



City of Alexandria, Virginia
Department of Planning & Zoning

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 #2020-0003

Approved by Planning and Zoning: April 21, 2020

Permission is hereby granted to: Alexander Benbassat

to use the premises located at: 529 East Howell Avenue

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.

4/21/2020 _____
Date

Karl Moritz (signed by TL)
Karl Moritz, Director
Department of Planning and Zoning

DATE: April 21, 2020

TO: Tony LaColla, Division Chief, Land Use Services
Department of Planning and Zoning

FROM: Ann Horowitz, Principal Planner
Department of Planning and Zoning

SUBJECT: Special Use Permit #2020-0003
Administrative Review for Change of Ownership and Minor Amendment
Site Use: Restaurant and Outdoor Dining
Applicant: Alexander Benbassat
Location: 529 East Howell Avenue
Zone: CDD #24/ Coordinated Development District #24

Request

Special Use Permit #2020-0003 is an administrative SUP change of ownership and minor amendment request for a restaurant with outdoor dining, renamed as Barkhaus, at 529 East Howell Avenue. The change of ownership request would transfer the SUP from EMS Food Group, LLC to Alexander Benbassat. In addition, the applicant requests a minor amendment to add one additional hour of operation on Friday and Saturday evenings and to increase the number of indoor seats from 48 to 70 and the outdoor seats from 10 to 20. One additional hour of operation is proposed on Friday and Saturday evenings, extending the closing hours from 10 p.m. to 11 p.m. The Sunday through Thursday hours of 11 a.m. to 10 p.m. would remain unchanged. No additional changes to the business are proposed.

Background

City Council approved DSP #2013-0010 on September 3, 2013 for construction of a 2,956 square foot commercial building with ground floor retail and second floor office spaces. A 12-space surface parking lot was also constructed. City Council approved SUP #2014-0068 on October 18, 2014 for a quick-service restaurant at the site. The 48-seat restaurant was allowed up to 10 seats for outdoor dining. The hours of operation were approved as 11 a.m. to 10 p.m., daily. The City registered the business as closed on May 1, 2019 and it has been actively marketed for a restaurant use since its closure.

Zoning inspectors issued a warning citation to the business on April 19, 2018 for violation of Condition #3 for hours of operation as the business was opening prior to 11 a.m. The manager was informed that an amendment to the SUP was required for additional hours of operation. The applicant submitted SUP requests in November 2017 and February 2018 to amend the hours, however, he withdrew the applications before staff reports were developed as nearby residents expressed opposition for the addition of early morning hours. A subsequent inspection in August 2018 confirmed a complaint

regarding tall grass and weeds on the property. The applicant addressed the issue within one week.

The applicant, Alexander Benbassat, submitted an Administrative SUP application early in 2020 for a combination restaurant and animal care facility without overnight accommodations use. The distinct uses were seamlessly merged in the tenant space. An outdoor dog park, accessory to the by-right animal care facility, was part of the proposal and was included in the outdoor dining area. The proposed outdoor dog park area would reduce the existing 12-space parking lot by four spaces. Alexandria Health Department staff identified that the applicant's proposal, to merge the two uses without the requisite separation of spaces, did not comply with state regulations. It recommended that the applicant submit a variance request to the Virginia Department of Health to accommodate his business plan. As the applicant expressed concern that approval of the Department of Health variance would delay the business opening, staff suggested that the applicant apply for an administrative change of ownership and minor amendment to operate only the restaurant and outdoor dining portion of the business, as reflected in this administrative SUP request.

Parking

According to Section 8-200(A)(17)(a) of the Zoning Ordinance, a restaurant of 2,956 square feet within the enhanced transit area is required to provide a minimum of three spaces. Outdoor seats up to 20 are exempt from a parking requirement, as stated in Section 8-200(A)(17)(c). The applicant, therefore, exceeds the minimum parking requirement by providing eight parking spaces after the installation of the dog park 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 Del Ray Citizens Association and the Potomac Yard Citizen's Association were sent notification of the application.

A nearby business operator commented that the combination animal care use and restaurant could not be approved through Administrative SUP review, which staff confirmed as accurate and explained that this SUP approval would be only for a restaurant with outdoor dining. The commenter added a concern about the reduction in the number of parking spaces and asked if the Del Ray Citizens Association Land Use Committee (DRCA LUC) had reviewed the application. Staff clarified that the applicant exceeded the minimum number of parking spaces required by the Zoning Ordinance. The DRCA LUC submitted a letter stating support for the restaurant and outdoor dining use, as well as the combined animal care facility, at the long-vacant commercial building. It believed the number of parking spaces was satisfactory given Zoning Ordinance compliance.

Staff Action

Staff supports the change of ownership and minor amendment requests for additional hours of operation and for an increase in indoor and outdoor seats at a restaurant with outdoor dining. The request for hours is minimal and would not impact the neighborhood. The increase in seats is within the standards set for administrative SUP approval and would allow the applicant to serve additional patrons. The increase in seats has been reflected in amended Condition 2 and the hours of operation were amended in Conditions 3 and 4.

It is important to emphasize that this SUP approval only grants approval for the applicant to operate a restaurant with outdoor dining given that he is awaiting Virginia Department of Health variance approval to incorporate an animal care facility with an accessory dog park. The outdoor dining area may not be merged with the dog park and an animal care facility cannot operate within the restaurant unless authorized by the Alexandria Health Department and the Virginia Department of Health, as stated in Condition 23.

Regarding the balance of the conditions, all have been carried forward from the previous SUP with Condition 19 amended to reflect present-day condition language. Standard conditions related to employee transportation benefits (Condition 25) and publicizing alternative forms of transportation (Condition 26) were added in the staff report. Other conditions have been added that require the applicant to submit an application for a minor site plan amendment regarding the removal of parking spaces (Condition 24) and to provide a flush transition between the loading space adjacent to the ADA parking space and the sidewalk to the building entrance (Condition 27).

Staff hereby approves the Special Use Permit request.

ADMINISTRATIVE ACTION - DEPARTMENT OF PLANNING AND ZONING:

Date: 4/21/20
Action: Approved



Tony LaColla, Division Chief

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

CONDITIONS OF SPECIAL USE PERMIT #2020-0003

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. 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) (SUP #2014-0068)
2. **CONDITION AMENDED BY STAFF:** The maximum number of indoor seats at the restaurant shall be ~~48~~ 70 and the number of outdoor seats shall be ~~20~~, of which ~~10~~ may be used for indoor or outdoor seating. (P&Z) (~~SUP #2014-0068~~)
3. **CONDITION AMENDED BY STAFF:** The hours of operation for the restaurant shall be limited to between 11 a.m. to 10 p.m., ~~daily~~ Sunday through Thursday. The hours of operation for the restaurant shall be limited to between 11 a.m. to 11 p.m., Friday and Saturday. For indoor patrons, meals ordered ~~before 10 p.m.~~ at the closing time may be sold, but no new patrons may be admitted after ~~10 p.m.~~ the closing time and no new alcohol may be served, and all patrons must leave ~~by no later than 11 p.m~~ one hour after the closing time. (P&Z) (~~SUP #2014-0068~~)
4. **CONDITION AMENDED BY STAFF:** The outdoor dining area shall be closed and cleared of all customers by 10 p.m., Sunday through Thursday and by 11 p.m., Friday and Saturday. ~~and~~ The outdoor dining area shall be cleaned at the close of each business day that it is in use. The outdoor seating area shall not include advertising signage, including on umbrellas. (P&Z) (~~SUP #2014-0068~~)
5. The applicant shall post the hours of operation at the entrance of the business. (P&Z) (SUP #2014-0068)
6. No delivery of food to customers may operate from the restaurant. (P&Z) (SUP #2014-0068)
7. On-premises beer and wine service may be offered but off-premises alcohol sales shall be prohibited. (P&Z) (SUP #2014-0068)
8. **CONDITION AMENDED BY STAFF:** The building and landscaping shall be maintained consistent with the Development Site Plan approved at this site (DSP2013-0010). (P&Z) (~~SUP #2014-0068~~)
9. No live entertainment shall be permitted. (P&Z) (SUP #2014-0068)

10. 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 on how to prevent underage sales of alcohol. (P&Z) (SUP #2014-0068)
11. No food, beverages, or other material shall be stored outside. (P&Z) (SUP #2014-0068)
12. Trash and garbage shall be placed in sealed containers which do not allow odors to escape and shall be stored inside or in closed containers which do not allow invasion by animals. No trash or debris shall be allowed to accumulate on site outside of those containers. (P&Z) (SUP #2014-0068)
13. Supply deliveries, loading, and unloading activities shall only occur on site in its parking lot and only between the hours of 8 a.m. and 2 p.m., and supply trucks delivering to this site shall not travel along East Howell Avenue west of this site's driveway. No supply deliveries, loading, or unloading activities are permitted to occur from a vehicle parked on the public right of way, and no on-street parking spaces shall be removed for this use. (P&Z)(T&ES) (SUP #2014-0068)
14. Litter on the site and on public right-of-way and spaces adjacent to or within 75 feet of the premises shall be picked up by the applicant at least twice a day, and more often if necessary, to prevent an unsightly and unsanitary accumulation on such day that the business is open to the public. (T&ES) (SUP #2014-0068)
15. Kitchen equipment shall not be cleaned outside, nor shall any cooking residue be washed into the streets, alleys or storm sewers. (T&ES) (SUP #2014-0068)
16. 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) (SUP #2014-0068)
17. 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) (SUP #2014-0068)
18. All loudspeakers shall be prohibited from the exterior of the building and no amplified sounds shall be audible at the property line. (T&ES) (SUP #2014-0068)
19. **CONDITION AMENDED 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) (SUP #2014-0068)~~

20. **CONDITION SATISFIED BY APPLICANT AND DELETED:** ~~The applicant shall contact the Community Relations Unit of the Alexandria Police Department at 703-838-4520 regarding a security assessment for the business and robbery readiness training for all employees. (P&Z) (SUP #2014-0068)~~
21. **CONDITION AMENDED BY STAFF:** 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 the 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) (SUP #2014-0068)
22. **CONDITION ADDED BY STAFF:** Outdoor dining must remain on the applicant's property and not encroach into the public right-of-way. (P&Z)
23. **CONDITION ADDED BY STAFF:** The use must operate solely as a restaurant with outdoor dining and is not permitted to include an animal care facility without overnight accommodations and a dog park unless authorized by the Alexandria Health Department and the Virginia Department of Health. (P&Z)
24. **CONDITION ADDED BY STAFF:** The applicant shall submit an application for a minor site plan amendment. The site plan amendment must be approved prior to submission of a building permit. (P&Z)
25. **CONDITION ADDED BY STAFF:** The business shall contact Go Alex at goalex@alexandriava.gov for information on establishing an employee transportation benefits program. (T&ES)
26. **CONDITION ADDED BY STAFF:** The applicant shall provide information about alternative forms of transportation to access the site, including but not limited to printed and electronic business promotional material, posting on the business website, and other similar methods. Contact Go Alex at goalex@alexandriava.gov for more information about available resources. (T&ES)

27. **CONDITION ADDED BY STAFF:** The applicant shall provide a flush transition between the loading space adjacent to the ADA parking space and the sidewalk to the building entrance. (T&ES)

28. **CONDITION ADDED BY STAFF:** The applicant must provide a pet waste plan and plan for cleaning the outdoor dining area. Pet waste and/or other debris from washing cannot be washed off site or into the storm drain system. (T&ES)

IV. CITY DEPARTMENT COMMENTS

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

Transportation & Environmental Services:

- R-1 The applicant shall require its employees who drive to use off-street parking. (T&ES)
- R-2 The applicant shall encourage its employees to use public transportation to travel to and from work. The business shall contact Go Alex at goalex@alexandriava.gov for information on establishing an employee transportation benefits program. (T&ES)
- R-3 The applicant shall provide information about alternative forms of transportation to access the site, including but not limited to printed and electronic business promotional material, posting on the business website, and other similar methods. Contact Go Alex at goalex@alexandriava.gov for more information about available resources. (T&ES)
- R-4 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. (T&ES)
- R-5 Provide a flush transition between the loading space adjacent to the ADA parking space and the sidewalk to the building entrance. (T&ES)
- R-6 The applicant must provide a pet waste plan and plan for cleaning the outdoor dining area. Pet waste and/or other debris from washing cannot be washed off site or into the storm drain system. (T&ES/ SWM)
- C-1 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 SUP 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)

- C-2 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-3 Section 5-1-42- Collection by Private collectors. (c) Time of collection. Solid waste shall be collected from all premises not serviced by the city at least once each week. No collections may be made between the hours of 11:00 p.m. and 7:00 a.m. (6:00 a.m. from May 1, through September 30) if the collection area is less than 500 feet from a residential area. (T&ES)

Fire Department:

- C-1 A fire prevention permit is required for this occupancy condition – assembly.

Code Enforcement:

- C-1 A building permit and plan review are required prior to the start of construction.

Health Department:

Food Facilities

- C-1 An Alexandria Health Department Permit is required for all regulated facilities. A permit shall be obtained prior to operation, and is not transferable between one individual, corporation or location to another. Permit application and fee are required.
- C-2 Construction plans shall be submitted to the Health Department located at 4480 King Street and through the Multi-Agency Permit Center. Plans shall be submitted and approved by the Health Department prior to construction. There is a \$200.00 plan review fee payable to the City of Alexandria- fee must be paid separate from any other departmental fees.
- C-3 Construction plans shall comply with Alexandria City Code, Title 11, Chapter 2, The Food Safety Code of the City of Alexandria. Plans shall include a menu of food items to be offered for service at the facility and specification sheets for all equipment used in the facility, including the hot water heater.
- C-4 A Food Protection Manager shall be on-duty during all operating hours.
- C-5 The facility shall comply with the Virginia Indoor Clean Air Act and the Code of Alexandria, Title 11, Chapter 10, Smoking Prohibitions.
- C-6 Facilities engaging in the following processes may be required to submit a HACCP plan and/or obtain a variance: Smoking as a form of food preservation; curing/drying food; using food additives to render food not potentially-hazardous;

vacuum packaging, cook-chill, or sous-vide; operating a molluscan shellfish life-support system; sprouting seeds or beans; and fermenting foods.

- C-7 Alexandria Health Department and Virginia Department of Health variance approval will be required to include any dogs within the facility (with the exception of service animals).

Recreation, Parks and Cultural Activities:

- F-1 Verify that the outdoor dining is on the applicant's property and not on the City's ROW (open space). If it is not on private property, further discussions are needed with RPCA.

Police Department:

No comments received

STATEMENT OF CONSENT

The undersigned hereby agrees and consents to the attached conditions of this Special Use Permit #2020-0003. The undersigned also hereby agrees to obtain all applicable licenses and permits required for the restaurant with outdoor dining at 529 East Howell Avenue.



Applicant – Signature

04/23/2020

Date

Alexander Benbassat

Applicant – Printed

04/23/2020

Date