

DATE: October 8, 2013

TO: Karl Moritz, Deputy Director
Department of Planning and Zoning

FROM: Nathan Randall, Planner
Department of Planning and Zoning

SUBJECT: Special Use Permit #2013-0035
Administrative Review for Minor Amendment
Site Use: Restaurant
Applicant: Quartermen II LLC t/a Theismann's
Location: 1800A Diagonal Road
Zone: OCH / Office Commercial High

Request

Special Use Permit #2013-0035 is a minor amendment request for several operational changes to the existing Theismann's Restaurant in ground-level tenant space in a multi-story office building at 1800A Diagonal Road. The applicant is requesting the following changes:

- 1) add 10 outdoor dining seats, bringing the total outdoor seating to 56,
- 2) extend the opening hour of the business from 11:30 a.m. to 7 a.m. daily,
- 3) allow carry-out service, which is currently prohibited in the approved SUP,
- 4) offer food delivery service to customers using only one delivery vehicle,
- 5) allow background music to be played in the outdoor dining area, and
- 6) allow a permanent barrier, anchored to the ground, to surround the outdoor dining area, which is on private property.

The applicant also wishes to offer catering service as an accessory use using the existing kitchen and equipment. No other changes to the operation of the business are proposed, and the applicant expects to continue to serve American-style cuisine under the trade name "Theismann's."

Background

The office building in which the restaurant is located was constructed in the early 1980s pursuant to Site Plan #81-0028. City Council approved SUP#1835 to Quartermen of Alexandria in November 1985. The same individuals currently own the business, but have re-incorporated their business partnership under a slightly different name: Quartermen II, LLC. Staff has determined that no change of ownership request is necessary.

Earlier this year, staff received a request from another City department to review the SUP to ensure compliance with Condition #18 of the SUP that requires 45 parking spaces within the on-site parking garage. Staff reviewed the SUP and discussed the matter with

the applicant on several occasions, including in at least two meetings. It ultimately concluded that the applicant satisfies the condition by having an arrangement with the parking garage operator in which restaurant customers and employees could park in the garage, either at full price during the day or using a discounted validation program on weekday evenings and on weekends. In written correspondence, the parking garage operator confirmed that there are at least 45 spaces available to customers and employees of Theismann's in the garage.

In conversations with staff confirming the parking compliance, the applicant also indicated that there are additional conditions of the existing Special Use Permit he would like to amend, such as the prohibition on carry-out service, the maximum number of outdoor seats, the playing of music in the outdoor dining area and the use of a permanent barrier around the outdoor dining area.

Community Outreach

Public notice was provided through eNews, via the City's website, and by posting a placard on the site. In addition, the Upper King Street Neighborhood and Royalton at King Street Metro Condominium Associations were sent written notification of the current application. Staff has received 11 emails in support of the applicant's minor amendment requests.

Staff Action

With two exceptions, staff does not object to the applicant's requested amendments to its existing SUP. Most of the requests are eligible for minor amendment pursuant to Section 11-511(A)(2)(b)(ii) of the Zoning Ordinance since they are no more intense than what would otherwise be allowed under administrative approval for a new use. Generally speaking, the requests represent minor updates to the existing SUP for the restaurant, which has been open in this location for over 25 years.

The request to extend the opening hour to 7 a.m. is reasonable and is in fact later than at least two other restaurants on this portion of King Street: the Uptowner and Dunkin Donuts. Although prohibiting carry-out service (existing Condition #8) appears to have been a common practice in SUP approvals for full-service restaurants in the mid-1980s, staff no longer prohibits carry-out service as a routine matter. It is a standard feature at many full-service restaurants throughout Alexandria and staff does not see any significant impacts from now allowing it here, particularly with the retention of Condition #12 requiring routine litter pick-up around the site. The request to offer delivery service represents a small change at the restaurant given that only one vehicle will be used, and staff has required in new Condition #21 that the vehicle must be parked off-street when it is located in the vicinity of the restaurant. Staff also does not object to the placement of a fixed barrier, attached to the ground, around the restaurant's outdoor dining area. Although it was contemplated in 1985 that pedestrians and bus travelers could use this area during inclement winter weather if the barrier is removed, staff today does not believe the area is no longer necessary for use as a waiting area for the bus. In addition, although today staff typically requires removable barriers for outdoor dining areas located on City property, it does so to prevent damage to City-owned sidewalk surfaces.

This concern is not present in the current case given that the barrier in question here is located on private property.

Staff cannot approve two of the applicant's amendments as requested because they are not consistent with the criteria for administrative approval. First, the request to eliminate existing Condition #13 to allow music to be played outside (using loudspeakers) is not consistent with the standards for administrative approval pursuant to Section 11-513(C)(10) of the Zoning Ordinance. In fact, staff has included a similar prohibition in virtually all Special Use Permits in recent years, whether administrative or full hearing cases. Second, the applicant's request to add ten outdoor dining seats at the restaurant slightly exceeds, by one seat, the number of outdoor seats that can be added by minor amendment (up to 20% of 46 existing outdoor dining seats). Staff has therefore approved an increase of nine outdoor dining seats in amended Conditions #2 and #3.

Aside from the applicant's requested changes, staff has also amended existing conditions and added new language for consistency with current standards. Modern language regarding trash storage has been included in an amended Condition #6, which also eliminates the need for daily trash pick-ups required in existing Condition #7, which is no longer used as standard condition language and has been deleted. Staff has amended Condition #18 for consistency with modern language for parking-related conditions, including allowing the applicant to potentially meet its parking requirement in the future at an alternate off-site location if approved by the Director. A prohibition on live entertainment has been added in new Conditions #19 since this element was not included in the 1985 SUP approval. Several other new conditions have been added to this report regarding matters such as odors, the cleaning of kitchen equipment, the posting of transit information and a standard one-year staff-level review.

Subject to the conditions contained in this report, staff hereby approves the Special Use Permit request.

ADMINISTRATIVE ACTION - DEPARTMENT OF PLANNING AND ZONING:

Date/Action: 7/31/2013 Approved
 10/8/2013 Re-approved

Karl Moritz, Deputy Director

Attachments: 1) Special Use Permit Conditions
 2) City Department Comments
 3) Statement of Consent

CONDITIONS OF SPECIAL USE PERMIT #2013-0035

The new owner is responsible for ensuring that the following conditions are adhered to at all times. Violation of any of the conditions may result in fines and/or referral to public hearing by the Planning Commission and City Council.

1. **CONDITION AMENDED BY STAFF:** ~~That~~ The Special Use Permit shall be granted to the applicant or to any corporation in which the applicant has a controlling interest only. (P&Z) (SUP#1835)
2. **CONDITION AMENDED BY STAFF:** ~~That~~ The maximum number of seats that may seating be provided at the restaurant for no more than shall not exceed 258 267 patrons, including any outdoor seats. (P&Z) (SUP#1835)
3. **CONDITION AMENDED BY STAFF:** ~~That~~ The maximum number of outside outdoor dining seats facilities be provided for no more than shall not exceed 46 55. No advertising shall be allowed in the outdoor dining area, including on any umbrellas. No part of the outdoor dining operations, including employee traffic, shall encroach upon the city right-of-way without the approval of an encroachment ordinance. The applicant shall use a demountable railing and will remove that railing during the months the café is not in operation. (P&Z)(PC) (SUP#1835)
4. **CONDITION AMENDED BY STAFF:** ~~That~~ The hours during which the business is may be open to the public shall be restricted to between 11:30 a.m. 7 a.m. and 1 a.m. Sunday through Wednesday and between 11:30 a.m. 7 a.m. to 2 a.m. Thursday through Saturday, as requested by the applicant. (P&Z) (SUP#1835)
5. **CONDITION AMENDED BY STAFF:** ~~That~~ No food, beverages, or other material shall be stored outside. (P&Z) (SUP#1835)
6. **CONDITION AMENDED BY STAFF:** ~~That trash and garbage be stored inside. 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#1835)~~
7. **CONDITION DELETED BY STAFF (See Condition #6):** ~~That trash and garbage be collected daily when the business is open. (P&Z) (SUP#1835)~~
8. **CONDITION DELETED BY STAFF:** ~~That the applicant not have carry out service. (P&Z) (SUP#1835)~~
9. **CONDITION AMENDED BY STAFF:** ~~That~~ The outside dining area shall be delineated by a barrier, planter, fence, etc. (P&Z) (SUP#1835)

10. **CONDITION AMENDED BY STAFF:** ~~That~~ The outside dining area shall be for sit-down service only. (P&Z) (SUP#1835)
11. **CONDITION AMENDED BY STAFF:** ~~That a sign be posted~~ The applicant shall post a sign denoting that no food or drinks are to be carried out of the outside dining area into adjacent street right-of-way. (P&Z) (SUP#1835)
12. **CONDITION AMENDED BY STAFF:** ~~That~~ Litter on the site and on public rights-of-way and spaces adjacent to or within 75 feet of the outdoor dining area shall 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) (T&ES) (SUP#1835)
13. **CONDITION AMENDED BY STAFF:** ~~That no music be played in the outside dining area.~~ All loudspeakers shall be prohibited from the exterior of the building, and no amplified sounds shall be audible at the property line. (P&Z) (SUP#1835)
14. **CONDITION AMENDED BY STAFF:** ~~That~~ No lights in the outdoor dining area shall interfere with traffic or pedestrians using the street. (P&Z) (T&ES) (SUP#1835)
15. **CONDITION AMENDED BY STAFF:** ~~That~~ The outside dining area shall not be used to display and/or sell anything but food and beverages. (P&Z) (SUP#1835)
16. **CONDITION AMENDED BY STAFF:** ~~That~~ All service to the fenced outside dining area shall be from within the fenced area, with none being allowed from the right-of-way. (P&Z) (SUP#1835)
17. **CONDITION DELETED BY STAFF:** ~~That the date of issuance of the SUP be coincidental with the issuance of the Certificate of Occupancy.~~ (P&Z) (SUP#1835)
18. **CONDITION AMENDED BY STAFF:** ~~That~~ The applicant shall provide at least 45 parking spaces ~~included either within the building or at another suitable location, to service for~~ employees and patrons, ~~provided that during the temporary active construction of the project, the applicant may relocate the 45 off street parking spaces at an alternate location. Such alternate location is to be approved by~~ to the satisfaction of the Director of Planning & Zoning. (P&Z) (SUP#1835)
19. **CONDITION ADDED BY STAFF:** No live entertainment shall be allowed either inside the restaurant or in the outdoor dining area. (P&Z)
20. **CONDITION ADDED BY STAFF:** Only one vehicle may be used at any one time to deliver food to customers and said vehicle must park in an off-street parking space when located at the restaurant. (P&Z) (T&ES)

21. **CONDITION ADDED BY STAFF:** Kitchen equipment shall not be cleaned outside, nor shall any cooking residue be washed into the streets, alleys or storm sewers. (T&ES)
22. **CONDITION ADDED BY STAFF:** All waste products including but not limited to organic compounds (solvents), shall be disposed of in accordance with all local, state and federal ordinances or regulations. (T&ES)
23. **CONDITION ADDED BY STAFF:** 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)
24. **CONDITION ADDED BY STAFF:** Supply deliveries, loading, and unloading activities shall not occur between the hours of 11:00pm and 7:00am. (T&ES)
25. **CONDITION ADDED BY STAFF:** The applicant shall require its employees who drive to use off-street parking and/or provide employees who use mass transit with subsidized bus and rail fare media. The applicant shall also post DASH and Metrobus schedules on-site for employees. (T&ES)
26. **CONDITION ADDED 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 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 DEPARTMENT COMMENTS

Legend: C - code requirement R - recommendation S - suggestion F - finding

Transportation & Environmental Services

R-1 Carry forward the following conditions from SUP1835:

12. 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. (SUP1835) (P&CD-T&ES)

13. **Replace previous condition by Staff:** All loudspeakers shall be prohibited from the exterior of the building, and no amplified sounds shall be audible at the property line. ~~That no live music shall be played.~~ (SUP1835) (T&ES)

14. That no lights in the outside dining area interfere with traffic or pedestrians using the street. (SUP1835) (P&CD/T&ES)

16. That all service to the fenced outside dining area be from within the fenced area, none being allowed from the right-of-way. (SUP1835) (P&CD/T&ES)

18. **Amended by Staff:** That the applicant provide at least forty-five (45) parking spaces included in the building, to serve employees and patrons, ~~provided that during the temporary active construction of the project the applicant may relocate the forty-five (45) off-street parking spaces at an alternation location.~~ **Such alternation location is to be approved by the Director of Planning and Community Development.** (SUP1835) (P&CD) (Planning Commission)

R-2 Kitchen equipment shall not be cleaned outside, nor shall any cooking residue be washed into the streets, alleys or storm sewers. (T&ES)

R-3 All waste products including but not limited to organic compounds (solvents), shall be disposed of in accordance with all local, state and federal ordinances or regulations. (T&ES)

R-4 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)

R-5 Supply deliveries, loading, and unloading activities shall not occur between the hours of 11:00pm and 7:00am. (T&ES)

- R-6 Delivery vehicle(s) must park in an off-street parking space when at the restaurant. (T&ES)
- R-7 The applicant shall require its employees who drive to use off-street parking and/or provide employees who use mass transit with subsidized bus and rail fare media. The applicant shall also post DASH and Metrobus schedules on-site for employees. (T&ES)
- 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. (T&ES)
- C-2 The applicant shall comply with the City of Alexandria's Solid Waste Control, Title 5, Chapter 1, which sets forth the requirements for the recycling of materials (Sec. 5-1-99).

In order to comply with this code requirement, the applicant shall provide a completed Recycling Implementation Plan (RIP) Form within 60 days of City Council approval. Contact the City's Recycling Program Coordinator at (703) 746-4410, or via e-mail at commercialrecycling@alexandriava.gov, for information about completing this form. (T&ES)

Code Administration

F-1 No comments received

Health Department

F-1 No comments

Parks & Recreation

F-1 No comments received

Police

F-1 No comments received

STATEMENT OF CONSENT

The undersigned hereby agrees and consents to the attached conditions of this Special Use Permit #2013-0035. The undersigned also hereby agrees to obtain all applicable licenses and permits required for the restaurant at 1800A Diagonal Road.

Applicant - Signature

Date

Applicant – Printed

Date