

Docket Item #34
ENCROACHMENT #2004-0003

Planning Commission Meeting
June 1, 2004

ISSUE: Consideration of a request for encroachment into the public right-of-way for a patio at a restaurant.

APPLICANT: Fireflies
by Marylisa Damiani and Daniel Lichens

LOCATION: 1501 Mount Vernon Avenue

ZONE: CL/Commercial Low

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, Fireflies, represented by Marylisa Damiani and Daniel Lichens, requests approval of an encroachment to extend the existing outdoor seating area into the public sidewalk right-of-way in front of 1501 Mount Vernon Avenue.

SITE DESCRIPTION

The subject property is one lot of record with 54 feet of frontage on Mount Vernon Avenue, 103 feet of depth and a total lot area of 5,562 square feet. The site is developed with a one story, masonry commercial building. Residential uses lie to the east, south and west of the subject property. Commercial uses line Mount Vernon Avenue to the north.

PROJECT DESCRIPTION

The Fireflies restaurant has been in business at this location for more than two years. A total of 68 seats are currently permitted for the premises, which includes up to 12 outdoor seats in the summer months. This application is part of the applicant's effort to enhance the restaurant. It is also applying for a special use permit amendment to add seats, extend the operating hours and the sale of alcoholic beverages, and to offer light music entertainment (see SUP#2004-00045).

The applicant requests approval to extend the depth of the outdoor seating area in front of the restaurant two feet and nine inches into the sidewalk and towards the street. The restaurant currently offers outdoor seating but intends to enclose the patio with a railing and to elevate the two seating areas, which are located north and south of the main entrance, by approximately five inches to the level of the restaurant. The existing slope and handicapped access to the restaurant's entrance will be maintained. Each side will provide twelve seats and can be accessed from the main entry area (see attached plans). In addition to ABC (Alcohol and Beverage Control Board) regulations requiring a restaurant serving alcoholic beverages to provide a clear physical separation to prevent the general public access to the outdoor seats, the applicant states that the enclosure and elevation of the patio will also define and beautify the restaurant's facade along Mount Vernon Avenue.

Proposal Details:

The applicant proposes to encroach two feet and nine inches into the public sidewalk, which will leave a four feet sidewalk for pedestrian access between the seating area and sidewalk features, such as a light post, trash can and tree wells (see picture on next page).

The encroachment dimensions read as follows:

	North Section	Walkway	South Section	TOTAL
<u>Width</u>	2'-9"	2'-9"	2'-9"	
<u>Length:</u>	10'	6'	12'	
<u>Area in square feet:</u>	27.5	16.5	33	77



ZONING / MASTER PLAN: The subject property is located in the CL/Commercial Low zone. Section 4-100 of the Zoning Ordinance allows a restaurant in the CL zone only with a special use permit. The existing use is consistent with the Potomac West Small Area Plan chapter of the Master Plan which designates the property for commercial use. The use is also subject to the Mount Vernon Urban Design Guidelines.

II. STAFF ANALYSIS

Staff supports this request to encroach slightly into the sidewalk along Mount Vernon Avenue because staff believes it will improve the appearance and operation of the outdoor seating area of this restaurant. Outdoor seating is an important feature of the restaurant and also a key element of a pedestrian environment on Mount Vernon Avenue. The extension of the outdoor seating area to the natural existing pavement break with the installation of railing around the area will define the restaurant's perimeter, will be more inviting to customers and will be easier to monitor. Furthermore, the proposed railing around the perimeter of the encroachment will align exactly with the landscape beds on either side of the patio area (see photo and attached plans). With the addition of landscaping in planters, it will add to the attractiveness of the street and the block.

While strongly supporting outdoor seating generally, and this application specifically, staff notes that the pedestrian sidewalk area remaining beyond the seating area is small, only four feet wide. Staff usually requires a minimum width of five feet for pedestrians, and there are some locations where even more sidewalk area is recommended. However, as staff analyzed other sidewalk widths along Mount Vernon Avenue, particularly measuring the clearance between the building line and/or outdoor seating areas and sidewalk features such as light poles, tress and trash cans, it found that it is not uncommon to have only a 4 foot sidewalk for passage. In addition, there is only a four foot width at Mancini's restaurant, and four feet seven inches at St. Elmo's coffeehouse, although there is eight feet at the Evening Star Cafe, and the Panetier restaurant. In conclusion, staff supports the proposal based on the choice to maintain the street scape of the subject side and its immediate neighbor and the fact that similar sidewalk widths in front of other outdoor seating areas along Mount Vernon Avenue appear to function well.

Staff notes that the City is currently completing its streetscaping and utility undergrounding program for this area, and that as part of this program, and in cooperation with the property and business owners, it is replacing the concrete sidewalk with masonry paving in accordance with Mt. Vernon Avenue Design Guidelines. Because the applicant is proposing to elevate the patio area on both sides of the entrance, the City will not be able to include this portion of the property in the paving program. However, staff has included a condition requiring the applicant to submit plans and obtain approval of the Director of Planning and Zoning for the patio's design, material and location. In addition, staff recommends that the applicant install masonry pavers for the walkway between the seating areas from the edge of the public right-of-way to the front building

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wall of the restaurant (on private property) in order to create an aesthetically pleasing connection between the private property and sidewalk.

Finally, staff recommends the placement of planters filled with seasonal plants within the outdoor seating area and has included a condition to that effect. With these conditions, 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 four feet shall be maintained as shown on the schematic submitted with the application, including where there are sidewalk features, such as a light post and trees. (P&Z) (T&ES)
5. The applicant shall install and maintain landscaped planters, to include four seasons of plants in at least two containers of a style and at a location approved by the Department of Planning and Zoning. (RPCA) (P&Z)
6. The applicant shall participate in the streetscaping and utility undergrounding program for the purpose of installing masonry paving in accordance with Mt. Vernon Avenue Design Guidelines. As part of this program, the applicant shall pay the City of Alexandria to install masonry pavers for the walkway between the seating areas from the edge of the public right-of-way to the front building wall of the restaurant (on private property). (T&ES)
7. Prior to the construction of an outdoor patio, the applicant shall submit plans and obtain approval of the Director of Planning and Zoning for its design, material and location.(P&Z)

8. Loudspeakers shall be prohibited from the exterior of the building.(T&ES)

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 4 feet shall be maintained as shown on the schematic submitted with the application.
- R-2 Loudspeakers shall be prohibited from the exterior of the building.
- R-3 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-4 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-5 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.
- R-6 When the City proceeds with its streetscaping and utility undergrounding program for this area, the applicant shall participate in such program for the purpose of installing masonry paving in accordance with the Mt. Vernon Avenue Design Guidelines. The applicant shall pay the City of Alexandria to install masonry pavers from the edge of the public right-of-way to the front of the building wall of the restaurant (on private property).

Code Enforcement:

- F-1 No comments.

Health Department:

- F-1 An Alexandria Health Department Permit is required for all regulated facilities. This facility is currently operating as Fireflies under an Alexandria Health Department permit issued to Food Services, Inc.
- C-1 Food must be protected to the point of service.
- C-2 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-3 Permits or approval must be obtained prior to use of the new area(s).
- C-4 This facility must comply with the Alexandria City Code, Title 11, Chapter 10, Smoking Prohibitions both indoors and at the outside dining areas.
- C-5 Certified Food Managers must be on duty during all hours of operation.

Police Department:

- F-1 No objections.

REPORT ATTACHMENTS AVAILABLE IN THE PLANNING AND ZONING OFFICE