



## ARLINGTON COUNTY, VIRGINIA

**County Board Agenda Item  
Meeting of May 16, 2009**

**REVISED REPORT**

**DATE:** ~~May 7, 2009~~ May 12, 2009

**SUBJECT:** SP #269 SITE PLAN AMENDMENT: Caribbean Breeze, live entertainment and dancing; 4100 N. Fairfax Dr., (RPC #14-046-025)

**Applicant:**

Mike Cordero  
4103 Winter Harbor Ct  
Chantilly, Virginia 20151

**By:**

William Schmidt, Esq.  
4103 Chain Bridge Rd, Ste. 400  
Fairfax, Virginia 22030

**REVISION EXPLANATION:** This report has been revised to correct a typographical error on page three (3). In addition, condition #6 has been modified to require the community liaison contact representing Caribbean Breeze be provided to the Berkeley Condominium Association, and condition #8 has been modified to require any outdoor radio speakers to be aimed away from the street.

**C. M. RECOMMENDATION:**

Approve the site plan amendment request for live entertainment and dancing, subject to the conditions of the staff report, and with a County Board review in six (6) months (November 2009).

**ISSUE:** This is a new site plan amendment for live entertainment and dancing, which the applicant has already been conducting for some time. Issues arose from neighbors across the street about noise emanating from the outdoor patio, and the request was deferred from the April County Board meeting to respond to these issues.

**SUMMARY:** The applicant requests a site plan amendment for live entertainment and dancing at the Caribbean Breeze restaurant in the ground floor of 4100 Fairfax Drive. Entertainment and dancing is proposed for seven days a week from 5 p.m. to 1:30 a.m., as well as a Latin Jazz Brunch (with no dancing) from 10 a.m. to 3 p.m. on Sundays. However, staff recommends, and the applicant agrees to, a live entertainment schedule of Thursday through Sundays, at least temporarily. The site is on the south side of Fairfax Drive, within the Ballston Coordinated

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

Staff: Peter Schulz, CPHD, Planning Division

PLA-5272

Mixed-Use District, one and one-half blocks from the Ballston Metro entrance, and is not immediately adjacent to residential uses. The Ballston-Virginia Square Civic Association has submitted a letter of support. The applicant has also addressed the issues raised in a petition by Berkeley Condominium residents presented at the April County Board meeting regarding noise from the outdoor patio. Therefore, staff recommends approval of the site plan amendment for live entertainment and dancing, with a County Board review in six (6) months (November 2009).

**BACKGROUND:** The restaurant has been in operation since 2005, and live entertainment and dancing has been offered for some time. Code Enforcement calls relating to another nearby business revealed that Caribbean Breeze had been offering live entertainment and dancing without a site plan amendment or dance hall permit. When informed of this, the applicant submitted the subject application.

The following provides more information about the site:

Site: The subject property is located on the ground floor of an office building at 4100 Fairfax Drive. The site is bound as follows:

- To the north: Across Fairfax Drive, the Berkeley and Eastview Condominiums, Zoned “R-C”
- To the west: The International House of Pancakes, zoned “C-O-A”
- To the east: Across Randolph Street, an office building zoned “C-O-A”.
- To the south: The Richmond Square Apartments, zoned “C-O-A”

Zoning: The site is zoned “C-O-A” Commercial, Office and Apartment Districts. Zoning Ordinance Section 25A.A.1 permits restaurants with live entertainment and dancing by reference to the “C-2” regulations in Section 26.

Land Use: The site is designated on the General Land Use Plan (GLUP) as a “Coordinated Mixed-Use Development District” (*This is a high density mixed-use district with actual density determined by site size. Allowable up to 6.0 F.A.R. with office not more than 3.0 F.A.R.*); and note 6: “This area was designated a ‘Coordinated Mixed-Use Development District’ on 12/2/78”.

Neighborhood: The site is located within the Ballston-Virginia Square Civic Association, which has submitted a letter of support. In addition, the presidents of the Berkeley and Eastview Condominium associations were forwarded copies of the application. Both Associations have no official positions on the live entertainment request, although some residents of the Berkeley signed a petition expressing concerns about and urging restrictions on outdoor activities on the patio.

**DISCUSSION:** The applicant has a Caribbean-themed restaurant that offers live entertainment and dancing. The proposed hours of live entertainment and dancing are 5 p.m. to 1:30 a.m. seven days a week, with an additional period for music (but not dancing) at a Latin Jazz Sunday

Brunch from 10 a.m. to 3 p.m. The live music, will, as is customary for live entertainment use permits, be permitted to be indoors only, with windows and doors shut during the presentation of the entertainment. The applicant had in the past presented bands outside, but as the applicant did not have County approval to have live entertainment, the applicant was not aware that the practice is forbidden. The applicant is now aware of these requirements, and agrees to hold **future live musical entertainment inside the premises, and that the live entertainment is not broadcast outside.**

Staff is not aware of community issues regarding the live musical entertainment that has been presented in the immediate past inside the premises. Staff, therefore, supports this application for live entertainment and dancing, with all the standard conditions but recommend that live entertainment be offered four (4) days a week, at least initially. The applicant agrees to the limitation, but would prefer seven (7) days a week. Staff has offered that at the six (6) month review, if there are no issues, staff would support the applicant's full request.

Issues had arisen regarding outdoor recreational activities at the site. Residents of the Berkeley Condominium had submitted a petition expressing concerns about activities on the outdoor patio such as mini-basketball. The applicant makes a mini-basketball hoop available to patrons in the outdoor patio. By the time of the April County Board meeting, the applicant had moved the basketball hoop further from the street, into the rear of the courtyard, in order to direct noise away from the Berkeley Condos across Fairfax Drive. Furthermore, the applicant also agrees to curtail any outside activities in the front part of the patio above and beyond simple table service to the outside to 10:30 p.m. weekdays and 11 p.m. Fridays and Saturdays. On May 6, the applicant met with the President of the condo association and other residents of the Berkeley. According to the applicant, the residents were satisfied that the applicant had addressed their issues with noise from the patio that was expressed in the petition presented to the County Board in April.

Otherwise, during the time the applicant has had live entertainment and dancing without the proper permits, there have been no known complaints to the code enforcement office, and the County Police Department report no issues with the restaurant. With the proposed conditions in place, the use should have a low impact on residential uses in the general vicinity.

**CONCLUSION:** Apart from not securing the proper permits in the first place, the issues that have arisen have been addressed, and the proposed conditions of approval should prevent recurrence. Therefore, staff recommends approval of the site plan amendment for live entertainment and dancing, subject to the following conditions, and with a County Board review in six (6) months (November 2009):

New Conditions:

1. The applicant agrees that live entertainment and dancing will be limited to Thursday, Friday, Saturday, from 5 p.m. to 1:30 a.m., and Sunday 10 a.m. to 3 p.m. and 5 p.m. to 1:30 a.m.
2. The applicant agrees to comply with all requirements of County and State Ordinances, the Environmental Health Bureau, the Fire Marshal's Office, the Police Department, Community Code Enforcement Office and the Alcohol Beverage Control Board.
3. The applicant agrees that live entertainment shall meet the noise limits established in the County Noise Ordinance.
4. The applicant agrees to ensure that all windows and doors shall remain closed when live entertainment is being offered. The applicant agrees that no live entertainment shall be permitted outdoors, and further agrees to ensure that live entertainment performances inside the restaurant will not be broadcast to the exterior of the restaurant over the restaurant's audio system.
5. The applicant agrees no customer dancing shall occur without the applicant first obtaining approval of a dance hall permit.
6. The applicant agrees to designate a neighborhood liaison to communicate with nearby residents and neighbors to address concerns which may be related to the live entertainment and an onsite liaison that shall be available during the hours of the business operation to receive and respond to community concerns regarding the live entertainment. The name and telephone number shall be submitted to the Zoning Administrator and a copy sent to the President of the Ballston-Virginia Square Civic Association, and the President of the Berkeley Condominium Association.
7. The applicant agrees the restaurant live entertainment use shall terminate upon the termination of the current tenant lease or upon vacation of the current tenant from the subject site and shall not transfer to any other tenant without subsequent approval by the County Board of a new site plan amendment request.
8. Applicant agrees to curtail outdoor recreational activities in the front of the patio and any other potential outdoor noise generators including but not limited to radios, at 10:30 p.m. Sundays through Thursdays, and 11 p.m. Fridays and Saturdays. Any exterior speakers shall be aimed at the patio and away from the street. The applicant shall keep the mini-basketball set-up in the rear of the patio.

PREVIOUS COUNTY BOARD ACTIONS:

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| December 2, 1978  | Amended the General Land Use Plan for the Ballston Metro Station Area 2 (GP-110-78-1) to a “Coordinated Mixed Use Development District”.  |
| May 31, 1980      | Amended the zoning (Z-2181-80-6) from “C-2” to “C-O-A”.   |
| November 19, 1988 | Approved a site plan [Z-2181-80-6 (SP-7)], now known as SP #269, for a mixed use project, subject to conditions.  |
| October 12, 1991  | Amended Site Plan #269 to extend the term to November 19, 1994, subject to all previous conditions and amended condition #56 and new condition #57.   |
| October 9, 1993   | Denied a site plan amendment to transfer office density from SP #269 to SP #256, and residential density from SP#256 to SP #269.  |
| July 9, 1994      | Approved a site plan amendment (SP #269) to incorporate additional site area, and a totally revised residential building, with new conditions for the residential building superseding all previous conditions, and the office building conditions remaining as approved November 19, 1988. |