

**CONDITIONS
FOR APPROVAL OF U-3297-11-1 USE PERMIT REQUEST
FOR A RESTAURANT WITH OUTDOOR LIVE ENTERTAINMENT**

May 17, 2011

1. This live entertainment use permit shall apply solely to the restaurant located at 5863 Washington Boulevard and shall not apply to any other restaurant in the Westover Shopping Center. The applicant agrees that live entertainment shall be permitted only within the confines of the area for which a Certificate of Occupancy has been issued for an Outdoor Café at the Westover Market.
2. The applicant agrees that no live entertainment shall be permitted until a permanent certificate of occupancy for an indoor restaurant in the building that now houses the Westover Market has been obtained by the applicant, and all construction work under building permit #B1002423 has passed final inspection.
3. The applicant agrees to designate a neighborhood liaison who will be present at the Westover Market during business hours to communicate with nearby residents and neighbors to address concerns which may be related to the live entertainment, and to have an on-site liaison who shall be available during the hours of live entertainment to receive and respond to community concerns regarding the live entertainment. The applicant agrees that the designated on-site liaison shall be present on site at all times during the hours of live entertainment.

The applicant further agrees that the name and telephone number of such liaison(s) shall be submitted to the Zoning Administrator, the Westover Village, Tara-Leeway Heights and Highland Park-Overlee Knolls Civic Association Presidents and the residents of all houses on the 1600 block of North Longfellow Street and the 5800 block of 18th Street North before issuance of the Certificate of Occupancy for the indoor restaurant within the market. The applicant shall submit to the Zoning Administrator proof that contact information has been shared with the above-mentioned residents and the civic associations before issuance of the certificate of occupancy for the indoor restaurant within the market. In the event the designated liaisons change, such information shall be immediately forwarded to the Zoning Administrator and the above-named residents and Civic Associations.

4. The applicant agrees that there shall be no dancing by patrons or performers unless and until the applicant has applied for and obtained a Dance Hall Permit.
5. The applicant agrees that the area designated for the live performers shall be generally as shown on the exhibit entitled "Café at Westover" and dated 3/14/2011. The applicant shall ensure that performers shall always be set up so they are performing facing Washington Boulevard.

6. The applicant agrees to retain an acoustical engineer or similar expert acceptable to the County Manager to develop a sound management plan that conforms to this condition, submit to and obtain approval from the County Manager for the plan, and implement and thereafter maintain such plan throughout the life of the use permit. The sound management plan shall ensure that the sound emitted from the live entertainment shall not exceed the limits of the Noise Control Ordinance or the limits specified hereinafter, whichever is less. The approved sound management plan shall be implemented beginning at or before commencement of live entertainment at the site. The applicant agrees that if a test involving live entertainment is necessary for the acoustical engineer to properly assess the feasibility of the sound management plan, the applicant agrees to request approval of such test from the Zoning Administrator at least 72 hours before commencement of the test. The applicant when making such a request shall submit the name and phone number of the acoustical engineer that will be on site conducting the test, the proposed schedule of said test, and the nature of the music being performed during said test. The applicant further agrees to inform the Westover Village Civic Association and nearest neighbors identified in Condition #3 at least 24 hours before commencing such test, if said test is approved by the Zoning Administrator. The applicant agrees that only one (1) test shall be approved by the Zoning Administrator.

Such plan may include, in the Manager's discretion after consultation with the Zoning Administrator concerning the enforceability of the plan, provisions for automatic monitoring by a recordable webcam of a decibel meter placed at the nearest residential property line, or by some other recordable process acceptable to the County Manager and the Zoning Administrator. Regardless of the monitoring tool used, during the live entertainment the decibels measured shall at no time exceed 60 dB before 9 p.m. and 55 dB after 9 p.m., or the limits of the County Noise Ordinance, whichever is less, the sound management plan making an accounting for environmental noise, e.g. vehicular traffic, aircraft, etc.. The applicant shall submit a written report of the recorded information no later than the 30th of every month to the Arlington County Zoning Administrator, the neighbors identified in Condition #3, and the President of the Westover Village Civic Association.

The acoustical engineer, or a similar expert acceptable to the County Manager, shall, for a period of six (6) months after the commencement of live entertainment, or such longer period as the County Manager directs to ensure the checks have occurred and shown compliance with this condition for a six-month period, conduct random unannounced checks of the noise level and the management of the sound at least once per week while the live entertainment is occurring. The tests shall be conducted in accordance with the procedures in the County Noise Control Ordinance from, at a minimum, two (2) locations including from the nearest residential property line. The acoustical engineer or expert shall also submit a monthly written report of the results of such tests to the applicant, the Arlington County Zoning Administrator, the neighbors identified in Condition #3, and the President of the Westover Village Civic Association. Results that show any noise levels above those referenced in this condition shall, without limitation as to the bases for revocation, be grounds for revocation of the use permit for live entertainment.

7. The applicant shall comply with the Arlington County Noise Ordinance as well as all other County and State Ordinances and the regulatory requirements of the Environmental Health Bureau, the Fire Marshal, the Police Department and the Virginia Department of Alcohol Beverage Control. The applicant agrees that the live entertainment and/or amplification shall not cause vibrations on adjacent properties.
8. The applicant agrees that live entertainment is permitted only from April 1 to October 31 three days a week: on Wednesdays from 6 p.m. to 8 p.m.; and Fridays from 6 p.m. to 10 p.m., Saturdays from 5 p.m. to 9 p.m., and at no other times. Live entertainment shall not be amplified and shall not consist of electric or electronic instruments. The applicant agrees that Westover Market shall provide the amplification equipment, including speakers, mixing board and any equipment that controls volume. Volume shall always be controlled by a Westover Market employee. Performers shall not be permitted to control the volume.
9. During the season that the outdoor café /Beer Garden is closed, the tables, chairs and outdoor bar shall be completely removed. The outdoor café shall not be open when the restaurant is not open for business.
10. The applicant agrees that maximum capacity of the outdoor café/Beer Garden shall be 29 seats when live entertainment is not occurring. No more than 29 seats and 69 persons standing shall be permitted during live entertainment. The applicant agrees that the total capacity during live entertainment events shall not exceed 98, consistent with the certificate of occupancy.
11. The applicant agrees to cooperate with the Arlington County Police Department when responding to complaints related to the outdoor café and live entertainment, and to ensure that all restaurant staff serving alcohol shall complete the State Training Intervention Procedures (TIPS) program.
12. The applicant agrees to notify the County Manager at any time when a change of ownership is contemplated; upon a change of ownership of the Westover Market, the use permit shall be scheduled for a County Board review.
13. The applicant agrees that radio, recorded, or “piped-in” music shall not be played in the outdoor café/Beer Garden on evenings (6 p.m. to closing time) that live music is not played.
14. The use permit shall be subject to an administrative review two (2) months after the live entertainment has begun, but not earlier than September 2011.

Upon completion of the administrative review, and provided the County Manager determines that the applicant has complied with all conditions of the use permit up to the time of the review, the applicant shall be permitted to have live entertainment using amplified musical instruments and related equipment including, but not limited to, speakers, a mixing board, and sound control equipment, on Saturday evenings only until the end of the 2011 season on October 31, 2011, and no further unless this use permit is

further amended by the County Board. All other conditions of the use permits shall remain in effect. The County shall notify the Westover Village Civic Association and nearest neighbors identified in Condition #3 once a decision is made to allow the applicant to have live entertainment using amplified musical instruments.