



## SPECIAL USE PERMIT CERTIFICATE

Article XI, Division A, Section 11-510 of the 1992 Zoning Ordinance of the City of Alexandria, Virginia requires that you display this special use permit in a conspicuous and publicly accessible place. A copy of the list of conditions associated with the special use permit shall be kept on the premises and made available for examination by the public upon request.

Special Use Permit #                    2001-0127

Approved by City Council on:        January 26, 2002

Permission is hereby granted to:    Nickell's & Scheffler, Ltd.  
by Louis E. Nickell and Susan M. Scheffler

to use the premises located at:     1028 King Street (King Henry Deli)

for the following purpose:          see attached report

It is the responsibility of the special use permit holder to adhere to the conditions approved by City Council. The Department of Planning and Zoning will periodically inspect the property to identify compliance with the approved conditions. If any condition is in violation, the permit holder will be cited and issued a ticket. The first violation carries a monetary fine. Continued violations will cause staff to docket the special use permit for review by City Council for possible revocation.

2/22/2002

Date

E. P. Fogarty  
Eileen P. Fogarty, Director  
Department of Planning and Zoning

Docket Item # 4  
SPECIAL USE PERMIT #2001-0127

Planning Commission Meeting  
January 3, 2002

**ISSUE:** Consideration of a request for a special use permit to change the ownership of a restaurant.

**APPLICANT:** Nickell's & Scheffler, Ltd.  
by Louis E. Nickell and Susan M. Scheffler

**LOCATION:** 1028 King Street  
King Henry Deli

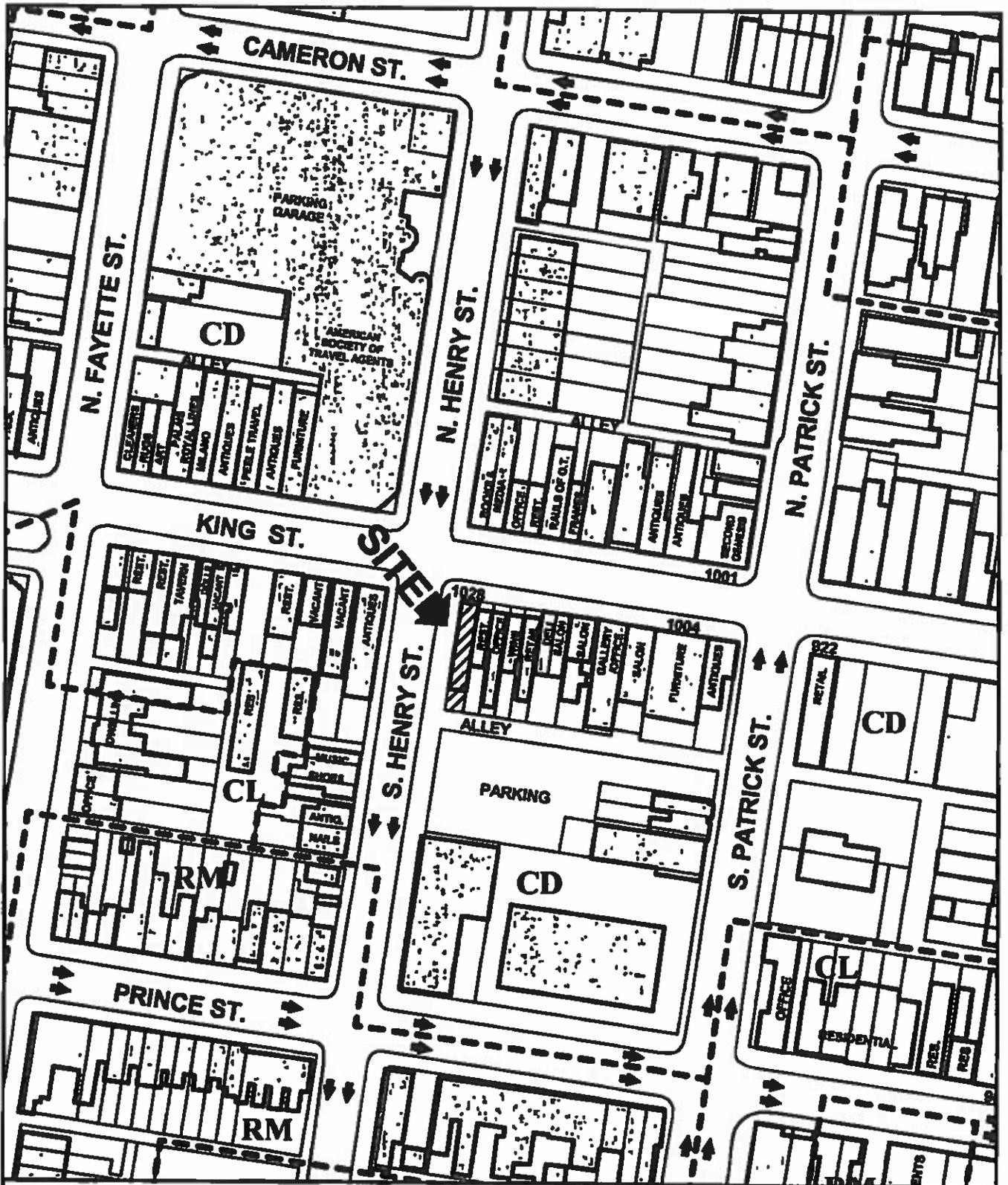
**ZONE:** CD/Commercial Downtown

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**CITY COUNCIL ACTION, JANUARY 26, 2002:** City Council approved the Planning Commission recommendation.

**PLANNING COMMISSION ACTION, JANUARY 3, 2002:** By unanimous consent, the Planning Commission recommended approval of the request, subject to compliance with all applicable codes, ordinances and staff recommendations.

**Reason:** The Planning Commission agreed with the staff analysis.



SUP #2001-0127

01/03/02



**STAFF RECOMMENDATION:**

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 #2548)
2. Seating shall be provided inside for no more than 24 patrons. (P&Z) (SUP #2548)
3. No outside dining facilities shall be located on the premises. (P&Z) (SUP #2548)
4. The applicant shall post the hours of operation at the entrance to the restaurant. The hours during which the business is open to the public shall be restricted to between 7:00 A.M. and 10:00 P.M., seven days a week, as requested by the applicant. (P&Z)
5. No food, beverages, or other material shall be stored outside. (P&Z) (SUP #2548)
6. 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 or debris shall be allowed to accumulate on-site outside of those containers. (P&Z)
7. Condition deleted. (SUP 2001-0127)
8. The applicant shall obtain, at its expense, one Model SD-42 Ironsides series trash container to be placed on the south east corner of King and Henry Streets at or near the location of the existing old model city trash can. The applicant shall contact T&ES Solid Waste Division at 703-751-5130. (P&Z)
9. Litter on the site and on public rights-of-way and spaces adjacent to or within 75 feet of the premises be picked up at least twice a day and at the close of business, and more often if necessary, to prevent an unsightly and unsanitary accumulation, on each day that the business is open to the public. (P&Z)

10. The delivery service shall be limited to two small motor vehicles (e.g. not large delivery trucks), bicycles and pedestrians. The two small motor vehicles shall be required to park on-site. Such vehicles shall not be parked on public rights-of-way. (P&Z)
11. 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 one hour after the closing hour. (P&Z)
12. No live entertainment shall be provided at the restaurant. (P&Z)
13. On-site sale of beer and wine is permitted; no off-premise alcohol sales are permitted. (P&Z)
14. Kitchen equipment shall not be cleaned outside, nor shall any cooking residue be washed into the streets, alleys or storm sewers. (T&ES)
15. No amplified sound shall be audible at the property line. All loudspeakers shall be prohibited from the exterior of the building. (P&Z) (T&ES)
16. The applicant shall require its employees who drive to work to use off-street parking. (P&Z)
17. The applicant shall direct patrons to the availability of parking at nearby public garages. (P&Z)
18. The applicant shall control cooking odors and smoke from the property to prevent them from becoming a nuisance to neighboring properties, as determined by the Department of Transportation and Environmental Services. (T&ES)
19. The applicant shall contribute \$250 to the City for the City's installation of one street tree in the empty tree well located directly west of and adjacent to the subject building along South Henry Street to the satisfaction of the Director of Planning and Zoning and the City Arborist. The applicant shall also install and maintain living plants in the existing or a replacement planter at the front of the business along King Street and in the existing planting bed at the side of the building along South Henry Street to the satisfaction of the Director of Planning and Zoning. (P&Z)

20. Building maintenance and upgrades shall be performed to include the following: (1) paint the wood trim of the existing building on the first floor only, (2) repair the brick wall located under the shop window on the South Henry Street side of the building, and (3) reroute or retrofit the mechanical system, currently mounted on the building wall facing South Henry Street, so that it is not visible on the exterior walls of the building or, at a minimum, is much less obtrusive. The work must be completed to the satisfaction of the Director of the Department of Planning and Zoning and within one year from approval, except that the work to the mechanical venting system shall be done within three years of the applicant's beginning operation of the restaurant. (P&Z)
21. The applicant is to contact the Crime Prevention Unit of the Alexandria Police Department regarding a security survey for the business. This is to be completed prior to the restaurant opening for business. (Police)
22. 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, (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)

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**Staff Note:** Any exterior changes to the property visible from a public way including, for example, signs, alterations to entryway, HVAC equipment, ventilating stacks and lights, require review and approval by the Board of Architectural Review.

**DISCUSSION:**

1. The applicant, Nickell's and Scheffler Ltd., is before the Planning Commission for a review of the special use permit for a change of ownership.
2. The subject property is one lot of record with 17 feet of frontage along King Street and 100 feet of frontage along South Henry Street, for a total of 1,700 square feet. The lot contains a two-story building totaling 2,472 square feet. The first floor of the building is occupied by the King Henry Deli. There are two parking spaces at the rear of the property allocated to the use of the restaurant. The surrounding land uses include predominantly commercial uses east and west along the King Street corridor, and primarily residential uses in the city blocks north and south of King Street.
3. Prior to 1992, the Egg Roll House restaurant occupied the same space as the current restaurant. It legally operated without benefit of a special use permit since it predated the current zoning ordinance requirements. In 1992, City Council approved a special use permit for the existing restaurant, the King Henry Deli (SUP #2548).
4. The applicants, Louie Nickell and Susan Sheffler of Nickell's and Scheffler Ltd., propose to change the ownership of the restaurant but not to intensify the use. They propose a full service restaurant with 24 seats, delivery and carry-out service and to continue the existing on-site service of beer and wine. The hours of operation will be 7:00 a.m. to 10:00 p.m. daily, as they have been in the past. The applicants also intend to upgrade the food service and offer prepared foods for carry-out. A proposed menu is attached.
5. On November 16, 2001, the zoning staff made an inspection of the subject property to determine if the existing restaurant was in compliance with the conditions of the special use permit. This inspection was triggered by the subject change of ownership application. Staff found violations of Conditions #2 and #6 of Special Use Permit #2548 and issued a citation. Specifically, there were more than the 24 seats approved in Condition #2, and trash was not stored inside or in a dumpster as required in Condition #6. It is because of these violations that the subject change of ownership application was then docketed for public hearings. The restaurant has also been cited in the past for sign violations but those have been corrected.

**STAFF ANALYSIS:**

Staff supports the continued operation of the restaurant use and the application for a change of ownership. The applicant proposes to upgrade the interior facilities and continue this neighborhood serving use, without increasing its intensity.

Staff believes that the proposed upgrades to the interior of the restaurant should be accompanied by upgrades to the exterior as well, especially on this highly visible, prominent corner. On inspection, staff found several site conditions that should be improved and has discussed them with the applicant. For example, the existing plants located in the planter at the front of the restaurant and in the side planting bed are not well maintained and need to be replaced. In addition, there is a gap in the row of trees fronting South Henry Street that should be filled with a new street tree. A new trash can of the City's new standard model should replace the old, worn model standing on King Street.

Finally, a significant improvement can be achieved by the removal, screening or replacement of the mechanical venting system on the South Henry Street side wall of the building, immediately adjacent to the sidewalk, because it is very unattractive although visible from the public right-of-way. Rerouting or retrofitting the vent in addition to repairing a damaged wall and painting the wooden trim will improve the appearance of the building, and in turn help the neighborhood and generally the businesses on King Street. These requirements are similar to conditions imposed on commercial and residential properties throughout the city during the special use permit review process. Overall, these types of conditions help provide an orderly and scenic streetscape.

Staff has included these improvements as requirements in Condition #20. Staff has also included a condition requiring a review of the restaurant one year after approval so if there are any problems with its operation, additional conditions may be imposed. Staff supports the continued operation of the existing business subject to the recommended conditions.

**STAFF:** Eileen P. Fogarty, Director, Department of Planning and Zoning;  
Barbara Ross, Deputy Director;  
Mary Hashemi, Urban Planner.

**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 All loudspeakers shall be prohibited from the exterior of the building.
- R-2 Kitchen equipment shall not be cleaned outside, nor shall any cooking residue be washed into the streets, alleys or storm sewers.
- R-3 The applicant shall control cooking odors and smoke from the property to prevent them from becoming a nuisance to neighboring properties, as determined by the Department of Transportation & Environmental Services.

**Code Enforcement:**

- C-1 All construction and equipment installation requires a building permit.
- C-2 All construction shall comply with the current requirements of the Virginia Uniform Statewide Building Code.

**Health Department:**

- C-1 An Alexandria Health Department Permit is required for all regulated facilities.
- C-2 Permits are non-transferable.
- C-3 This facility must meet current Alexandria City Code requirements for food establishments. Contact Environmental Health at 703-838-4400 Est. 255 to arrange for a "change of ownership" inspection.

- C-4 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-5 Permits must be obtained prior to operation.
- C-6 The facility must comply with the Alexandria City Code, Title 11, Chapter 10, Smoking Prohibitions.
- C-7 Certified Food Managers must be on duty during all hours of operation.
- C-8 Restrooms, including those in common areas, serving the restaurant, are to meet Alexandria City Code, Title 11, Chapter 2 requirements.
- C-9 This facility is currently operating as King Henry Deli under permit #16F-247-1, issued to King Henry Deli, Inc.
- C-10 Provide a menu or list of foods to be handled at this facility to the Health Department prior to opening.

**Police Department:**

- R-1 Security survey for the business.
- R-2 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.