.

At some point in the evolution of the restaurant Special Use Permit process it was determined that the City would impose as a condition of a Permit "operating" hours which differed from "closing" hours. The Virginia ABC requires restaurants that serve alcoholic beverages to close by 2:00 am. For the ABC, "to close" means just that; no patrons in the facility, doors locked, lights off.

The City determines operating hours to mean, as they relate to closing, that one hour prior to closing the restaurant will not admit any new patrons and cease serving its existing patrons, allowing them to finish any food or beverage they purchased prior to one hour before closing. For *Las Tapas* that means that by 1:00 am on Friday and Saturday nights they must not admit patrons and cease serving the ones there at the time, allowing them to finish anything ordered prior to 1:00 am.

In October of 2001, Council approved the owners' request to have live entertainment until 1:00 am on Friday and Saturday evenings, but denied the owners' request to extend the hours of operation to 1:30 am. As a result, *Las Tapas* effectively ceases operations at or before 1:00 am on the weekends.

To allow time to place and fill a customer's order by 1:00 am, *Las Tapas'* employees must initiate a last call by 12:40 am. With this last call, most customers leave *Las Tapas* without placing an order, as they know that there are several establishments nearby that will remain open until 2:00 am with full service.

Mr. Euille, *et al*
January 20, 2005
Page 2

For example, Bistro Europa, Murphy's, Café Salsa and Asian Bistro all may and often do, stay open until 2:00 am. It is important to note here, that these restaurants have a last call at or near 1:30 am; close out their customer's checks, turn off the lights and lock the doors by the prescribed 2:00 am time established by the ABC.

When the owners of *Las Tapas* sought the extended time for entertainment in 2001, it was with the hope that patrons, once attracted to the restaurant, would stay until closing. By imposing an "operating hour" of 1:00 am on the restaurant, the City effectively closes the restaurant prior to its ABC and City allowed 2:00 am "closing hour" as the patrons leave for those competitors that remain open.

In seeking to extend the operating hour to 1:30 am the owners of *Las Tapas* are simply trying to keep the customers that they have worked so hard to attract to their restaurant, in their restaurant. They are not necessarily seeking new customers, but they based their operating projections on a business open until 2:00 am on those two critical nights of the week, not a restaurant that is "open" until 2:00 am but can't "operate" past 1:00 am.

All the owners of *Las Tapas* ask is for a level playing field, so they can compete with the other restaurants in their vicinity, and not lose their customers to their competition. Thank you for your consideration of this request. If you have any questions, please feel free to call.

Yours truly,

A handwritten signature in black ink, appearing to read "R. J. Test", with a long horizontal flourish extending to the right.

Robert J. Test

RJT/pd

SPEAKER'S FORM

DOCKET ITEM NO. 6

6 3
1-22-05

**PLEASE COMPLETE THIS FORM AND GIVE IT TO THE CITY CLERK
BEFORE YOU SPEAK ON A DOCKET ITEM**

PLEASE ANNOUNCE THE INFORMATION SPECIFIED BELOW PRIOR TO SPEAKING.

1. NAME: ROBERT J. TEST

2. ADDRESS: 918 PRINCE ST, ALEXANDRIA, VA. 22314

TELEPHONE NO. 703-837-9070 E-MAIL ADDRESS: _____

3. WHOM DO YOU REPRESENT, IF OTHER THAN YOURSELF? _____

APPLICANT

4. WHAT IS YOUR POSITION ON THE ITEM?
FOR: X AGAINST: _____ OTHER: _____

5. NATURE OF YOUR INTEREST IN ITEM (PROPERTY OWNER, ATTORNEY, LOBBYIST, CIVIC INTEREST, ETC.):

ATTORNEY

6. ARE YOU RECEIVING COMPENSATION FOR THIS APPEARANCE BEFORE COUNCIL?
YES X NO _____

This form shall be kept as a part of the permanent record in those instances where financial interest or compensation is indicated by the speaker.

A maximum of three minutes will be allowed for your presentation, except that one officer or other designated member speaking on behalf of each *bona fide* neighborhood civic association or unit owners' association desiring to be heard on a docket item shall be allowed five minutes. In order to obtain five minutes, you must identify yourself as a designated speaker, and identify the neighborhood civic association or unit owners' association you represent, at the start of your presentation. If you have a prepared statement, please leave a copy with the Clerk.

Additional time not to exceed 15 minutes may be obtained with the consent of the majority of the council present; provided notice requesting additional time with reasons stated is filed with the City Clerk in writing before 5:00 p.m. of the day preceding the meeting.

The public normally may speak on docket items only at public hearing meetings, and not at regular legislative meetings. Public hearing meetings are usually held on the Saturday following the second Tuesday in each month; regular legislative meetings on the second and fourth Tuesdays in each month. The rule with respect to when a person may speak to a docket item at a legislative meeting can be waived by a majority vote of council members present but such a waiver is not normal practice. When a speaker is recognized, the rules of procedures for speakers at public hearing meetings shall apply. If an item is docketed *for public hearing* at a regular legislative meeting, the public may speak to that item, and the rules of procedures for speakers at public hearing meetings shall apply.

In addition, the public may speak on matters which are not on the docket during the Public Discussion Period at public hearing meetings. The mayor may grant permission to a person, who is unable to participate in public discussion at a public hearing meeting for medical, religious, family emergency or other similarly substantial reasons, to speak at a regular legislative meeting. When such permission is granted, the rules of procedures for public discussion at public hearing meetings shall apply.

Guidelines for the Public Discussion Period

(a) All speaker request forms for the public discussion period must be submitted by the time the item is called by the city clerk.

(b) No speaker will be allowed more than three minutes; except that one officer or other designated member speaking on behalf of each *bona fide* neighborhood civic association or unit owners' association desiring to be heard during the public discussion period shall be allowed five minutes. In order to obtain five minutes, you must identify yourself as a designated speaker, and identify the neighborhood civic association or unit owners' association you represent, at the start of your presentation.

(c) If more speakers are signed up than would be allotted for in 30 minutes, the mayor will organize speaker requests by subject or position, and allocated appropriate times, trying to ensure that speakers on unrelated subjects will also be allowed to speak during the 30 minute public discussion period.

(d) If speakers seeking to address council on the same subject cannot agree on a particular order or method that they would like the speakers to be called on, the speakers shall be called in the chronological order of their request forms' submission.

(e) Any speakers not called during the public discussion period will have the option to speak at the conclusion of the meeting, after all docketed items have been heard.

APPLICATION for SPECIAL USE PERMIT # 2004-0106
[] Change of Ownership or [] Minor Amendment

[must use black ink or type]

PROPERTY LOCATION: 710 King Street

TAX MAP REFERENCE: 074.02-10-07 ZONE: CD

APPLICANT Name: 710 King Street, LLC t/a Las Tapas

Address: 710 King Street, Alexandria, Virginia 22314

PROPERTY OWNER Name: Mel & Oud LLC

Address: 710 King Street, Alexandria, Virginia 22314

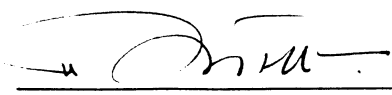
SITE USE: Restaurant

[] THE UNDERSIGNED hereby applies for a Special Use Permit for **Change in Ownership**, in accordance with the provisions of Article XI, Division A, Section 11-503 (5)(f) of the 1992 Zoning Ordinance of City of Alexandria, Virginia. THE UNDERSIGNED, having read and received a copy of the special use permit, hereby agrees to comply with all conditions of the current special use permit, including all other applicable City codes and ordinances.

THE UNDERSIGNED hereby applies for a Special Use Permit for **Minor Amendment**, in accordance with the provisions of Article XI, Division A, Section 11-509 and 11-511 of the 1992 Zoning Ordinance of City of Alexandria, Virginia.

THE UNDERSIGNED, having obtained permission from the property owner, hereby requests this special use permit. The undersigned also attests that all of the information herein required to be furnished by the applicant are true, correct and accurate to the best of their knowledge and belief.

Robert J. Test
Print Name of Applicant or Agent


Signature

918 Prince Street
Mailing/Street Address

703-837-9070
Telephone # Fax #

Alexandria, VA 22314
City and State Zip Code

August 28, 2004
Date

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

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

Planning Comm.
~~ADMINISTRATIVE ACTION:~~ 1/6/2005 RECOMMEND DENIAL 7-0

City Council Action: 1/25/05 CC approved the Planning Commission recommendation for denial 6-1

Date

Director, Planning & Zoning

6
1-22-05

ROBERT J. TEST
ATTORNEY AT LAW

TEL: 703.837.9070

FAX: 703.837.9758

January 20, 2005

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Members of City Council
301 King Street
Alexandria, VA 22314

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Mr. Euille, *et al*
January 20, 2005
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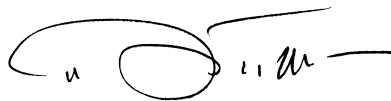
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Robert J. Test

RJT/pd