



## ARLINGTON COUNTY, VIRGINIA

**County Board Agenda Item  
Meeting of November 15, 2008**

**DATE:** October 30, 2008

- SUBJECTS:** A. SP #106 SITE PLAN AMENDMENT REVIEW for outdoor restaurant/retail seating plan and outdoor music for the restaurants of phase I of the Village at Shirlington; for the premises known as 2756, 2762, 2766, 2768, 2770, 2772, 2774, 2780 S. Quincy St., 4013, 4014, 4015, 4017, 4019, 4021, 4025, 4028, 4029, 4031, 4039, 4043, 4044, 4047, 4052, 4053 Campbell Avenue, 2772 S. Arlington Mill Dr. (RPC #29-020-003, -004, -005, -006, -007, -008, -009, -010, -011, -012, -013, -014, -015, -016, -017, -018, -019, -020, -021, -022, -023, -024; 29-019-024).
- B. SP #106 SITE PLAN AMENDMENT REVIEW for live entertainment and additional outdoor seating located at 4053 Campbell Avenue (Extra Virgin Restaurant) (RPC #29-020-004)

**Applicant:**

Federal Realty Investment Trust  
1626 E. Jefferson Street  
Rockville, MD 20852

**Restaurant Tenants:**

Charlie Chiang's Restaurant, Curious Grape, Aroma Restaurant, Aladdin's Eatery, Bonsai Grill, Guapo's, T.H.A.I. in Shirlington, Luna Grill, Bistro Bistro, Maggie Moos, Capitol City Brewing Company, Best Buns Bread Company, Carlyle Restaurant, Extra Virgin Restaurant.

**By:**

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County Manager: \_\_\_\_\_

County Attorney: \_\_\_\_\_

Staff: Matthew Pfeiffer, DCPHD, Planning Division

PLA-5124

### **C.M. RECOMMENDATIONS:**

- A. Renew the site plan amendment for outdoor restaurant/retail seating plan and outdoor music for restaurants of phase I of the Village at Shirlington, subject to all previous conditions and with an administrative review in one year (November 2009), and a County Board review in two (2) years (November 2010).
- B. Renew the site plan amendment for live entertainment and additional outdoor seating at 4053 Campbell Avenue (Extra Virgin Restaurant), with a County Board review in two (2) years (November 2010).

**ISSUES:** This is a review of a site plan amendment for outdoor seating and outdoor piped music for the restaurants in phase I of the Village at Shirlington, and live entertainment and additional outdoor seating for the Extra Virgin Restaurant. There are no issues.

**SUMMARY:** For the past year, the outdoor seating, outdoor music and live entertainment have generally operated in compliance with the approved site plan amendment conditions. These uses contribute to the active character of the Village at Shirlington. Therefore, staff recommends renewal of the site plan amendment outdoor restaurant/retail seating plan and outdoor music for the restaurants of phase I of the Village at Shirlington subject to all previous conditions with an administrative review in one (1) year (November 2009), and a County Board review in two (2) years (November 2010). Furthermore, staff recommends renewal of the site plan amendment for live entertainment and additional outdoor seating at the Extra Virgin Restaurant, subject to all previous conditions, with a County Board review in two (2) years (November 2010).

**BACKGROUND:** In June 1992, a site plan amendment for the first outdoor café in Shirlington was approved, at the Carlyle Grand restaurant for a maximum of 38 seats. Since that time, other restaurants applied for site plan amendments for outdoor seating on an individual basis. During the review of these requests, staff determined that several restaurants had placed the outdoor seating in areas which encroached on the public right-of-way without approval from the County Board. As a consequence, staff requested that the owner of the majority of the retail space in phase I of Shirlington, Federal Realty Investment Trust (FRIT), coordinate the submission and review of the outdoor seating for their restaurant tenants so as to consolidate these requests and ensure proper location of the outdoor seating.

FRIT obtained County Board approval on July 9, 2005 of a site plan amendment for the consolidation of the existing outdoor seating uses and a new seating plan for the remainder of the retail and restaurant uses in Shirlington. The approval did not restrict each use to a specific number of seats, but rather required each tenant to maintain a 6-foot clear path zone so as not to impede pedestrian circulation. The approval further stated that each seating area will be demarcated by fixed, immovable barriers enclosing each dining area and that each area must comply with ADA accessibility standards. Each tenant was required to submit an administrative change request to show the individual seating plan and compliance with the conditions of the

overall approval. The site plan amendment to Site Plan #106 was reviewed and renewed on June 26, 2006 after the review found compliance with approved conditions.

In June 2007, the Fairlington-Shirlington Neighborhood Conservation Association (FNCA) representative expressed concern regarding the piping of music to one of the outdoor restaurant seating areas covered by this review. The FNCA reported that during the past year, the Extra Virgin restaurant has been periodically piping music to their outdoor restaurant seating. The applicant, FRIT, removed all speakers in the outdoor seating areas, but indicated to staff a desire to have outdoor music. On November 13, 2007, the County Board renewed the subject site plan amendment with a revision to Condition #2 in order to allow outdoor music. The revised condition limits the hours when music is permitted and where speakers may be placed. In addition, it specifies requirements to ensure that the music does not exceed Arlington County Noise Ordinance limits. FRIT is required to do random sampling of noise levels and to make records of violations of the Noise Ordinance and records of complaints, available to the County.

The Extra Virgin Restaurant (Applicant B), located at 4053 Campbell Avenue, received County Board approval for a site plan amendment on September 16, 2006, for live entertainment and additional outdoor seating (30 seats) subject to all previous conditions and with new conditions. On November 13, 2007, the County Board renewed the site plan amendment in concert with the applications for outdoor seating/outdoor music for the restaurants of Phase I, subject to all previous conditions, with an administrative review in six (6) months and a County Board review in one (1) year (November 2008).

The following table provides a history of County Board approvals of outdoor seating, outdoor music, and live entertainment at the Village at Shirlington:

<b>Restaurant</b>	<b>Date of Approval</b>
Carlyle Grand	June 13, 1992
California Pizza Kitchen (now Extra Virgin)	May 7, 1994
Thai in Shirlington	October 14, 1995
Capital City Brewing Company Expansion of outdoor seating	November 16, 1996 July 8, 1998
Guapos	October 13, 2001
Best Buns	June 14, 2003
Maggie Moos, Luna Grill, Aladdin's Eatery, Bonsai Grill, increase in seating for Thai in Shirlington, outdoor seating for 2756, 2762, 2766, 2768, 2770, 2772, 2774, 2780 S. Quincy St., 4013, 4014, 4015, 4017, 4019, 4021, 4025, 4028, 4029, 4031, 4039, 4043, 4044, 4047, 4052, 4053 Campbell Avenue (formerly S. 28 <sup>th</sup> St.), 2772 S. Arlington Mill Dr.	July 9, 2005 July 26, 2006 - Review
Charlie Chiang's, Curious Grape, Extra Virgin, Aroma Restaurant, Aladdin's Eatery, Bonsai Grill, Guapo's, T.H.A.I. In Shirlington, Luna Grill, Bistro Bistro, Maggie Moo's, Capital City Brewing Company, Best Buns bread Company, Carlyle Restaurant; outdoor seating and outdoor music; Extra Virgin; live entertainment	September 19, 2006 – live entertainment November 13, 2007 – outdoor seating, outdoor music, and live entertainment

In June 2008, an administrative review was conducted for the outdoor seating and outdoor music for the various restaurants of the Village at Shirlington, and for live entertainment for the Extra Virgin Restaurant. During the administrative review, violations of conditions were reported

involving railings not meeting the required six-foot clear path along the sidewalk for two of the restaurants, Bistro Bistro and Aroma. These violations were brought to the attention of the subject restaurants and quickly corrected. Charlie Chiang's was found to have an outdoor seating area that had not undergone an administrative change approval, and did not have a certificate of occupancy. The additional seating area was removed and management agreed to obtain the required permits for any future additional seating. During their required monthly samples for outdoor music, FRIT found that the noise level at the Capital City Brewing Co. exceeded requirements set by the Noise Ordinance. The restaurant management was notified and no violations of the Noise Ordinance have been reported since.

**Since the Last Review (June 2008 Administrative Review):**

Site Plan Amendment Conditions: Staff found that the applicant, FRIT, had not communicated the name and phone number of an on-site liaison to the applicable citizens groups or the County. The applicant was informed of this error by staff, and has promptly corrected the situation.

Site Plan Inspector: The Site Plan Inspector has no objections to the continuation of the outdoor seating, outdoor music, and live entertainment uses.

Fire Marshal's Office: The Fire Marshal's office did not express any concerns regarding the continuation of the outdoor seating, outdoor music, and live entertainment uses.

Police Department: The Police Department did not express any concerns regarding the continuation of the outdoor seating, outdoor music, and live entertainment uses.

State ABC Board: The State ABC staff states that they have no issues with continuation of the outdoor seating, outdoor music, and live entertainment uses.

Civic Association: The subject property is not located within a civic association boundary. However, staff spoke with a representative from the Fairlington-Shirlington Neighborhood Conservation Advisory Committee, who expressed concerns that FRIT had not provided his group with the name and phone number of an on-site liaison, as they are required to do. He also expressed concerns to staff that the public should be notified of the month of the required annual administrative review of the outdoor music so that citizens groups would have a chance to express any concerns to staff. Staff has communicated to the citizen a willingness to involve him in any future reviews of the subject site plan amendment.

**CONCLUSION:** Over the past year, Shirlington outdoor seating has continued to operate successfully and has provided a vibrant urban streetscape environment. While some minor violations have been found, they have been corrected promptly. Therefore, staff recommends renewal of the site plan amendment outdoor restaurant/retail seating plan and outdoor music for the restaurants of phase I of the Village at Shirlington subject to previous conditions 1 through 6,

as set forth below, with an administrative review in one (1) year (November 2009), and a County Board review in two (2) years (November 2010). Furthermore, staff recommends renewal of the site plan amendment for live entertainment and additional outdoor seating at the Extra Virgin Restaurant, subject to previous conditions 7 through 11, as set forth below, with a County Board review in two (2) years (November 2010).

Approved Conditions:

1. The applicants (as used in these conditions, the term applicant shall mean the owner and all successors and assigns) (Street Retail, Inc.) agree to maintain at least a six (6) foot clearance width along the sidewalk. The applicants further agree to work with the Department of Environmental Service to develop non-moveable barriers that would be affixed to the sidewalk to maintain a six (6) foot clear pedestrian travelway. The barriers should be removed on a seasonal basis when the café is not in use.
2. The applicants agree that outdoor cafés are permitted to be used during normal restaurant hours. The applicants also agree that outdoor music is permitted only from April 1st to November 1st when the cafés are in use and shall conform to the following restrictions:
  - a. Noise limits consistent with the Arlington County Noise Ordinance.
  - b. No music allowed between 10 p.m. to 10 a.m.
  - c. During the months the outdoor cafes are in use, the applicants shall do random sampling at least once every month at peak hours of operation on a Friday or Saturday evening, of the noise levels associated with the outdoor music. Any violations of the Arlington County Noise Ordinance will be communicated and made available to the County.
  - d. FRIT shall maintain a written record of complaints and respond immediately to complaints and provide copies to the County of the complaints and responses.
  - e. FRIT shall add language to leases regarding the Arlington County Noise Ordinance upon execution of new tenant leases or current tenant renewals.
  - f. For outdoor seating adjacent to buildings, speakers must be arranged so that sound is projected downward into the immediate outdoor seating area. No speakers or means of producing noise shall be placed on trees, lampposts, cafe railings, or street furniture. For outdoor seating adjacent to the curb, speakers may be installed using either a wireless or non-obtrusive alternative approved by FRIT management. The speakers may be placed on the inside of café railings, but shall point downwards and be unobtrusive.
  - g. FRIT shall maintain an on-site point of contact to address complaints associated with outdoor music. The name and telephone number of the liaison shall be submitted by the applicant to the Zoning Administrator, the Fairlington Citizens Association, the Fairlington-Shirlington Neighborhood Conservation representative, and the Nauck Civic Association.

- h. At a minimum, there shall be an annual administrative review of this condition, Condition #2, allowing outdoor music.
3. The applicants agree that prior to issuance of an occupancy permit for outdoor seating retail tenants requesting such seating shall seek administrative approval from the County prior to providing outdoor seating and shall designate a neighborhood liaison to communicate with nearby residents and neighbors to address concerns that may be related to the outdoor café. The name and telephone number of the liaison shall be submitted by the applicant to the Zoning Administrator, the Fairlington Civic Association, the Fairlington-Shirlington Neighborhood Conservation representative, and the Nauck Citizens Association.
4. The applicant agrees that outdoor seating associated with retail/restaurant uses along Campbell Avenue between South Quincy Street and South Randolph Street shall maintain the minimum standard of six feet of clear pedestrian space along the public-right-of-way and shall be provided in accordance with the plans entitled “Café Seating Areas and Sidewalk Clearpaths, Shirlington” prepared by Federal Realty Investment Trust, as revised June 10, 2005, and made part of the record at the July 9, 2005, County Board meeting. The applicant agrees that any furniture used in outdoor seating areas, including tables, chairs, railings, umbrellas, and planters shall be removed on a seasonal basis and not stored in front of the storefronts.
5. The applicant further agrees that where lampposts are located in the public right-of-way and adjacent to outdoor seating space, a four (4) foot wide clear space would be maintained on the inside of the lamppost as shown on plans dated June 10, 2005, and approved by the County Board at its meeting of July 9, 2005. The applicant agrees that the minimum four-foot clear space currently exists between the 4 lampposts in question and the edge of the sidewalk cafes affected (Carlyle Grand, Capitol Cities, Extra Virgin, and Curious Grape). The applicant further agrees to work with DES staff to relocate bike racks and moveable outdoor furniture that encumbers the clear space along Campbell Avenue.
6. The applicant agrees that all existing and future outdoor seating requests shall be required to be administratively approved by the County. All requests shall be required to submit accurate, scaled drawings depicting a minimum clear space in the public sidewalk (or public access easement) across the applicant’s entire frontage. The dimension of this minimum clear space could vary from block to block, but should in no circumstances be less than six (6) feet. Reasonable allowance should also be made for occasional pinch points; however, ADA requirements must be maintained at all times. All graphics should show how the applicant’s clear space links up to any adjacent sidewalks and required clear spaces.

**Conditions 7 through 11 Apply to Extra Virgin Restaurant Only**

7. Live entertainment shall be permitted only between the hours of Mondays through Thursdays from 8 p.m. to 12 a.m., Fridays and Saturdays from 9 p.m. to 1 a.m., and Sundays from 6:30 p.m. to 11 p.m.
8. The windows and doors of the restaurant shall be closed during hours of live entertainment and the applicant shall comply with the Arlington County Noise Ordinance.
9. The applicant agrees that all requirements of County and State Ordinances, the Environmental Health Bureau, the Fire Marshal, the Police Department and the Alcohol Beverage Control Board shall be met. In addition, the applicant agrees to provide TIPS (Training for Intervention Procedures) training to all servers.
10. The applicant shall provide the name, address, and phone number of an on-going community liaison to the Zoning Administrator and to the surrounding civic association presidents, in order to effectively address neighborhood concerns.
11. Outdoor seating shall conform to the “Tenant Criteria Handbook” for the Village at Shirlington by Street-Works LLC dated September 2005, Section 4.1 (Café Enclosure Criteria), except that:
  - a. Barriers for curb-side cafes must surround the entire café area except for the entrance into the seating area. Building-side cafes are not required to have a barrier along the building side of the café area. However, the seating area adjacent to the west side of Building 4 may be provided without a barrier.
  - b. Barriers shall be located at least two feet from the curb face.
  - c. Umbrellas shall not be placed in or extend into the pedestrian clear path.
  - d. Landscape items and wait staff equipment shall be located within the barriers.
  - e. Planters may be placed on top of barriers, with a total height, to the top of the plants, not to exceed 48 inches.
  - f. Potted plants, planters, lanterns or other elements of the seating area shall not encroach on the pedestrian clear path.

PREVIOUS COUNTY BOARD ACTIONS:

- October 9, 1976                      Approved a rezoning from “C-2” to “C-O-1.5” (Z-2086-76-3); and approved a Phased Development Site Plan. The approval expired in 1981.
- December 4, 1982                    Approved a Phased Development Site Plan (PDSP), on four parcels, consisting of 570,000 square feet of office space, 428,000 square feet of retail space, 300 hotel rooms, and 490 residential units; known as “Village of Shirlington.”
- July 13, 1985                        Approved PDSP amendment to increase the maximum building height on Parcel 3 from 10 stories (150 feet) to 11 stories (150 feet); and approved the final site plan for Phase II (SP-2) on Parcel 3, allowing an 11-story office building with 295,000 s.f. of office g.f.a. and 17,000 s.f of retail g.f.a.
- December 13, 1987                  Approved a PDSP amendment to transfer 85,895 square feet of office/retail area from Parcel Two to Parcel One; and Approved the Final Site Plan for Phase III (SP-3) on Parcel One, allowing a 6-story office building with 85,895 square feet of office/retail area, and a 10-story hotel with 299 units.
- November 14, 1992                  Approved one tenant identification sign 100.5 square feet in size on east elevation of building.
- April 9, 1994                        Approved conversion of approximately 4,000 sq. ft. of retail space to secondary retail use including classroom, copy facility, and shower/locker room space for an existing tenant for a period not to exceed 12 years (2006).
- January 11, 1997                    Approved a phased development site plan amendment and final site plan amendment to add two stories of studio/mechanical/technical support space above the existing parking garage structure and an atrium lobby between the office building and existing parking garage; three transmit and receive satellite dish antennae on the studio roof; up to three rooftop signs; and modification of use regulations to permit 50 percent compact spaces and to not count the proposed two floors and atrium as gross floor area for density purposes.

- July 20, 2001 Approved conversion of approximately 4,485 sq. ft. of retail space located on the first floor of the office building to office/commercial space.
- October 18, 2003 Approved site plan amendment request (SP #106) to amend PDSP and final site plan to convert hotel to residential (approx. 245 dwelling units) with modifications of use regulations for coverage and density; Lot 2-A First Addition to Village at Shirlington.
- March 13, 2004 Approved a site plan amendment (SP #106) for a rehearsal studio; dramatic and visual arts classes for children ages 4 and up, Classika Theater, with a review in one (1) year. March 2005.
- January 29, 2005 Approved site plan amendment (SP #106) for a comprehensive sign plan for 4013, 4015, 4017, 4021, 4025, 4031, 4039, 4043, 4047, 4052, 4053 South 28<sup>th</sup> Street, 2700, 2727, 2754, 2756, 2766, 2768, 2770, 2772, 2774, 2780 South Quincy Street, 2772 South Arlington Mill Drive, 2772, 2800 South Randolph Street, 2800 South Stafford Street (RPC #29-020-001, -002, -003, -004, -005, -006, -007, -008, -009, -010, -011, -012, -013, -014, -015, -016, -017, -018, -019, -020, -021, -022, -023, -024; 29-019-021, -022, -023 -024; 29-014-008, -009; 29-023-006; 29-003-026 [portion]).
- March 12, 2005 Renewed a site plan amendment (SP #106) for a rehearsal studio; dramatic and visual arts classes for children ages 4 and up, Classika Theater, with a review in one (1) year (March 2006).
- April 16, 2005 Deferred site plan amendment (SP #106) to permit outdoor restaurant at 4014, 4024, 4040, 4044, 4052 28th Street South (Maggie Moos, Luna Grill, Aroma Restaurant, Aladdin's Eatery, Bonsai Grill; Village at Shirlington; RPC # 29-019-024) to the June 18, 2005 County Board meeting.
- June 18, 2005 Deferred site plan amendment (SP #106) to permit outdoor restaurant at 4014, 4024, 4040, 4044, 4052 28th Street South (Maggie Moos, Luna Grill, Aroma Restaurant, Aladdin's Eatery, Bonsai Grill; Village at Shirlington; RPC # 29-019-024) to the July 9, 2005 County Board meeting.

- July 9, 2005 Approved site plan amendment (SP #106) to permit outdoor restaurant at Maggie Moos, Luna Grill, Aladdin's Eatery, Bonsai Grill, increase in seating for Thai in Shirlington, and for outdoor seating for 2756, 2762, 2766, 2768, 2770, 2772, 2774, 2780 S. Quincy St., 4013, 4014, 4015, 4017, 4019, 4021, 4025, 4028, 4029, 4031, 4039, 4043, 4044, 4047, 4052, 4053 S. 28<sup>th</sup> St., 2772 S. Arlington Mill Dr.
- July 8, 2006 Renewed site plan amendment (SP #106) to permit outdoor restaurant/retail seating plan for the parcels of real property known as 2756, 2762, 2766, 2768, 2770, 2772, 2774, and 2780 South Quincy Street; 4013, 4014, 4015, 4017, 4019, 4021, 4025, 4028, 4029, 4031, 4039, 4043, 4044, 4047, 4052, and 4053 South 28th Street; and 2772 South Arlington Mill Drive, subject to all previous conditions with a County Board review in one (1) year (July 2007).
- September 19, 2006 Approved site plan amendment (SP #106) for live entertainment and additional outdoor seating (30 seats) located at 4053 S. 28<sup>th</sup> St (Extra Virgin Restaurant).
- July 7, 2007 Deferred to the September 8, 2007 County Board meeting. review of site plan amendment SP#106 for outdoor restaurant/retail seating plan for the premises known as 2756, 2762, 2766, 2768, 2770, 2772, 2774, 2780 S. Quincy St., 4013, 4014, 4015, 4017, 4019, 4021, 4025, 4028, 4029, 4031, 4039, 4043, 4044, 4047, 4052, 4053 Campbell Avenue (formerly 28<sup>th</sup> Street South), 2772 S. Arlington Mill Dr.
- September 8, 2007 Deferred to the October 13, 2007 County Board meeting. review of site plan amendment SP#106 for outdoor restaurant/retail seating plan for the premises known as 2756, 2762, 2766, 2768, 2770, 2772, 2774, 2780 S. Quincy St., 4013, 4014, 4015, 4017, 4019, 4021, 4025, 4028, 4029, 4031, 4039, 4043, 4044, 4047, 4052, 4053 Campbell Avenue (formerly 28<sup>th</sup> Street South), 2772 S. Arlington Mill Dr. and site plan amendment and review for live entertainment and additional outdoor seating (30 seats) located at 4053 Campbell Avenue (Extra Virgin Restaurant).

October 13, 2007

Deferred to the November 13, 2007 County Board meeting. review of site plan amendment SP#106 for outdoor restaurant/retail seating plan for the premises known as 2756, 2762, 2766, 2768, 2770, 2772, 2774, 2780 S. Quincy St., 4013, 4014, 4015, 4017, 4019, 4021, 4025, 4028, 4029, 4031, 4039, 4043, 4044, 4047, 4052, 4053 Campbell Avenue (formerly 28<sup>th</sup> Street South), 2772 S. Arlington Mill Dr. and site plan amendment and review for live entertainment and additional outdoor seating (30 seats) located at 4053 Campbell Avenue (Extra Virgin Restaurant).

November 13, 2007

Renewed site plan amendment (SP#106) for outdoor restaurant/retail seating plan for the premises known as 2756, 2762, 2766, 2768, 2770, 2772, 2774, 2780 S. Quincy St., 4013, 4014, 4015, 4017, 4019, 4021, 4025, 4028, 4029, 4031, 4039, 4043, 4044, 4047, 4052, 4053 Campbell Avenue (formerly 28<sup>th</sup> Street South), 2772 S. Arlington Mill Dr. and approved site plan amendment and review for live entertainment and additional outdoor seating (30 seats) located at 4053 Campbell Avenue (Extra Virgin Restaurant).