

Docket Item # 6
SPECIAL USE PERMIT #2004-0106

Planning Commission Meeting
January 6, 2005

ISSUE: Consideration of a request for a special use permit to expand the hours of operation of a restaurant.

APPLICANT: 710 King Street, LLC
by Robert Test

LOCATION: 710 King Street
Las Tapas Restaurant

ZONE: CD/Commercial Downtown

STAFF RECOMMENDATION: Staff recommends **denial** of this application. 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.

SITE GRAPHIC
AVAILABLE IN THE PLANNING AND ZONING OFFICE

I. DISCUSSION

REQUEST

The applicant, 710 King St. LLC, by Robert Test, attorney, requests special use permit approval to amend the hours of operation for an existing restaurant located at 710-714 King Street.

SITE DESCRIPTION

The subject property is one lot of record with an area of 6,397 square feet, approximately 53 feet of frontage along King Street, and a depth of approximately 105 feet. It is located in the heart of Downtown Alexandria and surrounded by commercial and restaurant uses.

CURRENT RESTAURANT CHARACTERISTICS

The applicant is operating as Las Tapas restaurant with 205 seats and a bar area. The restaurant has a full on-premise alcohol license and provides occasional live entertainment in the form of small musical and dance ensembles. The approved hours of operation are 11:00 a.m. to 11:00 p.m. Sunday through Thursday, and 11:00 a.m. to 1:00 a.m. on Friday and Saturday.

PROPOSED AMENDMENT

The applicant proposes to extend the closing hour from 1:00 a.m. to 1:30 a.m. Fridays and Saturdays, with all patrons leaving by 2:00 a.m. The applicant states that the expansion is primarily proposed to accommodate the weekend demand for orders after 1:00 a.m.

No change is requested to the Sunday through Thursday hours of operation and no other changes are proposed to the operation of the restaurant.

Staff visited the subject property to determine if the business was in compliance with the conditions of its special use permit, and found that the applicant was not offering parking validation as required by Conditions #13, #14, and #15. The manager stated that it only recently ceased validating parking. Following the inspection, the applicant pursued an arrangement with the Alfred Street garage as required. The applicant is in the process of obtaining a written agreement from the garage to provide to staff as required.

SUP HISTORY

A restaurant has operated in this location since 1982 when City Council granted Special Use Permit #1498 to Kai Dong. Since that approval, the ownership of the restaurant has changed hands. In May 2001, City Council granted SUP #2001-0028, which changed the ownership and combined the special use permits for this restaurant and the next door 'La Costa Del Sol' restaurant into a single permit. In October 2001 (SUP #2001-0088), City Council approved an amendment to allow live entertainment until the closing hour rather than 11:00 p.m., but denied the applicant's request to extend the hours of operation to 1:00 a.m. Monday through Thursday and to 1:30 a.m. on Fridays and Saturdays.

PARKING

The restaurant's location within the Central Business District of Historic Alexandria technically exempts the applicant from the requirement to provide off-street parking. However, in accordance with condition #13, which was added to the restaurant SUP in 1997, the applicant is required to provide subsidized parking for all patrons during evenings and weekends in a nearby public parking garage.

ZONING / MASTER PLAN

The subject property is located in the CD/Commercial Downtown zone. Section 4-503(W) of the Zoning Ordinance allows a restaurant in the CD zone only with a special use permit. The restaurant 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 is concerned about the applicant's request for later hours of operation for the existing restaurant located at 710 King Street. Although in recent years many problems have subsided, there have historically been problems with late night drinking and noise spilling over into the adjacent residential areas that were attributed to the restaurants in the lower King Street area. The City has spent considerable resources, in the form of police and inspectors, to control the problem. While Old Town residents have not recently experienced the 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 the business community and the need for quiet enjoyment of residential areas. For this reason, there has more recently been a consistent approach to the closing hours for restaurants with SUPs along King Street, which is no later than 1:00 a.m.

The closing hours of the other restaurants on the 700 and 800 blocks of King Street vary. There are some grandfathered restaurants, such as Bistro Europa and Murphy's, that close at 1:00 a.m. daily. For other restaurants that operate pursuant to SUPs, such as China King, Taj Prince, Geranio's, Bertucci's, Cajun Bangkok, and Los Amigos, their closing hours range from 10:30 p.m. to 1:00 a.m. depending on the day of the week. Of those restaurants, however, none is permitted to operate past 1:00 a.m. In these blocks, only Café Salsa at 808 King Street and Asian Bistro at 809 King Street are permitted to stay open until 2:00 a.m. on Fridays and Saturdays under old special use permits, and neither are currently operating that late.

More recently, City Council has approved restaurants on King Street limiting the closing hour to 1:00 a.m. daily, including O'Connell's Irish Restaurant at 112 King Street, and the Fish Market at 105-109 King Street.

One recent exception to the 1:00 a.m. closing hour is the Old Town Theater, which was approved with a 2:00 a.m. closing hour daily. These hours were recommended for a number of reasons. The economic health of King Street is one of the City's principal concerns, and the Old Town Theater contributes to the City's economic health. There is also a concern about the lack of evening activity on King Street as a business generator. The late hour allows the theater to provide two shows in an evening. However, the applicant agreed to stop serving alcohol at 1:00 a.m., which is consistent with the current hours that alcohol sales are provided at the subject restaurant, 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 applicant's request for later hours to accommodate later service, including alcohol service, is inconsistent with all recent approvals for closing hours on King Street, and would establish a precedent for future special use permits for later hours. In addition, City Council denied the same request for later hours at Las Tapas three years ago. Therefore, staff recommends denial of the request for extended hours.

If City Council approves the request, staff recommends approval subject to compliance with all applicable codes and ordinances and the following conditions.

III. RECOMMENDED CONDITIONS

Staff recommends **denial** of the request but approval of the continued operation of the restaurant. 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 issued to the applicant only or to any corporation or entity in which the applicant has a controlling interest. (P&Z)(SUP 1498)
2. **CONDITION AMENDED:** The hours of operation shall be limited to 11:00 a.m. to 11:00 p.m. Sunday through Thursday, and 11:00 a.m. to ~~1:00 a.m.~~ 1:30 a.m. on Friday and Saturday. (P&Z)(~~PC~~)(SUP #97-0005)
3. 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) (SUP #97-0005)
4. Seating shall be provided for no more than 205 patrons. Seating in the bar area on the ground floor of the restaurant space at 714 King Street shall be limited to a total of 44 seats, of which at least 30 seats shall be located at tables and not more than 10 stools shall be located at the bar. (P&Z) (SUP#2001-0088)
5. Live entertainment may be provided at the restaurant as follows:
 - (A) (1) Flamenco dancing and demonstration with acoustic guitar players and a maximum of two professional dancers may occur on an occasional basis;
(2) [condition deleted] (City Council)
(3) a single acoustic guitar player may be present in each restaurant daily.
 - (B) All dancing and amplified music must cease at closing. (City Council)
 - (C) All entertainment must be subordinate to the principal function of the restaurant as an eating establishment. Any advertising of the entertainment shall reflect the subordinate nature of the entertainment by featuring the food service as well as the entertainment. (P&Z) (SUP #2001-0028)
6. The applicant shall post the hours of operation at the entrance to the restaurant. (P&Z)(SUP #97-0005)

7. The applicant may serve mixed drinks, beer and wine for on-premise consumption only. (P&Z)(SUP #97-0005)
8. Service in the bar area shall be limited to 10 people seated on bar stools. (P&Z) (SUP #97-0005)
9. No food, beverages, or other material shall be stored outside. (P&Z)(SUP #97-0005)
10. 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 #97-0005)
11. Kitchen equipment shall not be cleaned outside, nor shall any cooking residue be washed into the streets, alleys or storm sewers. (T&ES) (SUP #97-0005)
12. The applicant shall require that its employees who drive to work use off-street parking. (CC) (SUP 99-0094)
13. The applicant shall (a) provide subsidized parking for all patrons under the Park Alexandria program during evenings and weekends in a public parking garage, (b) advertise such parking by posting notice at its restaurant and including such notice in any advertising, and (c) urge patrons who drive to use the space. (P&Z) (SUP #97-0005)
14. The applicant shall post signs directing patrons to the availability of discounted validated parking at the Church Square garage located at the 100 block of North Alfred Street. City Council hereby authorizes an agreement with the garage to allow restaurant parking in the garage consistent with this approval. (P&Z) (SUP #98-0055)
15. On each anniversary of the approval of the special use permit, the applicant shall provide to the Director of Planning and Zoning a copy of the lease or other arrangement by which the applicant makes off-street parking available for customers and employees. (P&Z) (SUP #98-0055)
16. The applicant shall employ the best cost-effective technology available to control odors at the time this permit takes effect, to the satisfaction of the Director of Health. (P&Z) (SUP #97-0005)

17. **CONDITION AMENDED BY STAFF:** The ~~new~~ applicant shall contact the Crime Prevention Unit of the Alexandria Police Department at 703-838-4520 for a security survey for the business and a robbery awareness program for employees. (P&Z) (SUP #2001-0028)
18. **CONDITION AMENDED BY STAFF:** The Director of Planning and Zoning shall review the special use permit one year after Council 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 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, 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) (City Council) (SUP#2001-0088)~~ (P&Z)
19. No music or noise shall be audible at the property line, the two restaurants together construed as occupying one lot. (P&Z) (SUP #98-0055)
20. **CONDITION AMENDED BY STAFF:** Meals ordered before the closing hour may be served, but no new patrons may be admitted and no alcoholic beverages may be served after the closing hour, and all patrons must leave by 2:00 a.m. ~~one hour after the closing hour.~~ (P&Z) ~~(SUP#2001-0088)~~ (P&Z)
21. **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)
22. **CONDITION ADDED BY STAFF:** 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, and to provide instruction preventing underage sales of alcohol. (P&Z)

STAFF: Eileen Fogarty, Director, Department of Planning and Zoning;
Richard Josephson, Deputy Director;
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:

F-1 No objections to the proposed changes to the existing operation.

Code Enforcement:

F-1 No comments.

Health Department:

F-1 No comments.

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.

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, 6-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.

SUP#2004-0106
710 King Street

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