

Docket Item #11  
ENCROACHMENT #2004-0001

Planning Commission Meeting  
March 2, 2004

**ISSUE:** Consideration of a request for encroachment into the public sidewalk right-of-way for outdoor restaurant seating.

**APPLICANT:** Thaiphoon of Old Town Inc.,  
by Rich Markus

**LOCATION:** 6 King Street

**ZONE:** CD/Commercial Downtown

---

**STAFF RECOMMENDATION:** Staff recommends **approval** subject to compliance with all applicable codes and ordinances and the permit conditions found in Section III of this report.

## **I. DISCUSSION**

### **REQUEST**

The applicant, Thaiphoon of Old Town Inc., represented by Rich Markus, architect, requests approval of an encroachment to permit it to locate outdoor restaurant seating in the public sidewalk right-of-way in front of 6 King Street.

### **SITE DESCRIPTION**

The subject property is one lot of record that is located on the east end of King Street. The lot is approximately 94.3 feet by 48.6 feet, and has an area of 4,302 square feet. The lot is occupied by a three and one half story building. Commercial and office uses surround the lot on three sides. Starbucks coffee shop adjoins the restaurant to the west; the Old Dommion Boat Club parking lot is located to the east. Residential uses are nearby.

### **HISTORY AND CONTEXT**

The restaurant is allowed to occupy the space without a special use permit because its predecessor restaurant, the Seaport Inn, occupied the site since prior to the special use permit requirement. The applicant plans to renovate approximately 1778 square feet of the first and 1338 square feet of the second floor for a total of 3116 square feet of the subject building for the restaurant. The restaurant anticipates having a total of 159 seats, which, when combined with the 33 seats provided for the adjacent Starbucks coffee shop, amounts to 192 seats and is well within the grandfathered restaurant rights allowing for up to 290 seats.

### **PROJECT DESCRIPTION**

The applicant requests approval to place outdoor seating in front of the restaurant along the front building wall on King Street. The seating area is divided into two sections, one is located west and the second is located east of the entrance (see attached plans). ABC (Alcohol and Beverage Control Board) regulations require a restaurant serving alcoholic beverages to provide a clear physical separation or barrier to prevent the general public access to the outdoor seats, except through one clearly delineated point of ingress/egress. Therefore, the applicant proposes to install a three foot high metal railing around the perimeters of the encroachment. The railing, signs and awnings are subject to BAR (Board of Architectural Review) approval.

Proposal:

The applicant's initial encroachment proposal to occupy 270 square feet of the public sidewalk did not provide sufficient room for pedestrian access between the seating area and sidewalk features, such as a light post and tree wells. Staff informed the applicant that a minimum distance of five feet must be maintained at any point to ensure a safe passage for pedestrians. The applicant agreed to reduce the encroachment width, resulting in the following dimensions:

	<b>West Section</b>	<b>East Section</b>	<b>TOTAL</b>
<u>Encroachment Width</u>	6'-9 ½"	5'-7"/ 6'-9 ½"	
<u>Encroachment Length:</u>	19'-6"	20' 3"	
<u>Encroachment Area:</u>	133 square feet	122 square feet	<b>255 square feet</b>

ZONING / MASTER PLAN

The subject property is zoned CD (Commercial Downtown), and is included in the Old Town Small Area Plan. The proposed 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 strongly supports this request to add outdoor seating at the foot of King Street. The proposed outdoor seating will add vitality to the street, thereby attracting more visitors and customers for area businesses. Its location, with a confined outdoor area, awnings, seats and people, will be seen from King Street and parts of the waterfront, and creates a visible symbol of activity and economic health. The encroachment will not obstruct pedestrian use of the public sidewalk since there will be at least five feet of public right-of-way remaining for pedestrian use after the outdoor seating is installed.

Staff does recommend two site improvements, including the addition of one City trash can on the corner of King Street and the Strand and the placement of planters filled with seasonal plants along the west and east side of the railing.

Staff recommends approval of the encroachment permit subject to the recommended conditions.

**III. RECOMMENDED PERMIT CONDITIONS**

1. The applicant (and his/her successors, if any) must obtain and maintain a policy of general liability insurance in the amount of \$1,000,000, which will indemnify the applicant (and his /her successors, if any) and the City of Alexandria, as an additional named insured, against all claims, demands, suits, etc., and all costs related thereto, including attorney fees, relating to any bodily injury or property damage which may occur as a result of the granting of this encroachment. (T&ES)
2. In the event the City shall, in the future, have need for the area of the proposed encroachment, the applicant shall remove any obstruction encroaching into the public right-of-way, within 60 days, upon notification by the City. (T&ES)
3. Neither the City nor any Private utility company will be held responsible for damage to the private improvements in the public right-of-way during repair, maintenance or replacement of any utilities that may be located within the area of the proposed encroachment. (T&ES)
4. A minimum pedestrian pathway of five feet shall be maintained, including where there are sidewalk features, such as a light post and trees. (P&Z)
5. Applicant shall obtain, at its expense, one Model SD-42 Bethesda Series litter receptacle for installation on the adjacent public right-of-way. Contact T&ES Engineering Division (703/838-4318) for information. (T&ES)
6. The applicant shall install and maintain landscaped planters, to include four seasons of plants in at least two black containers of a style and at a location approved by the Department of Planning and Zoning. (RPCA) (P&Z)
7. Kitchen equipment shall not be cleaned outside, nor shall any cooking residue be washed into the streets, alleys or storm sewers. (T&ES)
8. The applicant shall control cooking odors, smoke and any other air pollution from operations at the site and prevent them from leaving the property or becoming a nuisance to neighboring properties, as determined by the Department of Transportation & Environmental Services. (T&ES)
9. Loudspeakers shall be prohibited from the exterior of the building, and no amplified sounds shall be audible at the property line. (T&ES)
10. Provide a menu or list of foods to be handled at this facility to the Health Department prior to opening. (Health)

11. The applicant shall conduct employee training sessions on an ongoing basis, including as part of any employee orientation, to discuss all encroachment provisions and requirements. (P&Z)
12. The Director of Planning and Zoning shall review the encroachment permit one year after approval and shall docket the matter for consideration by the Planning Commission and City Council if (a) there have been documented violations of the permit conditions, (b) the director has received a request from any person to docket the permit for review as a result of a complaint that rises to the level of a violation, or (c) the director has determined that there are problems with the operation of the use and that new or revised conditions are needed. (P&Z)

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

---

Staff Note:

For commercial properties, the applicant and/or his successors are responsible for payment of an annual charge for such encroachment pursuant to Section 3-2-85 of the City Code.

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:

- 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 A minimum pedestrian pathway of 5 feet shall be maintained. Distance to be measured from the face of the curb to encroachment.
- R-2 Kitchen equipment shall not be cleaned outside, nor shall any cooking residue be washed into the streets, alleys or storm sewers.
- R-3 The applicant shall control cooking odors, smoke and any other air pollution from operations at the site and prevent them from leaving the property or becoming a nuisance to neighboring properties, as determined by the Department of Transportation & Environmental Services.
- R-4 Loudspeakers shall be prohibited from the exterior of the building, and no amplified sounds shall be audible at the property line.
- R-5 Applicant shall obtain, at their expense, one Model SD-42 Bethesda Series litter receptacle for installation on the adjacent public right-of-way. Contact T&ES Engineering Division (703/838-4318) for information.
- R-6 The applicant (and his/her successors, if any) must obtain and maintain a policy of general liability insurance in the amount of \$1,000,000, which will indemnify the applicant (and his /her successors, if any) and the City of Alexandria, as an additional named insured, against all claims, demands, suits, etc., and all costs related thereto, including attorney fees, relating to any bodily injury or property damage which may occur as a result of the granting of this encroachment.
- R-7 Neither the City nor any Private utility company will be held responsible for damage to the private improvements in the public right-of-way during repair, maintenance or replacement of any utilities that may be located within the area of the proposed encroachment.
- R-8 In the event the City shall, in the future, have need for the area of the proposed encroachment, the applicant shall remove any obstruction encroaching into the public right-of-way, within 60 days, upon notification by the City.

Code Enforcement:

- C-1 The arrangement of tables, chairs and other decorative features shall not obstruct or impair handicap access, emergency egress, or access to fire department connections for the structure.
- F-1 The revised drawings submitted show a conflict in gate swing and aisle width for compliance with means of egress and handicap accessibility.

Health Department:

- C-1 An Alexandria Health Department Permit is required for all regulated facilities.
- C-2 Food must be protected to the point of service.
- C-3 If changes to the facility are to be done, five sets of plans must be submitted to and approved by this department prior to construction. Plans must comply with the Alexandria City Code, Title 11, Chapter 2, Food and Food Establishments. There is a \$135.00 fee for review of plans for food facilities.
- C-4 Permits or approval must be obtained prior to use of the new area(s).
- C-5 This facility must comply with the Alexandria City Code, Title 11, Chapter 10, Smoking Prohibitions both indoors and at the outside dining areas.
- C-6 Certified Food Managers must be on duty during all hours of operation.
- R-1 Provide a menu or list of foods to be handled at this facility to the Health Department prior to opening.

Police Department:

- F-1 No objections.

Department of Recreation, Parks and Cultural Activities:

- R-1 The applicant shall install and maintain landscaped planters, to include four seasons of plants in at least two black containers of a style and at a location approved by the Department of Planning and Zoning.