



ARLINGTON COUNTY, VIRGINIA

**County Board Agenda Item
Meeting of November 19, 2011**

DATE: October 31, 2011

SUBJECT: U-3134-05-2 USE PERMIT REVIEW for restaurant providing live entertainment; located at 1041 N. Highland Street (RPC# 18-026-004).

Applicant:

Rich Roberts
Eleventh Street Lounge
1041 N. Highland Street
Arlington, Virginia

C. M. RECOMMENDATION:

Renew use permit for restaurant providing live entertainment, subject to all previously approved conditions, with an administrative review in six (6) months (May 2012), and a County Board review in one (1) year (November 2012).

ISSUES: This is a one (1) year review of a use permit for live entertainment at the Eleventh Street Lounge. The Fire Marshal's Office reports that the restaurant was cited for being overcrowded. A representative from Eleventh Street Lounge was not present at the June 2011 meeting of the Clarendon Live Entertainment Neighborhood Advisory Group.

SUMMARY: This is a one (1) year review of a use permit for live entertainment at the Eleventh Street Lounge, located at the corner of Highland Street and 11th Street North in Clarendon. The restaurant has been compliant with the conditions of the use permit, with two (2) exceptions. A joint inspection on August 26, 2011 by the Police Department, the Fire Marshal, and the Virginia Department of Alcoholic Beverage Control (ABC) found the restaurant to be over capacity. The restaurant has been issued a citation for the violation. This is a violation of Condition #3, which requires compliance with County code. In addition, the applicant was unable to attend the June meeting of the Clarendon Live Entertainment Neighborhood Advisory Group. Condition #5 requires attendance at the quarterly meetings. However, the applicant notified staff prior to the

County Manager: *BMD/GA*

County Attorney: *MNC* 

Staff: Matthew W. Pfeiffer, DCPHD, Planning

PLA-6037

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meeting in June that they were unable to attend, and did participate in meetings held in March 2011, and October 2011. Staff is recommending that the use permit be reviewed again in November 2012 to track with the rest of the Clarendon Live Entertainment special exception permits; staff is also recommending a short administrative review to monitor the above-cited issues. Therefore, staff recommends that the use permit be renewed subject to all previously approved conditions, with an administrative review in six (6) months (May 2012), and a County Board review in one (1) year (November 2012).

BACKGROUND: The use permit for live entertainment at Eleventh Street Lounge was approved in 2005 and reviewed on the same cycle as the other Clarendon Live Entertainment Special Exceptions. During the review of the Clarendon Live Entertainment uses in November 2010, it was found that Eleventh Street Lounge had not participated in the three (3) meetings preceding the review. As a result, the County Board placed the use permit on a shorter review schedule, requiring the use permit to be reviewed in one (1) year.

DISCUSSION: Since the Last Review (November 13, 2010):

Use Permit Conditions: The restaurant did not participate in the June 2011 meeting of the Clarendon Live Entertainment Neighborhood Advisory Group, which is a violation of Condition #5, which requires participation in quarterly meetings. However, the applicant notified staff prior to the meeting that they were unable to attend, and a representative was present at the March and October meetings. In addition, the restaurant was cited for a violation after being found to be over capacity in an August 26th inspection. This is a violation of Condition #3, which requires the applicant to meet the requirements of the Fire Marshal's Office. No other use permit violations have been identified.

Community Code Enforcement: The Code Enforcement Office has not identified any issues with the use permit.

Fire Marshal's Office: The Fire Marshal's Office has reported that an August 26, 2011 inspection found the restaurant to be over capacity by ten (10) persons. A violation notice was issued, and the case resolved on September 3, 2011.

State ABC Board: The ABC Board has not identified any issues with the use permit.

Police Department: The Police Department has reported that there is one active report on file for Eleventh Street Lounge in which a driver cited for a DUI violation claimed to have patronized the restaurant.

Civic Association: The Lyon Village and Clarendon-Courthouse Civic Associations were notified of the use permit review. The Lyon Village Civic Association has not responded to request for comment, and the Clarendon-Courthouse Civic Association has expressed that they support the renewal of the use permit.

CONCLUSION: The restaurant was found to have exceeded capacity on one (1) occasion, but resolved the issue in a timely manner. The restaurant also did not participate in one (1) of the

required quarterly meetings over the past year, however did work with staff to be present at the following meeting. Staff is recommending an administrative review to monitor issues discussed. Therefore, staff recommends renewal of the use permit subject to all previously approved conditions, with an administrative review in six (6) months (May 2012) and a County Board review in one (1) year (November 2012).

PREVIOUS COUNTY BOARD ACTIONS:

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| October 18, 2005 | Approved a use permit for live entertainment for RTM Investment Group LP “eleventh street” (U-3134-05-2), subject to conditions and with a review in seven (7) months. (May 2006) |
| May 20, 2006 | Renewed use permit for live entertainment at eleventh street lounge (U-3134-05-2) subject to all previous conditions and with a review in one (1) year. (May 2007) |
| May 5, 2007 | Renewed use permit for live entertainment at eleventh street lounge (U-3134-05-2) subject to all previous conditions and with a review in one (1) year. (May 2008) |
| May 17, 2008 | Deferred the use permit reviews and site plan amendments for Clarendon Live Entertainment to the September 13, 2008 County Board meeting. |
| September 13, 2008 | Deferred the use permit reviews and site plan amendments for Clarendon Live Entertainment to the November 15, 2008 County Board meeting. |
| November 15, 2008 | Renewed the use permit for Eleventh Street Lounge subject to all previous conditions, and four (4) new conditions, with an administrative review in one (1) year (November 2009) and a review by the County Board in two (2) years (November 2010). |
| November 13, 2010 | Renewed use permit for live entertainment at Eleventh Street Lounge, subject to all previously approved conditions and eight (8) new conditions, with an administrative review in six (6) months and a County board review in one (1) year (November, 2011). |

Approved Conditions:

U-3134-05-2: 1041 N Highland St – Eleventh Street Lounge

1. The applicant agrees to limit the live entertainment to the following hours: Monday through Sunday, 9 a.m. to 1:30 a.m. The applicant agrees that there shall be no dancing associated with the live entertainment. A use permit amendment and a dance hall permit will be required in the event that the applicant decides to offer dancing in the future.
2. The applicant agrees to keep all doors and windows of the restaurant closed during live entertainment- except for the purposes of entry, egress, and other intermittent uses, such as serving an outdoor seating area. Under no circumstances shall live entertainment be permitted outside of the building or broadcast over loudspeakers outside of the building. The applicant agrees that doors shall not be propped open during live entertainment. The applicant agrees that music resulting from live entertainment shall comply with the limits established in the County Noise Ordinance-
3. The applicant agrees to meet the requirements of the Community Code Enforcement Office, Environmental Health Bureau, the Fire Marshal's Office, the Police Department, and the Alcohol Beverage Control Board.
4. The applicant agrees to identify a liaison between the subject use and the neighborhoods. The liaison shall be empowered to address any concerns identified as emanating from the live entertainment. The name and telephone number of the liaison shall be shared with the Zoning Administrator and the Clarendon-Courthouse Civic Association.
5. The applicant agrees to participate in the established neighborhood advisory group consisting of representatives of several of the live entertainment establishments in the Clarendon area, the Clarendon Alliance, the Clarendon-Courthouse Civic Association, the Lyon Village Citizens Association, the Lyon Park Citizens Association, and representatives of various County staff including Police, Code Enforcement, and Planning. The advisory group meets quarterly to work through issues associated with the live entertainment uses.
6. The applicant agrees to pay its proportional share of the cost of hiring an off-duty police officer between the hours of 9 a.m. and 1:00 a.m. on Monday through Sunday, should a cost-sharing agreement for the police officer be reached among all the businesses that have use permits or site plan amendments for live entertainment in the Clarendon Metro Station area in the future.
7. The applicant shall make customers aware of available parking and any special parking arrangements through postings in the restaurant and on their website.
8. The applicant agrees that on-site dedicated security shall be provided from 9:00 p.m. until closing on nights that have bands or deejays whose primary purpose is to serve a dancing crowd. The on-site security may consist of “in house” staff, so long as that staff is dedicated to security only.
9. The applicant agrees that all staff serving alcohol to customers shall have TIPS (Training for Intervention Procedures) certification.

10. The applicant agrees to post sign signs inside the restaurant near the door telling patrons to respect the peace of residential neighborhoods and to please avoid parking in the residential neighborhood where possible.
11. The applicant agrees to ensure that any patrons queuing outside should keep noise to a minimum.
12. The applicant agrees to clean the sidewalk in front of its establishment each morning, including sweeping cigarette butts and litter that may have accumulated from any outdoor seating area, if applicable.
13. The applicant agrees that the approval for live entertainment at 1041 N. Highland St. is valid only for Eleventh Street Lounge. Any other tenant/owner occupying the premises shall not be permitted to have live entertainment without prior approval of the County Board.

From: Kenneth Fulton <kennethgfulton@yahoo.com>
Sent: Wednesday, October 19, 2011 7:07 AM
To: Matthew Pfeiffer; Marco Rivero
Cc: Tim Wise; Adam Thocher; Peter Owen; Melissa Bondi; Richard Dumas; HK Park
Subject: Re: Live music permits - County staff request for comments

Follow Up Flag: Follow up
Flag Status: Completed

Matthew and Marco,

The CCCA met last night, and our discussion included new and renewing permits. Below are the the positions regarding applications for which you have asked comments:

Clarendon Farmers Market -- The CCCA supports renewal of this permit, and has no adverse comments.

Mexicali Blues (new live entertainment) -- The CCCA does not support this permit. The CCCA President visited the restaurant and spoke with the its manager and emailed the owner to learn preliminary and sketchy details of the planned operations, and invited a management representative to attend a CCCA meeting where two other businesses (Mad Rose Tavern and Arlington Rooftop Bar and Grill) presented information about their business plans and responded to CCCA member questions. Representatives of Mexicali Blues declined to meet with the CCCA, and the information contained in the formal application indicates substantially longer hours and more neighborhood intrusive operations than was indicated in preliminary conversations. The CCCA is supportive of business activities in its neighborhood, as indicated by the other positions below, but in this instance does not believe the permit would be in the broad general interest of the neighborhood.

Mad Rose Tavern (new live entertainment) -- The CCCA supports this permit but with a 6 month review period as opposed to the usual 12 month. CCCA members have observed and spoken with the manager on repeated occasions (but have not filed formal complaints) regarding failure to maintain the required 6-foot clear sidewalk space adjacent to outdoor cafe seating, and open doors that permit loud recorded music into the street. While the applicant has demonstrated greater adherence to existing site requirements, we would encourage County staff and the Board to have a shorter review and evaluation period until a consistent pattern of compliance is established.

11th Street Lounge (renewal live entertainment) -- The CCCA supports renewal of this permit, and has no adverse comments.

Guarapo (renewal live entertainment) -- The CCCA supports renewal of this permit, and has no adverse comments.

Regards,
Ken Fulton
CCCA President

cc: CCCA Executive Committee
HK Park, Lyon Village

