

Docket Item #18
SPECIAL USE PERMIT #2004-0073

Planning Commission Meeting
September 9, 2004

ISSUE: Consideration of a request for a special use permit to operate a restaurant.

APPLICANT: Rita's Italian Ice
by Gary L. Jones and Robynn Thornton-Howie

LOCATION: 2705 Mount Vernon Avenue

ZONE: CL/Commercial Low

STAFF RECOMMENDATION: Staff recommends **denial** of the request. 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#2004-0073
2705 Mount Vernon Avenue

SITE GRAPHIC
AVAILABLE IN THE PLANNING AND ZONING OFFICE

I. DISCUSSION

REQUEST

The applicant, Rita's Italian Ice, requests special use permit approval for the operation of a carry-out restaurant located at 2705 Mount Vernon Avenue.

SITE DESCRIPTION

The subject property is part of one lot of record with approximately 20 feet of frontage on Mount Vernon Avenue and a total area of approximately 1,700 square feet. The property is developed with one commercial building facing Mount Vernon Avenue and one small residential building located at the rear of the lot. The subject tenant space will occupy the 600 square feet commercial building.

SURROUNDING USES

To the south is a three-story apartment building. The property to the north is currently vacant but proposed to be redeveloped with a live/work mixed use building. Across Mount Vernon Avenue is the Mount Vernon Elementary School.

PROJECT DESCRIPTION

The applicant is proposing to operate a franchise of Rita's Water Ice Corporation ("Rita's"), which has more than 250 shops in ten states, from Florida to New York. The restaurant will serve Italian Ice, gelati and shakes. Rita's will not have seats available to its patrons; it operates as a "walk-up" with customers placing their orders at outside windows, and typically consuming the product off the premises. Customers are not permitted inside the building. The building contains an office, a space for storage and staging, and the food service area, which consists of refrigeration units, food products, equipment, and the cash registers. The applicant is not proposing to serve alcoholic beverages, or to offer live entertainment.

Months/ Hours of Operation: Rita's is a seven month business, serving customers from March 1 to September 30. The proposed hours of operation are 10:00 A.M. to 10:00 P.M. daily.

Customers/Employees: Despite requests from staff, the applicant has not indicated the number of customers anticipated daily. Up to five employees will be on the premises at any one time.

Trash: Trash will mainly consist of paper and plastic utensils, ice and dairy products. The applicant anticipates between five and eight cans of trash per day and notes that trash cans will be placed at the "walk-up" window, and at the parking lot (see PARKING below).

Loading/Unloading: The shape and small size of the property require loading and unloading to occur from the public right-of-way along Mount Vernon Avenue. The applicant anticipates three deliveries weekly at flexible times of the day.

PARKING

The proposed use, a carry-out restaurant without seats, constitutes a change in use and is treated as a retail use for parking purposes, with a requirement of 1.1 spaces for each 200 square feet of space. A carry-out restaurant with 600 square feet is therefore required to provide four off-street parking spaces. The four required spaces will be provided within 500 feet, located at the SunTrust Bank parking lot across East Raymond Avenue.

Until now, the use of the building without parking was grandfathered because the subject site was constructed in 1954 and occupied by retail or personal service uses ever since. However, under the parking grandfathering rules, Section 8-200 (F)(1)(b) of the zoning ordinance, once the use is changed, compliance with current parking rules is required

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 proposed 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 recommends denial of this restaurant application because it believes it will not be helpful to the future of Mount Vernon Avenue and will create serious conflicts for neighbors today. The proposal is inconsistent with the planning effort for Mount Vernon Avenue that has been undertaken over the past year, and potentially inconsistent with existing and future uses in the area. Staff understands that there is some excitement about the proposal because it involves a popular product. However, whatever benefits the new restaurant may bring to the community are not outweighed in this case by its negative aspects.

Retail Market Issues

The City, through the Department of Planning and Zoning, has been working on a Mount Vernon Avenue Business Plan for the last year. The purpose of the work has been to find strategies to further the energetic economic advances that Mount Vernon Avenue has experienced in the last several years, all while protecting the existing adjacent residential neighborhoods. The study and draft plan have several elements, but a few key ideas are significant to this case.

Retail Location. First, the study has made an important distinction between parts of Mount Vernon Avenue for purposes of analysis and proposed land uses and future zoning rules. The portion of the Avenue between Bellefonte and Uhler is identified as the “historic core” of Mount Vernon. Emphasis has been placed on that area because it is within the Town of Potomac historic district, but also because it is the center of the Del Ray area. In order to support active and economically viable retail activity on Mount Vernon Avenue, it is important that retail opportunities be concentrated. An important factor that came out of the economic analysis of the Avenue is that there is insufficient market to support retail uses along the whole of Mount Vernon Avenue. The draft plan, therefore identifies that central area as the one where new retail uses should be focused and suggests that economic efforts be targeted there. From an economic development perspective it is important to focus new retail uses to the heart, or core, of the retail area between Bellefonte and Uhler. To support retail uses everywhere along the Avenue will dilute the economic effect, eliminate sites for other uses and undermine efforts to build a healthy retail core. Outside the core to the north, in the area between Uhler and Herbert, the planning effort has identified desirable uses as residential, including live/work opportunities.

In this case, the proposed restaurant will be located outside the proposed retail core, in an area designated and appropriate for residential use. While retail uses are allowed at the subject property, they are not favored. It is true that the subject property is located in a part of Mount Vernon Avenue where economic activity has not been strong in the recent past. Although that fact might argue in favor of supporting the proposed restaurant, there is a pending proposal for a large development of residential and live/work units on the large vacant site adjacent to the proposed restaurant site. That use is consistent with the plan for the area and the distinction between different segments of Mount Vernon Avenue from an economic development perspective. It is also consistent with the existing residential building to the south. Staff does not support new retail uses at the proposed location because it undermines the key economic development strategies identified in the planning effort for the future of Mount Vernon Avenue and takes away from efforts to build a healthy, active core retail area.

Specific Retail Use. Another factor raised as part of the economic study for Mount Vernon Avenue relates to the type of retail use that is appropriate and desirable for the street. Today Mount Vernon Avenue is enjoyed because of its character and vitality, and its “Main Street” environment. To continue and strengthen that character, it is important that new retail uses be independent uses, and unique ones, as to national chains and franchise operations. In addition, it is important that there be a balance of specific uses, so that there are not too many of any one type, in order to sustain a healthy market. In this case, the proposed restaurant is inconsistent with these important planning principles. It is a franchise, and part of a national chain. It also represents the third ice cream business, in a relatively small area. Staff cannot support the proposal for these reasons and to do so would set a precedent that would be difficult to undo in the future.

Impact on Surrounding Uses

In addition to the strong market issues raised above, staff is concerned about the Rita's proposal because of the nature of the use, its site and its plan for operation.

Traffic and Parking. The proposal is for a walk-up ice cream take-out window in a very small store, on a very small site. Rita's has indicated it does not plan to install outdoor seating; it does not plan – and there is no room – for seats indoors. Therefore, its customers will be quick, and there will be significant turnover. Although the use will undoubtedly attract pedestrians, there will also be significant drive up traffic. The result, staff believes, will create both traffic safety and parking issues for the surrounding neighborhood. Because the site includes no parking whatsoever, customers who park will have to find parking elsewhere. While the use meets the technical zoning requirement for parking, two spaces will not meet the natural demand the restaurant will create. Customers will either park on nearby residential streets or they may park in the large SunTrust parking lot a block away to the north. Although only two spaces will be technically allotted for the use at that parking lot, there are often empty spaces. If the bank does not object, Rita's customers may park there. If the bank does object, then there will be little opportunity for customer parking in the area.

Either way, because of the inconvenience of parking even a block away for a quick purchase, customers are likely to double park while purchasing the products at the “walk-up” window. The result could create a traffic hazard on Mount Vernon Avenue right before the intersection of East Raymond Avenue. With the Mount Vernon Elementary School across the street, traffic and parking issues could lead to safety problems for children who are customers or just pedestrians crossing the street.

Noise. In addition to traffic and parking problems, there is the potential for noise from the outside activity associated with the walk-up operation. The potential for gathering of crowds, double parked cars and animated conversations will all be a problem for adjacent and nearby residential units.

Litter. The use has a great potential for litter because patrons who walk away from the restaurant, either to their cars or to other destinations, are very likely to toss napkins and containers on the ground. Although the applicant intends to install litter baskets on the site, as well as in the bank parking lot, and would be required to police the site for litter, staff is very concerned about the litter problem here, or with any quick, carry out operation.

Each of the above issues suggests that this location, adjacent to existing and future residential uses, and across the street from an elementary school, is a poor choice for a walk-up fast food restaurant. Staff has been contacted by concerned residents in the area who object to a restaurant of this nature near their homes.

Building Design Plan

Staff objects to the physical appearance of the proposed business, which symbolizes a boardwalk fast-food stand rather than an appealing specialty independent neighborhood store, consistent with the flavor of Mount Vernon Avenue (see attached pictures). The bold, red and white awning and proposed signage and lighting, all on a concrete platform, are out of place on a street that has character and acts as a “Main Street” for the community. Staff has talked to the applicant about changing its logo and franchise image, but the applicant has been reluctant to seriously consider changes.

For each of the above reasons, staff recommends that the restaurant application be denied. In the event that the application is approved, staff has included site improvement and parking conditions in addition to the standard restaurant conditions which should be part of any approval. Staff has also included the requirement of a review of the restaurant after it has been operational for one year.

The site improvement conditions reflect the necessity to guide the redesign of the concrete area, including landscaping, and the application of Rita’s corporate colors and signs on the site in accordance with the Mount Vernon Avenue Design Guidelines. Although the applicant is not proposing to provide outdoor seating, staff has included a condition regulating a potential outdoor seating area in order to provide flexibility to the applicant and to potentially enhance the site’s appearance with benches or cafe-style seats and tables.

III. RECOMMENDED CONDITIONS

Staff recommends **denial** of the request. 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 granted to the applicant only or to any business or entity in which the applicant has a controlling interest. (P&Z)
2. Outdoor seats are permitted in front of the restaurant along Mount Vernon Avenue, subject to approval of the Director of Planning and Zoning for the number, location and design of the seats. Outdoor dining activities shall not encroach upon the right-of-way, unless an encroachment permit is granted. The applicant shall ensure that access is provided in accordance with building and fire requirements and that the seating area is cleaned at the close of each day of operation. (P&Z)
3. The hours of operation shall be limited to between 8:00 A.M. and 10:00 P.M. daily. If applicable, the hours of operation for the outdoor dining area shall be limited to between 9:00 A.M. to 9:00 P.M. daily. (P&Z)

4. The applicant shall post the hours of operation at the entrance to the restaurant. (P&Z)
5. Meals ordered before the closing hour may be served, but no new patrons may be admitted after the closing hour, and all patrons must leave by one hour after the closing hour. (P&Z)
6. No food, beverages, or other material, shall be stored outside. (P&Z)
7. 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)
8. 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)
9. The applicant shall provide the City \$850.00 for one Model SD-42 Bethesda Series litter receptacle for installation on the adjacent public right-of-way. Contact T&ES Solid Waste Division (703/751-5130) for information. (T&ES)
10. Kitchen equipment shall not be cleaned outside, nor shall any cooking residue be washed into the streets, alleys or storm sewers. (T&ES)
11. 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)
12. Loudspeakers shall be prohibited from the exterior of the building, and no amplified sounds shall be audible at the property line. (T&ES)
13. The applicant shall require its employees who drive to work to use off-street parking. (P&Z)
14. The applicant shall post signs directing patrons to the availability of at least two off-site parking spaces made available by the applicant at the SunTrust Bank located at 2809 Mount Vernon Avenue. (P&Z)

15. The applicant shall remove the existing driveway apron and replace it with city standard curb/gutter and masonry pavers per the Mt. Vernon Avenue Design Guidelines. (T&ES)
16. The applicant shall submit a site improvement plan to include the redesign and landscaping of the area facing Mount Vernon Avenue and the replacement of the concrete with masonry pavers. All site improvement shall comply with the Mount Vernon Avenue Design Guidelines and are subject to the approval of the Directors of the Department of Transportation and Environmental Services and the Department of Planning and Zoning and shall be completed within one year of the special use permit approval. (T&ES) (P&Z)
17. The applicant shall provide and maintain in good condition landscaping generally consistent with an approved plan and/or shall install planters with seasonal plants and at a size and location to the satisfaction of the Director of the Department of Planning and Zoning. (P&Z)
18. The applicant shall revise the design, location and coloring of the building exterior and facade, including the corporate business signs and awnings to the satisfaction of the Director of Planning and Zoning. All site improvement shall comply with the Mount Vernon Avenue Design Guidelines and are subject to the approval of the Director of Department of Planning and Zoning. (P&Z)
19. Alterations or repairs to existing exterior lighting fixtures or new exterior lighting fixtures shall be shielded so as not to cause glare onto adjacent properties. (P&Z)
20. The applicant shall provide a menu or list of foods to be handled at this facility to the Health Department prior to opening. (Health)
21. No alcohol service shall be permitted. (P&Z)
22. No live entertainment shall be provided on the premises. (P&Z)
23. The applicant shall contact the Crime Prevention Unit of the Alexandria Police Department at 703-838-4520 regarding a security survey for the business and a robbery awareness program for all employees prior to opening. (Police)
24. 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. (P&Z)

25. 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)
26. 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 as a result of a complaint that rises to the level of a violation of the permit conditions, 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 Fogarty, Director, Department of Planning and Zoning;
Bettina Irps, 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 Loudspeakers shall be prohibited from the exterior of the building, and no amplified sounds shall be audible at the property line.
- R-3 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 Applicant shall provide the City \$850.00 for one Model SD-42 Bethesda Series litter receptacle for installation on the adjacent public right-of-way. Contact T&ES Solid Waste Division (703/751-5130) for information.
- R-5 Applicant shall remove the existing driveway apron and replace with City standard curb/gutter and masonry pavers per the Mt. Vernon Avenue Design Guidelines.

Code Enforcement:

- F-1 The lot in question has two structures located on it. The rear structure's current use is R, Residential. The front structure's current use is B, Business. The separation distance between both structures is an existing condition which does not conform to code requirements pertaining to fire separation distances. (USBC 704.3). As a result, a fire in one structure has a high probability of spreading to the adjoining structure in a limited amount of time. In order to reduce this potential spread of fire, the following are strongly recommended:

- All exterior openings on the east face of the front building shall be eliminated. All combustible trim shall be eliminated. A 1 hour fire rating for the east face wall shall be maintained.
 - The redesign on the south face shall respect the 5 foot set back requirement for openings in accordance with the USBC (USBC 704.1 through 704.8)
- C-1 New construction must comply with the current edition of the Uniform Statewide Building Code (USBC).
- C-2 Alterations to the existing structure must comply with the current edition of the Uniform Statewide Building Code (USBC).
- C-3 Before a building permit can be issued on any proposed future alterations, a certification is required from the owner or owner's agent that the building has been inspected by a licensed asbestos inspector for the presence of asbestos (USBC 112.1.4).
- C-4 Alterations to the existing structure and/or installation and/or altering of equipment therein requires a building permit. Five 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-5 Required exits, parking, and accessibility for persons with disabilities must be provided to the building.
- 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 Alexandria Health Department Permit is required for all regulated facilities.

- C-2 Five sets of plans are to 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 must be obtained prior to operation.
- C-4 This facility must comply with the Alexandria City Code, Title 11, Chapter 10, Smoking Prohibitions.
- C-5 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:

- R-1 The applicant is to contact the Crime Prevention Unit of the Alexandria Police Department 703-838-4520 regarding a security survey for the business prior to opening.
- 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.
- F-1 The applicant is not requesting an ABC permit. The Alexandria Police concurs with this.

SUP#2004-0073
2705 Mount Vernon Avenue

**REPORT ATTACHMENTS
AVAILABLE IN THE PLANNING AND ZONING OFFICE**