



ARLINGTON COUNTY, VIRGINIA

County Board Agenda Item Meeting of July 9, 2011

DATE: June 29, 2011

SUBJECT: SP #397 SITE PLAN AMENDMENT to condition #65, for the project located at 1200 North Garfield Street, related to outdoor cafes, to provide for removal of the outdoor seating and barriers, including the insertion of plugs in the barrier sleeve holes, from some of the outdoor cafés that front on streets that abut the project, for the months of December, January and February, and other amendments that provide for seasonal use of outdoor cafés located on sidewalks around the project (RPC# 18-013-011).

Applicant:

The MHG Group

By:

Nan E. Walsh, Esq.
Walsh, Colucci, Lubeley, Emrich & Walsh
2200 Clarendon Blvd., 13th Floor
Arlington, Virginia 22201

C. M. RECOMMENDATION:

Adopt the attached ordinance approving a site plan amendment to SP #397 to require removal of the outdoor café located in the public right-of- way, including the fencing tables, and chairs, and the fence sleeve holes be capped, in the months of December, January and February, subject to the conditions of the ordinance applicable only to this site plan amendment, with a County Board review in one (1) year (July 2012).

ISSUES: This is a request to amend Condition #65 of Site Plan #397 requiring removal of the outdoor seating, tables and barriers located within the public right-of-way along Clarendon Boulevard for Circa in the months of December, January and February. No issues have been identified.

County Manager:

BMD/GA

County Attorney:

[Handwritten Signature]

Staff: Peter Schulz, DCPHD, Planning Division

PLA-5942

9.

SUMMARY: The applicant’s restaurant, Circa, has an outdoor café along Clarendon Boulevard that encroaches into the right-of-way. The applicant agrees to a site plan amendment requiring the restaurant to remove their encroaching outdoor café, including a fence, in the months of December, January and February of each year, in order that the outdoor café not be a permanent fixture in the right-of-way. This includes all tables and chairs. Therefore, staff recommends adoption of the attached ordinance approving a site plan amendment to SP #397 to require removal of the outdoor café located in the public right-of- way, including the fencing tables, and chairs, and the fence sleeve holes be capped, in the months of December, January and February, subject to the conditions of the ordinance applicable only to this site plan amendment, with a County Board review in one (1) year (July 2012).

BACKGROUND: Circa currently occupies outdoor seating in the right-of-way of Clarendon Boulevard and in the public access easement in the plaza. The applicant had installed fencing in the public right-of-way along Clarendon Boulevard. In June 2011 the County Board approved an encroachment ordinance for a canopy and for permanent anchor sleeves for the fencing, with the understanding that the fencing is removable. The County Board, at that time, also authorized advertising a site plan amendment to establish exactly when the fencing, tables and chairs in the public right of way along Clarendon Boulevard must be removed and that the sleeve holes be capped, in order that the use not be permanent.

Site: The restaurant is located in the building on the South Block, on the corner of Clarendon Boulevard and North Garfield Street. The site is bounded by the following:

- North: Clarendon Boulevard and the North Block of Clarendon Center, zoned “C-3” (SP #397).
- South: Across 11th Street North, low-rise commercial zoned “C-3”
- East: Across North Garfield Street is Restaurant 3 (zoned “C-3”) and the high-rise Station Square condominium building zoned “C-O” (SP #359).
- West: Across North Highland St., the high-rise Olmstead office building zoned “C-O” (SP #194)

Zoning: “C-O” Commercial Office Building, Hotel, and Multiple-Family Dwelling Districts (South Block).

General Land Use Plan Designation: “High” Office-Apartment-Hotel (South Block). Also located in the “Clarendon Revitalization District” (Note 12) and Note 1 (“All structures in this area will be restricted to 110 feet in height”).

Neighborhood: The site is located in the Clarendon-Courthouse Civic Association. The Clarendon-Courthouse Civic Association has been notified but has not provided a formal response to date.

DISCUSSION: The applicant, Circa, has an outdoor café in the fee simple public right-of-way along Clarendon Boulevard. The applicant had previously installed fencing, including the drilling of sleeve holes, in the public sidewalk. At the June 2011 County Board meeting, the Board approved an encroachment ordinance for the sleeve holes, and authorized on their own

motion advertising of a site plan amendment to clarify the times of year when the fencing, tables and chairs must be removed and the sleeve holes capped. The applicant has stated in a letter to the Board (attached) that they would agree to entirely remove the outdoor café along Clarendon Boulevard, including the fencing, tables and chairs, during the months of December, January, and February of each year.

CONCLUSION: Staff supports the site plan amendment to require Circa's outdoor café, including fencing, tables, and chairs to be completely removed from the public right of way along Clarendon Boulevard each year in the months of December, January, and February, and the fencing sleeve holes capped. Therefore, staff recommends adoption of the attached ordinance approving a site plan amendment to SP #397 to require removal of the outdoor café located in the public right-of- way, including the fencing tables, and chairs, and the fence sleeve holes be capped, in the months of December, January and February, subject to the conditions of the ordinance applicable only to this site plan amendment, with a County Board review in one (1) year (July 2012).

Site Plan Amendment Ordinance

WHEREAS, an application for a Site Plan Amendment dated June 10, 2011 for SP #397, was filed with the Office of the Zoning Administrator: and

WHEREAS, as indicated in Staff Report provided to the County Board for its July 9, 2011 meeting, and through comments made at the public hearing before the County Board, the County Manager recommends that the County Board approve the Site Plan Amendment subject to numerous conditions as set forth in the Staff Report; and

WHEREAS, the County Board held a duly-advertised public hearing on that Site Plan Amendment on July 9, 2011 and finds, based on thorough consideration of the public testimony and all materials presented to it and/or on file in the Office of the Zoning Administrator, that the improvements and/or development proposed by the Site Plan, as amended:

- Substantially complies with the character of the General Land Use Plan, and with the uses permitted and use regulations of the C-O Districts as set forth in the Zoning Ordinance; and
- Functionally relates to other structures permitted in the district and will not be injurious or detrimental to the property or improvements in the neighborhood; and
- Is so designed and located that the public health, safety and welfare will be promoted and protected.

NOW THEREFORE, BE IT ORDAINED that, as originally requested by an application dated June 10, 2011 for SP #397, and as such application has been modified, revised, or amended to include the drawings, documents, conditions and other elements designated in Condition 1 of the site plan (which drawings, etc. are hereafter collectively referred to as “Revised Site Plan Application”), for the parcels of real property known as RPC # 18-013-011 and 3030 Clarendon Boulevard and 1200 North Garfield Street, approval is granted and the parcels so described shall be used according to the Revised Site Plan Application, subject to all previously approved conditions (numbers 1 through 87) with Condition #65 amended as follows:

65. Outdoor cafés shall be permitted in the public right-of-way or within public easements along Clarendon Boulevard, Wilson Boulevard, North Highland Street, North Garfield Street, 11th Street North and for the plaza area at the southwest corner of the intersection of Clarendon Boulevard and North Garfield Street (the “Plaza”) in accordance with the applicable provisions of the Zoning Ordinance, with a maximum seating area and all other applicable requirements as set forth in the Zoning Ordinance and as determined by the Zoning Administrator. Unless otherwise specified by the Clarendon Sector Plan, in effect at the time of the issuance of the Clearing and Grading Permit, the following minimum sidewalk widths, which may not include a two foot shy zone adjacent to the buildings, shall be maintained even where outdoor cafes are established: A minimum of 8 feet of clear sidewalk width must be maintained along Wilson Boulevard, Clarendon Boulevard, and North Highland Street (with the exception of the sidewalks in front of the

Underwood Building and the Old Dominion Building). A minimum of 6 feet of clear sidewalk width must be maintained along North Garfield Street and 11th Street North (with the exception of sidewalks in front of the Old Dominion Building). A minimum of 6 feet of clear sidewalk width must be maintained adjacent to the public art in the Plaza and a minimum of 6 feet of clear sidewalk width must be maintained between the building and the Plaza easement. With the exception of outdoor seating areas existing at the time of site plan approval, a minimum of 6 feet of clear sidewalk width must be maintained along the sidewalks fronting the Underwood Building and the Old Dominion Building. Plans for all outdoor cafes shall be subject to prior administrative approval by the Zoning Administrator for consistency with County ordinances, regulations and policies. Any outdoor café shall be administratively reviewed one year following its approval to evaluate it after a season of operation. At that time and at any time thereafter, the Zoning Administrator may review the approval, and the County Board may impose conditions on the operation of the outdoor café, or revoke the prior approval. The applicant further agrees that the outdoor tables and seating, and the fencing and other barriers located in the public right-of-way along Clarendon Boulevard must be completely removed from the Clarendon Boulevard frontage, and plugs shall be inserted in the barrier sleeve holes, each year during the months of December, January and February.

PREVIOUS COUNTY BOARD ACTIONS:

April 2, 1977	Approved a use permit U-2105-77-1 to permit a private music school at 1137 North Highland Street.
September 9, 1978	Approved a use permit U-2170-78-2 to permit a dance studio at 1137 North Highland Street with conditions and a review in one year.
October 13, 1979	Continued U-2170-78-2 to permit a dance studio at 1137 North Highland Street with conditions and a review in three years.
October 16, 1982	Continued U-2170-78-2 to permit a dance studio at 1137 North Highland Street with conditions and a review in three years.
October 5, 1985	Continued U-2170-78-2 to permit a dance studio at 1137 North Highland Street with conditions and a review in three years.
April 15, 1986	Approved a use permit U-2506-86-1 to permit live entertainment and customer dancing at 3012 Wilson Boulevard subject to conditions and a review in one year.
October 18, 1986	Approved a use permit U-2528-86-1 to permit the operation of a photography studio on the second level of 3019 Clarendon Boulevard.
April 4, 1987	Continued U-2506-86-1 to permit live entertainment and customer dancing at 3012 Wilson Boulevard subject to all previous conditions and a review in two years.
April 25, 1987	Continued U-2528-86-1 to permit the operation of a photography studio on the second level of 3019 Clarendon Boulevard.
February 11, 1989	Approved a use permit U-2615-89-1 to permit a food delivery service at 3014 Wilson Boulevard with conditions and a review in one year.
April 8, 1989	Continued U-2506-86-1 to permit live entertainment at 3012 Wilson Boulevard subject to

	all previous conditions with the elimination of customer dancing and a review in three years.
February 10, 1990	Continued U-2615-89-1 to permit a food delivery service at 3014 Wilson Boulevard with amended conditions #1 and #2 and deletion of #3 and a review in three months.
May 22, 1990	Continued U-2615-89-1 to permit a food delivery service at 3014 Wilson Boulevard subject to all previous conditions with a review in one year.
June 4, 1991	Discontinued U-2615-89-1 for food delivery service at 3014 Wilson Boulevard.
April 3, 1993	Continued U-2506-86-1 to permit live entertainment at 3012 Wilson Boulevard subject to all previous conditions and one new condition regarding the noise ordinance and a review in five years.
September 9, 1995	Approved a use permit (U-2859-95-1) for the Leadership Institute for a dormitory at 1101 North Highland St., subject to conditions and County Board review in March 1997.
March 8, 1997	Renewed a use permit (U-2859-95-1) for a dormitory at 1101 North Highland St., with a County Board review in three years (March 2000).
September 18, 1999	Approved a use permit U-2968-99-1 to permit outdoor seating with 14 seats at 3028 Wilson Boulevard subject to conditions and a review in one year.
March 11, 2000	Renewed a use permit (U-2859-95-1) for a dormitory at 1101 North Highland St., with no further County Board review.
September 9, 2000	Continued U-2968-99-1 to permit outdoor seating with 14 seats at 3028 Wilson Boulevard subject to all previous conditions and a review in three years.
September 13, 2003	Continued U-2968-99-1 to permit outdoor seating with 14 seats at 3028 Wilson Boulevard subject to

all previous conditions, revised condition #1 and a review in September 2008.

July 14, 2004

Denied Z-2501-03-1 Rezoning from C-3” General Commercial Districts to “C-O” Commercial Office Building, Hotel and Multiple-Family Dwelling Districts and SP #372 Site Plan for approximately 279 dwelling units, approximately 156,689 square feet of retail, modifications of use regulations for building setbacks, parking, width of parking aisle, density, coverage, storage, mechanical systems within units and ducts to roof exemptions from FAR, and loading dock length

June 13, 2006

Approved Site Plan #397 to permit approximately 244 dwelling units, 220,919 sq ft of office, 61,380 sq ft retail with modification to use regulations for density, coverage, parking ratio, compact parking, tandem parking, and drive aisle width.

November 14, 2006

Enactment of Ordinance allowing the encroachment of an underground electric vault within the right-of-way of North Garfield St., immediately adjacent to lots 92, 93, 94 and 95, Lyon’s addition to Clarendon, block “F”, RPC Nos. 18-013-001 and 18-013-006, with conditions; and Enactment of Ordinance allowing the encroachment of an underground electric vault within the right-of-way of Wilson Blvd., immediately adjacent to Lot 9, Lyon’s addition to Clarendon, block “E”, RPC Nos. 18-012-001, with conditions.

February 26, 2008

Approved Site Plan Amendment to amend project phasing.

March 15, 2008

Approved Site Plan Amendment to permit permanent preservation easements on the Underwood Building and the Old Dominion Building, required to run to the benefit of the Northern Virginia Conservation Trust (NVCT), could also run to the benefit of another entity identified and mutually acceptable to the landowners and the County Manager.

September 13, 2008

Approved a Site Plan Amendment to modify Condition #33 (plat of excavated area), and

	Condition #42 (wall check survey), and to amend Conditions #77 and #78 (permanent preservation easements).
September 16, 2008	Renewed a use permit for an outdoor café (U-2968-99-1) subject to all previous conditions with a review in one year (September 2009).
September 29, 2009	Renewed a use permit for an outdoor café (U-2968-99-1) subject to all previous conditions with a review in one year (September 2010).
November 17, 2009	Approved a site plan amendment for live entertainment and dancing at Hard Times Café, subject to conditions and review in one year (November 2010).
May 22, 2010	Approved temporary signs at Clarendon Center, subject to all previous conditions and revised condition #47.
July 10, 2010	Approved the site plan amendment request for a comprehensive sign plan at Clarendon Center, subject to all previous conditions and revised condition #47.
September 28, 2010	Renewed a use permit (U-2968-99-1) for an outdoor café at Hard Times Café, subject to a revised condition #1, new conditions, all previous conditions and review in six months (March 2011).
November 13, 2010	Renewed a site plan amendment for live entertainment and dancing for Hard Times Café, subject to all previously approved conditions and revised condition #2 and eight new conditions, with a review in two years (November 2012).
March 12, 2011	Renewed a use permit (U-2968-99-1) for an outdoor café at Hard Times Café, subject to a revised condition #1, all previous conditions and review in one year (March 2012).



**WALSH COLUCCI
LUBELEY EMRICH
& WALSH PC**

Nan E. Walsh
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nwalsh@arl.thelandlawyers.com

June 16, 2011

Via Hand Delivery

Ms. Barbara M. Donnellan
County Manager
County of Arlington
2100 Clarendon Boulevard, #302
Arlington, VA 22201

Re: CIRCA Restaurant, Clarendon Center, 3030 Clarendon Boulevard

Dear Ms. Donnellan:

As a followup to my messages to Gabriella Acurio and Carol McCoskrie yesterday, I wanted to write you a quick note. As you know, at its June 14 carryover hearing, the County Board approved the encroachments associated with the CIRCA application. During the hearing, the County Board made a second motion to advertise on its own motion the amendment to the outdoor seating condition. As the applicant's representative, I did not have the benefit of seeing the advertising language that the County Board was acting upon and, in fact, amended during the hearing to specify the affected three months.

On behalf of Saul, I want to reiterate that the amendment to the outdoor seating condition must narrowly apply to the seating area that is located along Clarendon Boulevard, which was the subject of the encroachments and is part of CIRCA's restaurant. As Saul has other restaurants with outdoor seating in the project and the applicable site plan conditions were a part of their leases, Saul cannot have the outdoor seating condition amended to apply to any area other than the Clarendon Blvd section of CIRCA's outdoor seating.

In summary, the enclosed letter to the Chairman of the County Board, that was requested by Staff and distributed publicly well before the hearing, describes the full extent and scope of Saul's agreement to amend Condition #65 of SP #397.

Very truly yours,

WALSH, COLUCCI, LUBELEY, EMRICH & WALSH, P.C.

Nan E. Walsh

NEW:mcm
Enclosure

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ATTORNEYS AT LAW



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**WALSH COLUCCI
LUBELEY EMRICH
& WALSH PC**
June 10, 2011

Via Hand Delivery

Chris Zimmerman
Chairman, Arlington County Board
Suite 300
2100 Clarendon Blvd.
Arlington, VA 22201

Re: County Board Agenda Item #4B - Encroachments for Circa

Dear Chairman Zimmerman:

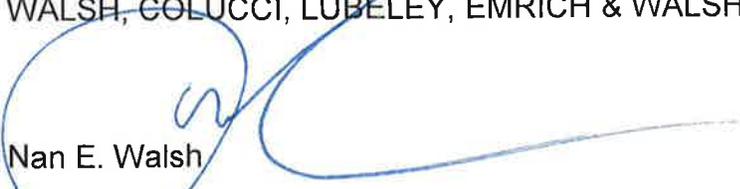
On behalf of the owners of Circa at Clarendon and Clarendon Center, as requested by Steve MacIsaac, I wanted to provide you with an agreeable methodology for achieving a formal agreement relative to the Circa outdoor seating area located along Clarendon Boulevard.

Specifically, Circa and Saul agree that the County Board may initiate an amendment on its own motion to Site Plan Condition #65 of Site Plan #397 requiring that the outdoor seating and barriers along the Clarendon Boulevard frontage area, as depicted on the enclosed exhibit, be removed and the barrier sleeve holes be covered with plugs during the months of December, January and February of each year. All other aspects of the condition would remain unchanged.

Thank you for your attention to this matter.

Very truly yours,

WALSH, COLUCCI, LUBELEY, EMRICH & WALSH, P.C.


Nan E. Walsh

cc: Steve MacIsaac
Carol McCoskrie
Melinda Artman
Gabriella Acurio
Tom Miller

Enclosure

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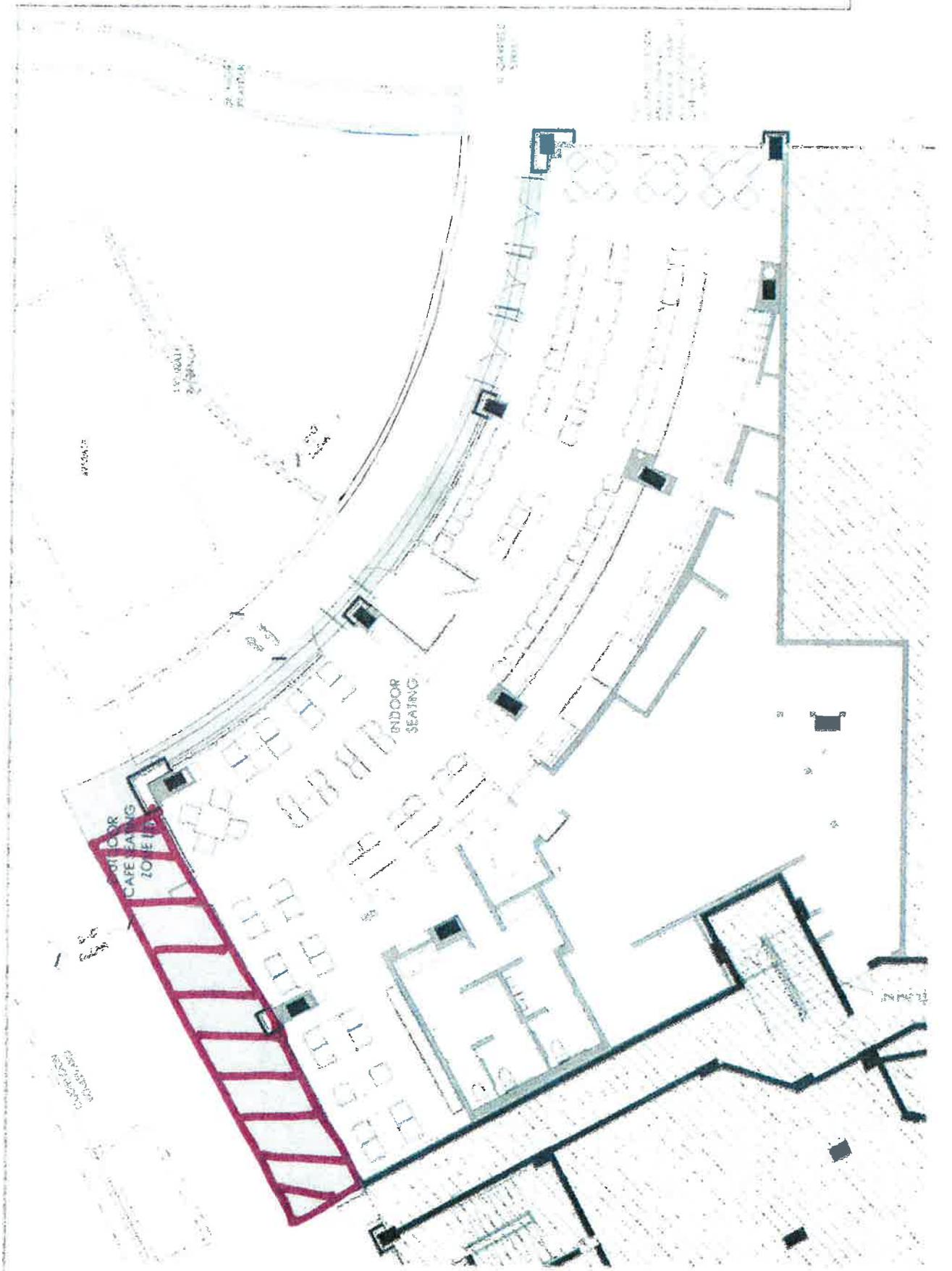
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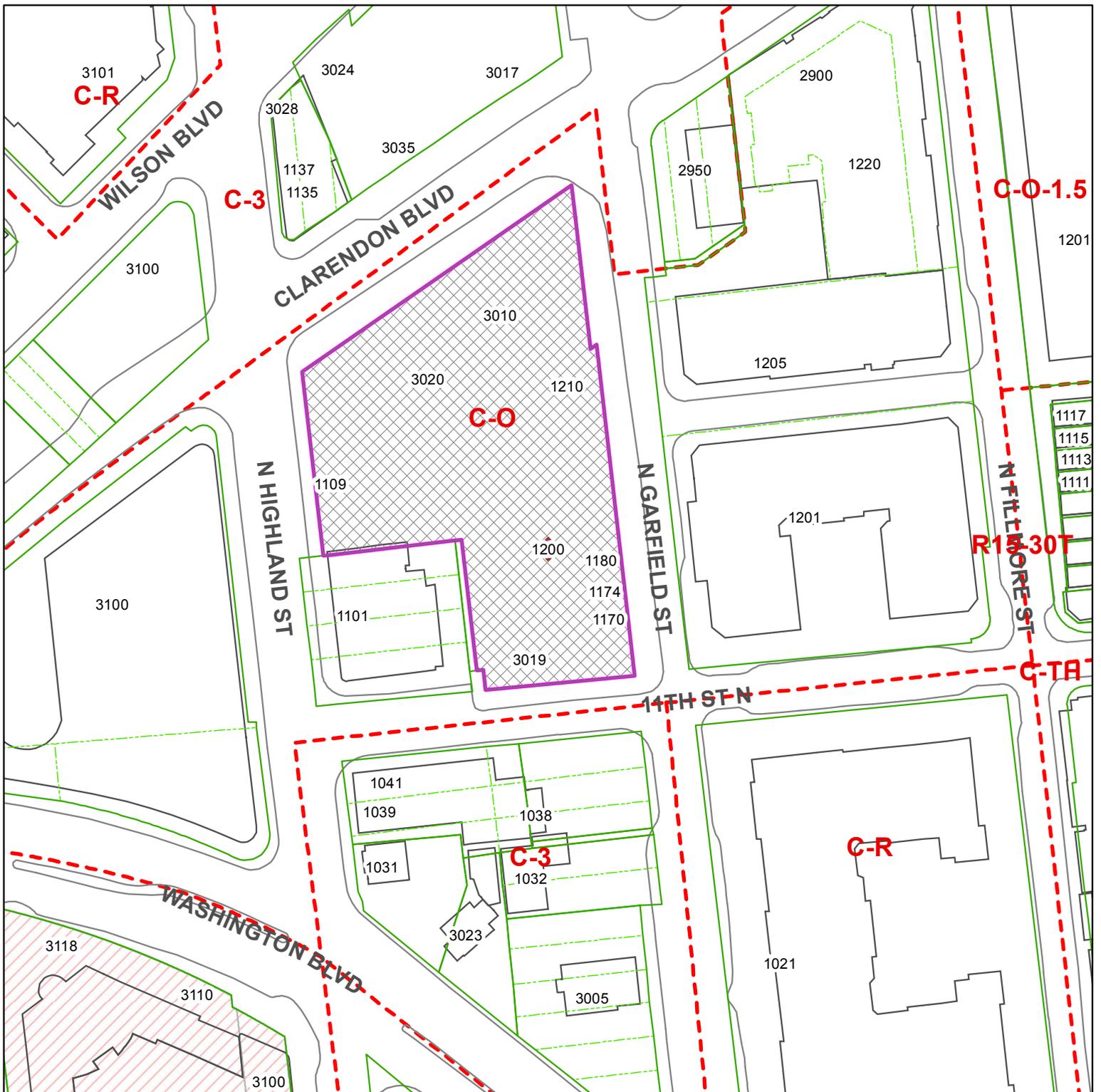
studio

(10)



OUTDOOR CAFE SEATING





SP #397 Circa: Amendment to condition #65

1200 North Garfield Street

RPC #18-013-011



 Case
 Location(s)
 Scale: 1:1,200

Note: These maps are for property location assistance only.
 They may not represent the latest survey and other information.