



## ARLINGTON COUNTY, VIRGINIA

**County Board Agenda Item  
Meeting of September 26, 2009**

**DATE:** September 17, 2009

**SUBJECT:** U-2968-99-1 USE PERMIT REVIEW for an outdoor café at Hard Times Café located at 3028 Wilson Blvd. (RPC # 18-012-003)

**Applicant:**

Hard Times Café  
3028 Wilson Blvd.  
Arlington, Virginia 22201

**C. M. RECOMMENDATION:**

Renew, subject to all previous conditions, with an administrative review in one (1) year (September 2010), and a County Board review in two (2) years (September 2011).

**ISSUES:** This is a review of the outdoor cafe at Hard Times Café in Clarendon and no issues have been identified.

**SUMMARY:** This is a review of the outdoor café at Hard Times Café in Clarendon. The use was approved on September 18, 1999 and reviewed and renewed several times over the past ten (10) years. During the September 2008 review, a citizen expressed concern that the outdoor café was extending outside the area permitted, making it difficult for pedestrians and those with disabilities to pass. At the recessed County Board meeting on September 16, 2008, the County Board advised the applicant to be more careful in ensuring that the outdoor café allows for adequate pedestrian and wheelchair passage, and the use permit was renewed again for one (1) year. During the current review, staff conducted a site visit and found that the use was in compliance and meeting the minimum clearance specified in Condition #1. However, at peak times, the café shifts and encroaches further into the sidewalk than is permitted, and staff has reiterated to the applicant the limits of the outdoor café as required in Condition #1. The applicant has stated that the restaurant is planning to get new outdoor furniture in 2010, and may not need the maximum fourteen (14) seats they are approved for. The applicant will still be required to meet the limits of the outdoor café currently outlined in Condition #1, but is encouraged to improve sidewalk clearances, particularly around the street tree grates, given that fewer seats may be needed. An administrative review in one (1) year will allow staff to evaluate the new outdoor seating arrangement after one season of operation. A County Board review in two (2) years will allow the outdoor café to be reevaluated after construction on that block is

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

Staff: Melanie Jesick, DCPHD, Planning Division

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complete and the sidewalk is widened. Therefore, staff recommends renewal of the use permit, subject to all previous conditions, and with an administrative review in one (1) year (September 2010) and a County Board review in two (2) years (September 2011).

**BACKGROUND:** The use permit was approved by the County Board in 1999, and renewed in 2000, 2003, and 2008. In 1999, approved Condition #1 stated that the café shall remain within five (5) feet of the building. This was amended in 2003 to state the café shall remain within three (3) feet of the building and within five (5) feet of any street tree grate, in order to provide additional sidewalk clearance.

**DISCUSSION:** The outdoor seating associated with the existing Hard Times Café restaurant consists of a maximum of fourteen (14) seats placed along the sidewalk along North Highland Street. The width of the sidewalk in this section is ten (10) feet, and, per existing Condition #1, the tables are required to be kept within three (3) feet of the building within five (5) feet of any street tree grates. With this requirement, a 5 – 7 foot clearance remains, which allows pedestrians and those in wheelchairs sufficient room for movement. However, historically it has been difficult for the applicant to maintain this clearance at all times because tables and chairs sometimes shift during use. During a recent site visit staff noted that the café was in compliance with limits outlined in Condition #1. However, staff continued to reiterate to the applicant the importance of leaving clearance for pedestrians and those in wheelchairs.

The applicant has told staff that the restaurant will likely order new furniture for the outdoor café in 2010. While the applicant will still be required to keep the café within three (3) feet of the building and five (5) feet within any street tree grate, the applicant has indicated to staff that the restaurant may not need the maximum of fourteen (14) seats the use permit currently permits. Fewer seats may allow furniture to be placed further from street tree grates, which may improve sidewalk clearance. An administrative review in one (1) year would allow staff to evaluate the new arrangement after one (1) season of operation, ensure the outdoor café continues to operate in compliance with the approved conditions, and address any concerns.

Staff is also recommending a two (2) year County Board review, which will allow for review of the outdoor seating when construction on the block is complete and the sidewalk at this location is widened. With construction complete, the sidewalk on Highland Street will be thirteen (13) feet wide (3 feet wider than currently), and the sidewalk on Wilson Boulevard will be seventeen (17) feet wide. A streetscape dimension exhibit showing future sidewalk widths is attached.

**Since the previous use permit review (September 16, 2008):**

Use Permit Conditions: The outdoor café is in compliance with the conditions of the use permit. Staff reiterated to the applicant the need to stay in compliance with all conditions, especially remaining within three (3) feet of the building and within five (5) feet of any street tree grate.

Community Code Enforcement: The Code Enforcement Office has not reported any concerns with the use. There have been no Code Enforcement nor Zoning complaints registered during this review period regarding the outdoor cafe.

Fire Marshal's Office: The Fire Marshal's Office has expressed no concerns regarding the continuation of this use.

State ABC Board: The State ABC has not provided any comments on the use permit renewal.

Police Department: The Police Department has expressed no concerns regarding the continuation of this use.

Civic Associations: The site is located within the Clarendon-Courthouse Civic Association. The Clarendon-Courthouse Civic Association was notified of the use permit renewal, and has not provided a civic association position, but has stated that from personal experience, sometimes the café takes up more than half the sidewalk.

**CONCLUSION:** Staff recognizes that the applicant has had a difficult time maintaining adequate sidewalk clearance due to shifting tables during use, and that sometimes it is challenging for pedestrians and those with disabilities to pass at this location. The applicant continues to make an effort to keep the café within the limits stated in Condition #1, In addition, upon completion of construction on that block, the sidewalk along Highland Street will be widened by three (3) feet. An administrative review in one (1) year will allow staff to continue to monitor the use. A County Board review in two (2) years will allow the outdoor café to be reevaluated after construction on that block is complete and the sidewalk is widened. Therefore, staff recommends renewal of the use permit, subject to all previous conditions, with an administrative review in one (1) year (September 2010) and a County Board review in two (2) years (September 2011).

PREVIOUS COUNTY BOARD ACTIONS:

- |                    |                                                                                                                                                                                                                              |
|--------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| September 18, 1999 | Approved use permit (U-2968-99-1) for an outdoor café with fourteen (14) seats in the public right-of-way, subject to conditions and with a review in one (1) year (September 2000).                                         |
| September 9, 2000  | Continued use permit (U-2968-99-1) for an outdoor café with fourteen (14) seats in the public right-of-way, subject to conditions and with a review in three (3) years (September 2003).                                     |
| September 13, 2003 | Continued use permit (U-2968-99-1) for an outdoor café with fourteen (14) seats in the public right-of-way, subject to all previous conditions, and revised Condition # 1, with a review in five (5) years (September 2008). |
| September 16, 2008 | Renewed use permit (U-2968-99-1) for an outdoor café with fourteen (14) seats in the public right-of-way, subject to all previous conditions, and with a County Board review in one (1) year (September 2009).               |

Approved Conditions:

1. The outdoor café is permitted on the North Highland Street frontage only. The outdoor café shall extend no more than three (3) feet into the sidewalk and no tables are to be placed within five (5) feet of any street tree grates. The number of seats used in the outdoor café will be limited to a maximum of 14 seats. Furniture used on the outdoor café, including tables, chairs, post and link separators, umbrellas and planters, shall be removed and not stored in front of the restaurant when the café is not in use.
2. The outdoor café is permitted to be used during normal restaurant hours, generally between 11:30 a.m. and 12:00 midnight. There will be no music or audio system piped outside to the café, other than that in place as of September 18, 1999.
3. The applicant shall designate a neighborhood liaison to communicate with nearby residents and neighbors to address concerns which 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 Lyon Village Citizens Association, the Clarendon and Courthouse Civic Association and the Clarendon Alliance.