

Docket Item #9
SPECIAL USE PERMIT #2004-0037

Planning Commission Meeting
June 1, 2004

ISSUE: Consideration of a request for a special use permit amendment to increase the number of outdoor seats at a restaurant.

APPLICANT: Prince deGaule, LC
by Robert Test, attorney

LOCATION: 1106 & 1108 King Street

ZONE: CD/Commercial Downtown

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

I. DISCUSSION

REQUEST

The applicant, Prince De Gaule, LC, represented by attorney Robert J. Test, requests special use permit approval for additional outdoor dining seats for a restaurant at 1106 King Street. The outdoor dining occupies 1108 King Street.

SITE DESCRIPTION

The subject property is two lots of record, each with 24 feet of frontage on King Street, 84 feet of depth and a total lot area of 2,016 square feet. The two lots are developed with a two story building used as a restaurant and a patio for outdoor seating. The building is surrounded on three sides by the King Street commercial corridor and bordered by a residential development to the south.

PROPOSAL DESCRIPTION

The applicant requests special use permit approval to allow 15 additional seats in the outdoor patio area, for a total of 45 seats outside. No other changes to the restaurant are proposed.

SUP HISTORY

A restaurant has been located at 1106 King Street since 1985 (SUP #1817). On May 9, 1996, City Council granted Special Use Permit #96-0020 allowing the addition of outdoor seating. The ownership (SUP #2002-0049) and the hours of operation (SUP #2002-0079) have been changed more recently.

INSPECTION

On October 28, 2003, staff inspected the premises for the one year review of SUP#2002-0079 and found no violations.

ZONING

The subject property is located in the CD/Commercial Downtown zone. Section 4-500 of the Zoning Ordinance allows a restaurant in the CD zone only with a special use permit. The subject property is also located within the Old and Historic Alexandria District. As such, any exterior architectural change, such as signs, exterior duct work or fenestration, must be reviewed and approved by the Board of Architectural Review, Old and Historic Alexandria District.

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 use.

II. STAFF ANALYSIS

Staff supports the applicant's proposal for additional outdoor seating in its courtyard. The courtyard is exceptionally maintained and adds to the vibrancy of King Street. It provides a unique outdoor dining experience in the heart of Old Town. Staff has not received any complaints regarding noise from the existing 30 outdoor seats, and staff does not anticipate an increase in impacts from the additional seats requested.

Staff is concerned, however, about the feasibility of 15 additional seats at this location because of the need to provide accommodation for egress in the case of a fire emergency. Staff recommends a number of conditions to address the fire egress for the seating plan provided by the applicant and will support up to 15 additional seats as requested by the applicant only if a plan is approved by Code Enforcement.

Because outdoor seating can only be used part of the year, and because the restaurant attracts many pedestrian patrons, staff found that additional parking impacts from the increase in seating would be minimal. Staff recommended no changes to the conditions regarding parking.

Staff recommended an extended closing hour for the indoor seating to be more consistent with other area restaurants. Staff recommended a one year review condition to ensure that Code issues are resolved, and no issues arise.

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

III. RECOMMENDED 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 corporation in which the applicant has a controlling interest. (P&Z) (SUP #1817)
2. Seating shall be provided inside for no more than 108 patrons. (P&Z) (SUP #96-0020)
3. **CONDITION AMENDED BY STAFF:** Outside dining facilities shall be provided for no more than 30 patrons on the patio to the west of the building. An additional 15 seats may be added if and when the applicant has satisfied all of the Code Enforcement requirements in Conditions #28 through #32. (P&Z) (SUP #1817)

4. **CONDITION AMENDED BY STAFF:** ~~The hours which the business is open to the public shall be restricted to between 11:30 A.M. to~~ Closing hours shall be no later than 11:00 P.M. Sunday ~~Monday through Thursday, 11:30 A.M. to and~~ 12:00 midnight Friday and Saturday, and 10:30 A.M. to 10:00 P.M. Sunday. (P&Z) (SUP #1817)
5. Trash and garbage shall be stored inside or in dumpsters which are fully enclosed within a refrigerated storage container at the rear of the property. Trash and garbage shall only be removed from the storage container for the purposes of collection and cleaning. (King Henry Court Owners Association) (SUP #96-0020)
6. Condition deleted. (SUP #96-0020)
7. The applicant shall provide a minimum of 33 off-street parking spaces within 500 feet of the site to accommodate restaurant patrons after the normal working hours in the evenings to the satisfaction of the Director of Planning and Zoning. On each anniversary of the approval of the special use permit, the applicant shall provide to the Director of Planning and Zoning copy of (1) the lease or other arrangement by which the applicant makes off-street parking available for customers and employees, (2) the materials advertising such off-street parking, and (3) a report concerning the utilization of off-street parking subsidies by the restaurant's patrons. (P&Z) (SUP #96-0020)
8. There will be no through vehicular traffic via the alley from Fayette Street. (PC) (SUP #1817)
9. The applicant, in agreement with the owner of 101 King Henry Court, shall erect a suitable wall or fence. (PC) (SUP #1817)
10. No live entertainment shall be provided at the restaurant. (P&Z) (SUP #96-0020)
11. The hours of operation for the outdoor dining area shall be limited to 11:30 A.M. to 10:00 P.M. Sunday through Thursday, and limited to 11:30 A.M. to 11:00 P.M. Friday and Saturday. No meals may be served after 9:30 P.M. Sunday through Thursday and after 10:30 P.M. Friday and Saturday and the patio shall be closed and cleaned by 10:00 P.M. Sunday through Thursday and 11:00 P.M. Friday and Saturday. (P&Z) (PC) (SUP#2002-0079)
12. The applicant shall post the hours of operation at the entrance to the restaurant. (P&Z) (SUP #96-0020)

13. Alcoholic beverages may be sold for on-premises consumption only. (P&Z) (SUP #96-0020)
14. No food, beverages, or other material shall be stored outside. (P&Z) (SUP #96-0020)
15. 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 #96-0020)
16. Kitchen equipment shall not be cleaned outside, nor shall any cooking residue be washed into the streets, alleys or storm sewers. (T&ES) (SUP #96-0020)
17. Loudspeakers shall be prohibited from the exterior of the building, and no music or amplified sound shall be audible at the property line. (T&ES) (SUP#2002-0079)
18. The applicant shall require its employees who drive to use off-street parking. (P&Z) (SUP #96-0020)
19. Condition deleted. (City Council) (SUP#2002-0079)
20. The applicant shall (a) advertise the availability of off-street parking by including such notice in any advertising; (b) urge patrons who drive to use the space; and (c) post signs at the restaurant directing patrons to the availability of such parking. (P&Z) (SUP #96-0020)
21. The applicant shall maintain the facade of the adjacent vacant building at 1104 King Street; the plywood shall be kept in good condition and shall be painted with a dark neutral color until the building is rehabilitated. The flower boxes on the facade shall either be removed or shall be repaired and kept in good condition. (P&Z) (SUP #96-0020)
22. **CONDITION AMENDED BY STAFF:** The Director of Planning and Zoning shall review the special use 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 which constitute repeat violations or which create a direct and immediate adverse zoning impact on the surrounding communities, (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)

23. The applicant shall contact the Crime Prevention Unit of the Alexandria Police Department for a security survey for the business and a robbery awareness program for all employees. (Police) (SUP #96-0020)
24. The brick wall currently under construction across the patio area shall be fully completed to a height of 14 feet and composed entirely of brick, with the exception of a wooden door. This door shall be kept closed at all times while the outdoor dining area is open, except for purposes of taking deliveries during daylight hours. (King Henry Court Owners Association) (SUP #96-0020)
25. **CONDITION AMENDED BY STAFF:** The applicant shall control cooking odors and smoke from the property to 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) (SUP # 2002-0049)
26. **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)
27. **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, and to provide instruction preventing underage sales of alcohol. (P&Z)
28. **CONDITION ADDED BY STAFF:** The applicant shall submit a seating plan that accurately reflects the conditions at the site along with the proposed seating arrangement. (Code Enforcement)
29. **CONDITION ADDED BY STAFF:** A clear, unobstructed path measuring no less than 44 inches is required to be maintained from the building exit, through the courtyard to the approved exits to the public way. The pathway shall remain clear of tables, chairs and planters at all times. The approved pathway shall be designated by the applicant and approved by the Director of Code Enforcement. (Code Enforcement)
30. **CONDITION ADDED BY STAFF:** A secondary exit from the courtyard shall comply with the USBC, remain free of obstructions and be properly illuminated at all times. The aforementioned shall include the exit door, pathway to the alley, and the alley leading to the public way. (Code Enforcement)

31. **CONDITION ADDED BY STAFF: Front gates of the courtyard shall remain unlocked and held in the open position at all times the building is occupied. (Code Enforcement)**
32. **CONDITION ADDED BY STAFF: Any encroachment from any other structure that impacts the courtyard, requires a new review of the courtyard seating shall be revisited for compliance with the USBC. (Code Enforcement)**
33. **CONDITION ADDED BY STAFF: Approval of this special use permit is contingent upon the applicant's compliance with all Code requirements for the outdoor seating area. (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:

- 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 Services.
- R-3 All loudspeakers shall be prohibited from the exterior of the building and no amplified sound shall be audible at the property line.
- C-1 The applicant shall comply with the City of Alexandria's Noise Control Code, Title 11, Chapter 5, which sets the maximum permissible noise level as measured at the property line.

Code Enforcement:

- F-1 The submitted seating plans does not reflect actual conditions on the site. Several permanent physical barriers were omitted from the plan that affect egress from the courtyard. The applicant shall resubmit a revised plan which accurately reflects the conditions at the site along with the proposed seating arraignment.
- F-2 The current egress pattern of the structure requires 50% of the approved, interior occupant load to discharge into the courtyard and then into an approved path leading to the public way. The proposed increased occupant load of the courtyard shall be combined with 50% of the approved interior occupant load. This combined number exceeds 50 persons and requires two approved means of egress from the courtyard. The current configuration only has one approved exit. A second exit is required.
- F-3 A clear, unobstructed path measuring no less than 44 inches is required to be maintained from the building exit, through the courtyard to the approved exits to the public way. The pathway shall remain clear of tables, chairs and planters at all times. The approved pathway shall be designated by the applicant and approved by the Director of Code Enforcement.

- F-4 A secondary exit from the court yard shall comply with the USBC and remain free of obstructions and properly illuminated at all times. This shall include the exit door, pathway to the alley, and the alley leading to the public way.
- F-5 Front gates of the courtyard shall remain unlocked and held in the open position at all times the building is occupied.
- F-6 Should an encroachment from any other structure be requested which impacts the courtyard, a review of the courtyard seating shall be revisited for compliance with the USBC.

Health Department:

- F-1 No objections.

Police Department:

- F-1 No objection to the additional seating.
- F-2 From January 1, 2003 through March 25, 2004 there have been no calls for public service.
- F-3 The applicant has had the security survey and robbery awareness program completed.

REPORT ATTACHMENTS AVAILABLE IN THE PLANNING AND ZONING OFFICE