

Docket Item #15
SPECIAL USE PERMIT #2003-0111

Planning Commission Meeting
April 6, 2004

ISSUE: Consideration of a request for a special use permit amendment to allow an intensification of theater uses and for the reduction of required parking.

APPLICANT: Old Town Theater, LLC
By Duncan W. Blair, attorney

LOCATION: 815 ½ King Street

ZONE: CD/Commercial Downtown Zone

PLANNING COMMISSION ACTION, MARCH 2, 2004: By unanimous consent, the Planning Commission deferred the request.

Reason: The applicant requested the deferral.

PLANNING COMMISSION ACTION, FEBRUARY 3, 2004: By unanimous consent, the Planning Commission deferred the request.

Reason: The applicant requested the deferral.

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

I. DISCUSSION:

REQUEST

The applicant, Old Town Theater, LLC, requests special use permit approval to allow an intensification of the theater use (amusement enterprise) and for a reduction of required parking at 815 ½ King Street.

SITE DESCRIPTION

The subject property is one lot of record with approximately 41 feet of frontage on King Street, 100 feet of depth and a total lot area of approximately 4,100 square feet. The site is developed with the Old Town Theater and is located in the Old and Historic Alexandria District.

SURROUNDING USES

The surrounding area is a mix of retail, office, and residential uses. There are a number of restaurants in this block of King Street including Café Salsa, Bittersweet, Siam 815 (closed for renovation), Asian Bistro, and Austin Grill. Immediately to the east of the theater is the six story building recently approved for residential condominiums (SUP#2002-0082).

HISTORY

The theater was constructed in 1922 and was used as a dance hall and then a movie theater during its early years of operation. On May 25, 1976, City Council granted Special Use Permit #1057 to the National Puppet Center for the operation of an amusement enterprise (puppet theater). That use never began operation and the special use permit expired. Instead, a movie theater operated at the site for 25 years. On May 13, 2000, City Council granted Special Use Permit #2000-0033 for the operation of a live theater to include musicals, comedies, and dramas, and for a parking reduction. The theater was vacated last year. The applicant acquired Old Town Theater, Inc., has reopened the theater, and has been operating recently under the prior SUP.

PROJECT DESCRIPTION

The applicant proposes to expand the activities at the theater to create a community venue for entertainment, culture, and education. The applicant anticipates that the theater will host the following activities: films (including midnight movies), music performances, sporting events, lectures, occasional live theater production, educational and community outreach activities, and private special events for businesses, organizations, and individuals who may want to rent the facility (see attached “Summary Business Plan”). In addition, the applicant proposes to offer more of a variety of concessions items including hot dogs and sandwiches, and proposes to offer on-premise beer, wine, and mixed drinks.

Specific aspects of the operation are as follows:

Seats: The applicant calculates that the theater space has 445 seats, which includes 229 main floor theater seats, 194 balcony seats, and 22 moveable seats both for handicapped patrons and to accommodate the “Richmond Room,” which is a small lobby area on the second floor. The room will not increase the theater occupancy, but is proposed to be used to serve patrons utilizing the theater facilities. Seating is not proposed in the concessions area.

The applicant proposes that for live theater performances, the full theater capacity will be used. However, because the addition of film and projection media is a change from the prior theater use, it requires upgrades to the building if the theater includes 300 seats or more. The applicant has therefore proposed that for film and projection events, the theater will use fewer than 300 seats and that the box office will be prohibited from selling more than 299 tickets for those events.

Hours: The applicant proposes to have the theater available for operation seven days a week from 7:30 a.m. to 2:00 a.m. The long hours will provide the flexibility to allow for early morning meetings, lectures, or other events, afternoon matinees, evening movies and performances, and midnight movies. See applicant’s attached “Weekly Program Schedule”, which shows a sample schedule of anticipated events during a week’s time. Because of the variety of events proposed to occur at the theater, the application requests the flexibility to offer the same hours for sales of beer, wine, and mixed drinks. The prior operator proposed evening hours of operation generally between 4:00 p.m. and 11:00 p.m., however, the hours were not a condition of the special use permit.

Attendance: It is anticipated that the Old Town Theater will be attended by 150 to 200 patrons for each performance. The number of performances each day will vary depending upon the day of the week and schedule of planned activities.

Restaurant: As there is not a full service kitchen located on the premises, the applicant proposes to offer a limited menu of concession items including hot dogs, sandwiches, refreshments, and requests approval for the sale of on-premise beer, wine, and mixed drinks. Food and beverage service will be offered to patrons at the theater for a performance, event, or private function. The applicant also proposes to offer the same food service to the public during lunch and dinner hours when the theater is not otherwise scheduled for an event, and anticipates showing news or other programming to the general

public in the theater. The applicant does not propose a designated seating area for consuming food and drink, but anticipates that patrons will take food and refreshments to their theater seats or will take it out of the premises to consume elsewhere.

- Employees: The theater will employ on a full or part time basis approximately 25 people working in two or more shifts. Generally, there will be five employees on site at any given time: a manager, two concession attendants, one usher, one box office attendant and one audio visual/lighting specialist.
- Trash: The type of trash and garbage generated by the movie theater will mainly consist of paper products used in connection with the preparation of the limited food prepared by the theater's concession stand. The applicant anticipates two cans of trash each day generated each day. Trash is proposed to be collected twice a week.
- Litter: The applicant does not anticipate that litter will be a problem; however, the theater staff will self-police the adjacent public right-of-way.
- Facade: The applicant proposes to renovate the facade of the theater, which will require approval by the Board of Architectural Review.
- Equipment: State of the art audio visual equipment will be installed to support the proposed activities.

PARKING

Section 8-200 (A)(8) of the zoning ordinance requires a theater with 445 seats to provide 112 parking spaces. As the property includes no land for parking, the applicant requests a parking reduction to provide no off-street parking.

In May 2000 City Council granted SUP# 2000-0033 to the applicant's predecessor, allowing a live performance theater and a parking reduction. The applicant was required to subsidize parking for patrons for the amount of \$1. The current applicant also requests a parking reduction for the current application intensifying the theater use, and justifies its request by stating the following:

1. The reestablishment of the Old Town Theater as an entertainment center on King Street is an essential component to the continued and future commercial vitality of the central business district. The entertainment use will assist in the retention of existing uses and encourage new restaurant and retail businesses. The theater was constructed without parking and it is impossible for the applicant to provide parking on site.

2. Because the property is in the Central Business District and contains less than 10,000 square feet of land, the building could be converted to a use, such as retail, office or restaurant, and be exempt from the requirement to provide parking.
3. There is an ample supply of public and private off-street parking facilities in the immediate area to accommodate the patrons of the Old Town Theater.
4. The Old Town Theater has an informal arrangement with the owner and operator of the Cameron Alfred Street garage to keep the facility open for the hours the theater is open and is willing to subsidize \$1.00 of a patrons' parking cost.

According to the applicant, it is not feasible to provide the required parking because the property is located in the fully developed downtown urban Old Town area, where little, if any, land is available for surface parking. Additionally, the applicant states that it is neither financially nor practically feasible to provide parking. The applicant specifically maintains that it is not feasible for it to operate the theater and pay for parking and have the business be economically viable.

ZONING

The subject property is located in the CD/Commercial downtown zone. Section 4-503(A) of the zoning ordinance allows an amusement enterprise in the CD zone only with a special use permit.

MASTER 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 the reuse of the Old Town Theater as a venue for live performances, movies and other destination activities. A vacant theater in the middle of Old Town is a waste of valuable community entertainment space, discourages street vitality and undermines economic stability in the area. The rebirth of the theater and the revitalization of the building to include active uses is important to all of Old Town and an important economic boost for the community in general. Staff supports the owner's efforts to be competitive with larger theater and movie houses in the region by offering a variety of functions and entertainment possibilities. Therefore, staff supports the SUP request.

Parking

Staff also supports the proposed parking reduction which is similar to the one approved for the prior theater operator. The applicant has agreed to subsidize \$1.00 of each patron's parking costs and to post information directing patrons to nearby garage parking. The applicant has also arranged for the

North Alfred Street garage to remain open until after the theater closes on those evenings that events are scheduled to close later than the garage's normal closing time. The applicant, by letter of February 2, 2004, proposed condition language to this effect, and staff has included that language in its recommended conditions.

Late Closing Hours

Staff's only concern about the proposed use relates to the applicant's request to remain open until 2:00 a.m. every night of the week. This unusually late closing hour throughout the week is necessary, according to the applicant, in order to allow it the flexibility it requires to schedule events when they are available, and to be able to coordinate two different performances each night. Staff's concern is that large crowds of theater patrons leaving the theater late at night may cause disruption to neighboring residential areas if they are loud and behave badly when walking to their parked cars on nearby residential streets. The fact that the theater proposes to serve alcohol adds to the potential late night problems. Part of the applicant's proposal is for closed circuit television sporting events and midnight movies. Staff also notes that the applicant's future plans are not precise, so there is uncertainty about how often late night events will occur and how large they will be. It was for these reasons that staff, in its initial report published two months ago, recommended that closing hours be limited to midnight during the week, although it supported a 2:00 a.m. closing on the weekend nights.

The Director of the Department of Planning and Zoning has, with professional planning and economic help, been analyzing data about businesses and market trends in Old Town as part of its King Street Retail Strategies planning effort. In that context, concern has been expressed about the need for entertainment and other destinations on King Street, at least if Old Town is to compete for business with Clarendon, Shirlington, and other popular restaurant/nightlife/shopping venues in the region. Entertainment venues are especially important because patrons of movies, theater, and other media attractions also shop and dine where they are entertained. The spillover effect acts as a multiplier in terms of business generation.

Against the background of this concern, Alexandria's historic approach to late night destination activity in Old Town, including its vigilance as part of the SUP process, may come into question, with its concern about late night alcohol, noise, and parking issues. While Old Town residents have not recently experienced the extreme 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 our business community and the need for quiet enjoyment of our residential areas. Staff also notes that the Old Town Civic Association has taken a position in this case regarding the closing hours that is similar to staff's original one. However, staff has changed its proposed condition regarding the issue, and is now supporting the hours proposed by the theater operator.

Staff's position in favor of a 2:00 a.m. closing hour every night is based on a series of factors. First, it considers the economic health of King Street to be one of the City's principal concerns, and it considers the Old Town Theater to be both a symbol and an actual factor in that economic health. Consultants for the City have expressed great concern about the lack of evening activity on King Street as a business generator.

In addition, staff notes that the applicant has agreed to stop serving alcohol one hour before closing 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 applicants arrangement with the North Alfred Street garage further limits the possibility of patrons parking on neighborhood streets.

The applicant has also agreed to a condition requiring its participation in a structured process pursuant to which the owners and operators of the Old Town Theater would engage in dialogue with area businesses and residents to address concerns, if any, that result from the operation of the theater. The Old Town Civic Association has indicated its willingness to participate. Finally, staff has included its standard condition regarding the need for a one year review, which will give the City an opportunity to experience the theater's actual programming during that time and to assess whatever late night problems occur over the next year. The combination of an ongoing dialogue to discuss issues regarding the theater with affected persons, and the official SUP review provides safeguards for the future.

With these conditions, staff recommends approval of the special use permit.

III. PERMIT CONDITIONS:

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 only or to any business or entity in which the applicant has a controlling interest. (P&Z) (SUP#2000-0033)
2. **CONDITION AMENDED BY STAFF:** The applicant shall post signs directing patrons to the availability of parking at the public garage located on the 100 block of North Alfred Street. The applicant and the operator of the garage shall have an arrangement that allows theater patrons to park in the public garage for \$1.00 off the regular price of parking. In addition, the applicant shall have an arrangement with the public garage operator that on nights that there are performances the garage operator will extend the hours of operation of the public garage to a time that is one-half an hour after the last performance and theater closing. The applicant shall

submit a copy of the agreement with the garage operator to the Director of Planning and Zoning on an annual basis. Alternatively, the applicant shall otherwise subsidize parking to at least the extent of \$1.00 to each patron who presents a parking garage ticket. (P&Z)

~~The applicant shall post signs directing patrons to the availability of parking in a public parking garage located within a two block radius of 815 ½ King Street at which public parking garage the applicant shall subsidize parking at least to the extent of \$1 off the regular price for patrons. The applicant shall submit annually to the Director of Planning and Zoning a copy of the lease or other agreement by which it provides this subsidy. (P&Z) (SUP#2000-0033)~~

3. The applicant shall require that its employees who drive to work use off-street parking. (P&Z) (SUP#2000-0033)
4. **CONDITION AMENDED BY STAFF:** On site alcohol service is permitted until one hour before the theater's closing hour. No alcohol sales are permitted. (P&Z) (SUP#2000-0033)
5. No amplified sound shall be audible at the property line. (P&Z) (SUP#2000-0033)
6. **CONDITION AMENDED BY STAFF:** The applicant shall ~~consult with~~ contact the Crime Prevention Unit of the Alexandria Police Department at 703-838-4520 regarding a security survey for the business and shall schedule a robbery awareness program for all employees. (Police) (SUP#2000-0033)
7. **CONDITION AMENDED BY STAFF:** The Director of Planning and Zoning shall review the special use permit after it has been operational for one year 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, or (c) the director has determined that there are problems with the operation of the use and that new or revised conditions are needed. (P&Z) (SUP#2000-0033)
8. **CONDITION ADDED BY STAFF:** The hours of operation for the public shall be limited to 7:30 a.m. to 2:00 a.m. daily. No shows shall start after 11:30 p.m. on Sunday through Thursday, or after 12:00 midnight on Fridays, Saturdays, and the evenings before holidays and holiday evenings. (P&Z)

9. **CONDITION ADDED BY STAFF:** The applicant shall conduct employee training session on an ongoing basis, including as part of any employee orientation, to discuss all SUP provisions and requirements. (P&Z)
10. **CONDITION ADDED BY STAFF:** Kitchen equipment shall not be cleaned outside, nor shall any cooking residue be washed into the streets, alleys, or storm sewers. (T&ES)
11. **CONDITION ADDED BY STAFF:** 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. (T&ES)
12. **CONDITION ADDED BY STAFF:** All loudspeakers shall be prohibited from the exterior of the building and no amplified sound shall be audible at the property line. (T&ES)
13. **CONDITION ADDED BY STAFF:** No theater event that includes film or other media projection presentation, to include closed circuit television events, shall include more than 299 patrons until and unless the applicant meets Building Code requirements triggered by the change of use of the theater. (Code, P&Z)
14. **CONDITION ADDED BY STAFF:** The applicant shall participate in a structured process organized by the Director of Planning pursuant to which the owners and operators of the Old Town Theater engage in a dialogue with area businesses and residents to address concerns, if any, that result from the operation of the theater. (P&Z)

STAFF: Eileen Fogarty, Director, Department of Planning and Zoning;
Barbara Ross, Deputy Director;
Valerie Peterson, 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:

- 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.
- 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 Service.
- R-3 All loudspeakers shall be prohibited from the exterior of the building and no amplified sound shall be audible at the property line.

Code Enforcement:

- F-1 Inspection reports from 2003 indicate business is closed and not in operation.
- F-2 The scope of the project is broad and requires further clarification by the applicant as to the layout, specific uses and functions of the project. The applicant should meet with Code Enforcement in order to provide more specific details and interior layout proposals in order to properly address Code concerns in advance.
- 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 egress plan showing fixture location, aisles and exit doors shall be submitted for review with the permit application.

- 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.
- C-4 Required exits, parking, and accessibility for persons with disabilities must be provided to the building.
- C-5 The following code requirements apply where food preparation results in the development of grease laden vapors:
 - (a) All cooking surfaces, kitchen exhaust systems, grease removal devices and hoods are required to be protected with an approved automatic fire suppression system.
 - (b) A grease interceptor is required where there is drainage from fixtures and equipment with grease-laden waste located in food preparation areas of restaurants. Food waste grinders can not discharge to the building drainage system through a grease interceptor.
- C-6 A rodent control plan shall be submitted to this office for review and approval prior to occupancy. This plan shall consist of the following:
 - (a) Measures to be taken to control the placement of litter on site and the trash storage and pickup schedule.
 - (b) How food stuffs will be stored on site.
 - (c) Rodent baiting plan.

Health Department:

- C-1 An Alexandria Health Department Permit is reacquired for all regulated facilities. Permits are non-transferable.
- C-2 This facility must meet current Alexandria City Code requirements for food establishments. Contact Environmental Health at 703-838-4400 Ext.255 to arrange a “change of ownership” inspection.
- C-3 If change to the facility are to be dine, 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 Establishment. There is a \$135.00 fee for review of plans for food facilities.

- C-4 Permits must be obtained prior to operation.
- C-5 The facility must comply with the Alexandria City Code, Title 11, Chapter 10, Smoking Prohibitions.
- C-6 Certified Food Mangers must be on duty during all hours of operation
- C-7 Restrooms, including those in common areas, serving the restaurant, are to be meet Alexandria City Code, Title 11, Chapter 2 requirements.
- C-8 This facility is currently operating as Old Town Theater under Alexandria Health Dept. permit, issued to Old Town Theater, Inc
- C-9 Provide a menu or list of foods to be handled at this facility to the Health Department Prior to opening.

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. This is to be completed prior to opening for 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 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.